

INTERNAL MEMORANDUM

To: David Cross
From: Matt Davies (Ecologist)
Ext: 5278
Memo number: 2
Date of previous memo: 11/11/2022
Date: 28/11/2023

SUBJECT: P/22/0222 | Land northwest of Aartal Bungalow, Efi Industrial Estate, Brecon Road | Re-siting of existing residential mobile home, expansion of residential curtilage and construction of day room/utility area, provision of ancillary tourer and parking area with ecological enhancements

Works have already been completed on site, including native habitat removal, site expansion, hardstanding, fencing and lighting installation, planting of non-native species.

Designated sites within 500m of the application site:

- Site of Special Scientific Interest (SSSI) – x1 (Cwm Taf Fechan Woodlands, c.286m from site);
- Local Nature Reserve (LNR) – x1 (Cwm Taf Fechan, c.286m from site);
- Sites of Importance for Nature Conservation (SINC) – x4 (**the site lies within the Cwm Taf Fechan SINC**);
- Restored Ancient Woodland Site (RAWS) – x3;
- **Within a Buglife B-Lines Area**

Priority and protected species within 500m of the application site:

- Birds (including Schedule 1¹ and Section 7² species, closest record, kingfisher, c.125m from site);
- Fish (including Section 7² species, closest records for Atlantic salmon and Brown/Sea trout, c.69m from site);
- Invertebrates (including Section 7² species, closest record, white-letter hairstreak, c.100m from site);
- Bats [closest roost records for Daubenton's bat and unidentified pipistrelle species, c.207m from site. Other nearby bat species records include brown long-eared bat (c.207m), common pipistrelle (c.303m), lesser horseshoe bat (c.563m), Natterer's bat (c.207m) and soprano pipistrelle (c.117m)];
- Otter (closest record, c.161m from site);
- Badger (closest record, c.369m from site);
- Hedgehog (closest record, c.320m from site);
- Reptiles (closest record for slow worm, c.244m from site);
- Amphibians (including great crested newt, closest record c.1093m from site);

¹ Wildlife & Countryside Act 1981 (as amended)

² Environment (Wales) Act 2016

- Vascular plants (including Section 7² species, c.307m from site – lesser butterfly-orchid).

As the site lies within a SINCC designation it is subject to the following National Policy³...

Box 1

Protection for Non-statutory Designations

6.4.20 Although non-statutory designations carry less weight than statutory designations, they can make a vital contribution to delivering an ecological network for biodiversity and resilient ecosystems, and they should be given adequate protection in development plans and the development management process. Before authorising development likely to damage a local wildlife designation, planning authorities should give notice of the proposed operation to the County Ecologist and third sector environmental organisations. Where a Green Infrastructure Assessment has identified that certain features or characteristics of the site need to be conserved or enhanced, planning authorities should state in their development plans what features or characteristics require this extra protection and why, and explain how the policies will achieve this protection. Assessments should similarly consider the presence of protected and priority species including those on the Section 7 list and appropriate weight attached to their protection. Policies for non-statutory sites should make it clear that such designations do not preclude appropriate developments, where there are no adverse impacts on the features for which a site is designated.

and Local Policy⁴...

Box 2

Policy EnW3: Regionally Important Geological Sites, Sites of Importance for Nature Conservation, Local Nature Reserves and Priority Habitats and Species

Development proposals likely to have an adverse impact on Regionally Important Geological Sites, Sites of Importance for Nature Conservation, Local Nature Reserves, or Priority Habitats and Species will only be permitted where it can be demonstrated that:

1. The need for the development clearly outweighs the conservation value of the site;
2. Adverse impacts on nature conservation features or geological features can be avoided;
3. Appropriate and proportionate mitigation and compensation measures can be provided; and
4. The development maintains and where possible enhances biodiversity and geodiversity interests.

6.6.28 Development which is likely to have an adverse impact on SINCCs, RIGS, LNRs or Priority Habitats and Species will be required to demonstrate that every effort has been made to avoid and mitigate any adverse impacts and that the need for the development outweighs the nature conservation or geological value. Where on site mitigation is not possible or sufficient to prevent any adverse impacts, off-site compensation will be required. Off-site compensation will be secured through planning conditions or Section 106 agreements as appropriate.

6.6.29 As stated above biodiversity and/or geodiversity enhancement and the promotion of ecosystem resilience will be sought through the consideration of development proposals. Development proposals should therefore demonstrate how biodiversity and/or geodiversity interests will be maintained and where possible enhanced. Levels of mitigation and compensation should be appropriate and proportionate with the level of adverse impact and the scale of development.

6.6.30 Together with open space and good design, contributing to high quality landscaping, sustainable drainage solutions (SUDs), SSSIs, SINCCs, RIGSs and Local Nature Reserves (LNRs) provide the foundation for ecosystem connectivity. In addition to considering these designations, development proposals will be expected to demonstrate how green infrastructure more broadly has been considered, including the incorporation of existing and provision of new features, in accordance with Policy SW11: Sustainable Design and Placemaking.

The works undertaken included the removal of woodland habitat and the disruption of an area of grassland. See below for a comparison of aerial images of the taken in 2021 (July) and 2016 (August). Figure 1 is the most recently taken aerial image and Figure 2 shows the site as it was prior to the works being undertaken (the red line boundary is included to demonstrate where habitat has been removed or disrupted). Trees along the western and eastern boundaries have been removed and there is a grassland area to the north that has been disrupted.

³ https://gov.wales/sites/default/files/publications/2021-02/planning-policy-wales-edition-11_0.pdf

⁴ <https://www.merthyr.gov.uk/media/5642/replacement-ldp-written-statement-final-composite-version-140120.pdf>



Figure 1 – most recently taken aerial image of the site (July 2021)



Figure 2 – the site as it was prior to works being undertaken (August 2016)

The trees that have been removed would appear from the aerial images, and also photographs taken by officers prior to the works, to be similar in age and size to the adjacent trees that remain on site. This means they were highly likely to have been

medium mature trees that were ‘*at least*’ 20 years old (using the evidence historic aerial imagery).

The site (and therefore the habitat that has been removed) lies within the Cwm Taf Fechan SINC. The SINC site was surveyed in 2007 by David Clements Ecology Ltd and was assessed against the published guidelines for SINC in South Wales. The whole area of the site qualified as a SINC in a range of categories – see Table 1 below:

Table 1 – SINC guideline qualification for the Cwm Taf Fechan SINC.

Guideline	Subject	Compliance
H1	Woodlands	Yes
H3	Scrub Communities	Yes
H4	Neutral Grasslands	Yes
H5	Calcareous Grasslands	Yes
H9	Bracken Communities	Yes
H10	Heath & Grass-Heath Habitats	Borderline/No
H12	Bog Habitats & Flushes	Yes
H15	Watercourses	Yes
H20	Mosaic Habitats	Yes
H21	Rock Exposures	Yes
H22	Other Features	Yes
S1	Mammals	Yes
S2	Birds	No
S3	Reptiles	No
S4	Amphibians	No
S5	Fish	Yes
S6	Invertebrates	Yes
S7	Vascular Plants	Yes
S8	Fungi	No
S9	Mosses & Liverworts	No

This included, Woodlands, Watercourses, Mammals, Fish, Invertebrates and Vascular Plants. All relevant to the development that has occurred on site and resulting in negative impacts (ranging from definite to probable to possible).

For example, the site qualifies under Guideline H1: Woodlands, in part under the following criteria - *Semi-natural woodlands, of whatever size, which support as assemblage of ancient woodland indicator species*. Almost all of the SINC site woodlands were identified as semi-natural, supporting at least 32 indicator species, which was considered to be highly significant.

Within the report the following description of woodlands in the south of the SINC site is provided:

Box 3

The woodlands in the south of the site have suffered more disturbance than those further north, on account of their location in an urbanised and industrialised area. The woodlands here include some young and semi-mature stands which have developed since the decline in industrial use of the riverside areas. However, there are also a number of large mature trees and in many areas the ground flora supports a diverse range of herbs. These woodlands are dominated by a mixture of tree species, with alder, ash, sycamore and goat willow being the most numerous. There are also a few large specimens of pedunculate oak and younger individuals of wych elm. The understorey comprises mainly hazel, while the ground flora is damp and lush and supports a moderately diverse range of woodland herbs, particularly close to the river. These include hairy brome, bearded couch, wood false-brome, tufted hair-grass, wood anemone, wild angelica, cuckoopint, sanicle (*Sanicula europaea*), meadowsweet, enchanter's nightshade (*Circaea lutetiana*), red campion (*Silene dioica*), wood speedwell, bluebell (*Hyacinthoides non-scripta*), wild garlic and pignut (*Conopodium majus*). There are also a few patches of dog's mercury and occasional bushes of red currant (*Ribes rubrum*), along with a sparse covering of ivy (*Hedera helix*).

This information demonstrates that the onsite works (including the removal of the woodland habitat) does not conform with National or Local Planning Policy in terms of locally designated sites. The works have had an adverse impact on the features for which the SINC site was designated (see Box 1). In addition, none of the following has been demonstrated:

1. *The need for the development clearly outweighs the conservation value of the site;*
2. *Adverse impacts on nature conservation features or geological features can be avoided;*
3. *Appropriate and proportionate mitigation and compensation measures can be provided; and*
4. *The development maintains and where possible enhances biodiversity and geodiversity interests.*

... see Box 2.

In addition, it is understood that no ecological assessments were undertaken prior to works being undertaken and therefore no consideration was given to any negative impacts for protected species, e.g., roosting bats, nesting birds, dormice, invertebrates, lichens etc. All examples of material considerations when considering a planning application. This may have resulted in the destruction of bat roosts, bird and dormice nests, however, this cannot be stated for certain without evidence of their presence prior to the works being undertaken. What can be said for certain, is the removal of habitat has had a negative impact on food sources for a range of species and also the connectivity of the habitat in the area, which again has negative impacts on a wide range of protected species.

It is also noted that onsite lighting has been installed. Light spill onto habitat suitable for nocturnal protected species is not acceptable.

In addition to the policy elements as already discussed, the development runs contrary to the Council's statutory duty under the Environment (Wales) Act, 2016 (*'all public authorities are required, when undertaking their functions in Wales, to seek to maintain and enhance biodiversity wherever possible within the proper exercise of their functions. In doing so, public authorities must also seek to promote the resilience of ecosystems.'*)

There may also have been breaches of a range of wildlife and biodiversity legislation, examples include:

- o The Wildlife and Countryside Act, 1981 (as amended);
- o The Conservation of Habitats and Species Regulations, 2017 (as amended).

Based on all the information above, the application should be refused. Further to this, as the work has already been undertaken, the removed habitat should be, as far as possible, fully reinstated (guided by the information within Box 3, without the use of Ash due to Ash Die-back). NB it is very difficult to compensate for the loss of medium mature trees in the short, or perhaps, even the medium term. Therefore, extra heavy standard tree specimens should be used to replace the larger trees with smaller specimens used to replace the scrub and understorey layer beneath. This would at least give the habitat provided in compensation a head start.

A full **reinstatement plan** for the site should be drawn up for approval by MTCBC.

NEW NATIONAL PLANNING POLICY

The next edition of Planning Policy Wales (PPW12) is due to be published in later this year. On the **11th October 2023**, ahead of the full document being released, the new Chapter 6 came into force with immediate effect.

The **main changes** to policy (that are or may be relevant to this application) are as follows:

Green Infrastructure: stronger emphasis on taking a proactive approach to green infrastructure, the submission of a proportionate green infrastructure statement with planning applications and signposting Building with Nature standards.

The **reinstatement plan** will now need to be accompanied by a Green Infrastructure Statement and in the absence of a completed MTCBC Green Infrastructure Assessment, the Building with Nature standards⁵ will be used.

Net Benefit for Biodiversity and the Step-wise Approach: further clarity is provided on securing net benefit for biodiversity through the application of the step-wise approach, including the acknowledgement of off-site compensation measures as a last resort, and, the need to consider enhancement and long-term management at each step. The use of the green infrastructure statement as a means of demonstrating the stepwise approach is made explicit. A simplified diagram of the policy approach has been developed (which will be further refined in the consolidated version of PPW12). The importance of strategic collaboration to identify and capture larger scale opportunities for securing a net benefit for biodiversity is recognised.

The **reinstatement plan** will now need to include a Net Benefit for Biodiversity (NBB). The new Chapter 6 (PPW12) states that:

“Where a site has been cleared prior to development its biodiversity value should be deemed to have been as it was before any site investigations or clearance took place. A net benefit for biodiversity must be achieved from that point. Habitat status can be established through evidence remaining on site and local desk-based assessments (planning authorities must ensure that they have access to these data sources). In such cases, habitat status will be presumed to be good in the absence of any evidence to the contrary.”

Therefore, the baseline used to demonstrate NBB will be the state of the habitat prior to the onsite works.

Trees and Woodlands: closer alignment with the stepwise approach, along with promoting new planting as part of development based on securing the right tree in the right place.

A relevant excerpt from the new Chapter 6 regarding trees and woodland:

*“Permanent removal of trees, woodland and hedgerows will only be permitted where it would achieve significant and clearly defined public benefits. Where individual or groups of trees and hedgerows are removed as part of a proposed scheme, planning authorities must first follow the step-wise approach as set out in paragraph 6.4.21. Where loss is unavoidable **developers will be required to provide compensatory planting** (which is proportionate to the proposed loss as identified through an assessment of green infrastructure value including biodiversity, landscape value and carbon capture). **Replacement planting shall be at a ratio equivalent to the quality, environmental and ecological importance of the tree(s) lost and this must be preferably onsite, or immediately adjacent to the site, and at a minimum ratio of at least 3 trees of a similar type and compensatory size planted for every 1 lost.** Where a woodland or a shelterbelt area is lost as part of a proposed scheme, the compensation planting must be at a scale, design and species mix reflective of that area lost. In such circumstances, the planting rate must be at a minimum of 1600 trees per hectare for broadleaves, and 2500 trees per hectare for conifers. The planting position for each replacement tree shall be fit to support its establishment and health, and ensure its unconstrained long-term growth to optimise the environmental and ecological benefits it affords.”*

Considerations for the lost onsite trees will need to be made in line with the policies in the new Chapter 6.

⁵ <https://www.buildingwithnature.org.uk/standards-form>

Non-Statutory Designations: there is also an update to the wording in PPW12 Chapter 6 regarding Non-Statutory Designations. Box 1 above contains the wording in PPW11, and the updated text for PPW12 is shown below in Box 4.

Protection for Non-statutory Designations

Although non-statutory designations do not have a statutory process for their protection Sites of Importance for Nature Conservation, Local Wildlife Sites, Local Nature Reserves, and Regionally Importance Geodiversity Sites make a vital contribution to delivering an ecological network for biodiversity and resilient ecosystems, and they should be given protection in development plans and the development management process. Non-statutory sites can form the core of a vital network of threatened habitats, play an essential role in protecting, maintaining, connecting and restoring biodiversity and contribute to nature recovery and a net benefit for biodiversity. Before authorising development likely to damage a local wildlife designation, planning authorities should give notice of the proposed operation to the local authority Ecologist and third sector environmental organisations. In all cases a written opinion must be secured from the local authority Ecologist. Where a Green Infrastructure Assessment has identified that certain features or characteristics of the site need to be maintained or enhanced, planning authorities should state in their development plans what features or characteristics require protection and why, and explain how the policies will achieve this protection. Assessments should similarly consider the presence of protected and priority habitats and species including those on the Section 7 list and appropriate weight attached to their protection.

Where, for reasons of scale, local authorities have decided not to map non-statutory designations on a proposals or a constraints map, development plans should include a criterion-based policy to provide for sites that meet the qualifying criteria for non-statutory designation (including those sites that are currently unidentified); these sites carry equal weight to mapped sites.

Policies for non-statutory sites should make it clear that such designations do not preclude appropriate developments, where there are no adverse impacts on the features for which a site is designated and on wider ecosystem resilience. Where harm is unavoidable it should be minimised by mitigation measures and offset as far as possible by compensation measures designed to ensure there is no reduction in the overall conservation value of the area or feature, and a net benefit for biodiversity secured.