

Delegated Decision Report

Application No:	25/0965	Statutory Period Expires:	31st December 2025
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Site:	Llanwern Works Queensway Llanwern Newport South Wales		
Proposal:	PRIOR APPROVAL FOR DEMOLITION OF THE HOT MILL STRUCTURE AT LLANWERN STEELWORKS ALONG WITH ITS ASSOCIATED EQUIPMENT AND INFRASTRUCTURE		
Applicant:	Tata Steel UK Ltd		
Type:	Prior Approval - 56 Day	Ward:	Bishton And Langstone
Decision:	Prior Approval is Granted		

1. BACKGROUND

- 1.1 The hotmill at the retained Llanwern steelworks has been mothballed and not operating since 2015. The applicant now reports the building complex as redundant and surplus to requirements.
- 1.2 This prior approval follows from a previous prior notification which was not agreed to due to uncertainty over European Protected Species (EPS), namely bats on the site and the completeness of survey effort for and mitigation of the effects on those species. The notification was refused for the following reason:

Bats were detected using some of the buildings. The Habitats Directive is relevant. The information so far provided is insufficient to conclude that a European Protected Species Licence would likely be granted by the relevant Statutory Body (CNC/NRW) for the proposed works of demolition. Additional ecological information is needed in relation to protected species on the site, proposed mitigation and its likelihood of meeting the 'three tests' (IROPI) to enable the EPS Licensing regime to be satisfied.

The applicant has provided additional information in the form of their application for a derogation licence and CNC/NRW have been consulted in relation to this application.

2. SITE LOCATION AND CONTEXT

- 2.1 The hotmill is a large building complex at the western end of the retained site adjacent to the new industrial development at Indurent Park (Saint Modwens Park). The complex includes the main building and a supporting array of smaller buildings that house associated equipment / plant.

3. DESCRIPTION OF DEVELOPMENT

- 3.1 The proposal is to demolish the hotmill and associated buildings at the retained Llanwern Steelworks. The hotmill is currently mothballed and has been judged redundant. The proposed demolition programme is estimated to last for three years and includes the retention of one building as mitigatory habitat for bats since bats of various types have been found in various elements of the complex which are scheduled for demolition.
- 3.2 The demolition operation is complex and will ultimately see the removal of above ground structures and the back-filling of sub-floor voids with secondary aggregate recovered on the site. Ultimately the site will be left clear of demolition waste and will be left as a flat recovered area suitable for redevelopment.
- 3.3 The applicant confirms the presence of nesting birds (gull species) on the roof and use of the main building and some subsidiary buildings by various bat species. Proposed mitigation is

the retention of a building and its adaptation to improve it as bat habitat. Other works will avoid nesting season and measures will be taken to deter birds from nesting on the building during the demolition period.

4. RELEVANT SITE HISTORY

App Number	Proposal	Decision & Date
25/0826	PRIOR NOTIFICATION FOR DEMOLITION OF THE HOT MILL STRUCTURE AT LLANWERN STEELWORKS ALONG WITH ITS ASSOCIATED EQUIPMENT AND INFRASTRUCTURE	Prior Approval is Required 28 October 2025

5. PLANNING POLICY

5.1 NEWPORT LOCAL DEVELOPMENT PLAN (2011-2026)

SP1 – Sustainability
GP5 – Natural Environment

5.4 SUPPLEMENTARY PLANNING GUIDANCE

WILDLIFE & DEVELOPMENT (AUGUST 2015)

6. CONSULTATION RESPONSES

6.1 Cyfoeth Naturiol Cymru / Natural Resources Wales: No objection.

6.2 NCC Ecology: Extensive comments provided with there being no objection in principle. The Ecology Officer notes the following:

- Bats are present on the site and are protected under the Habitat Regulations
- Nesting birds are present – gulls and a pair of Peregrine Falcons
- Bat Surveys are incomplete and additional surveys will be needed over a phased demolition period of 3 years.
- The Council should not replicate the Habitat Regulations ‘tests’ since that is for the statutory Nature Conservation Body (CNC/NRW).
- The Council should have reasonable confidence that CNC/NRW will issue the relevant derogation licence for works affecting a protected species.

6.3 NCC Highways: No objection.

7. PUBLIC REPRESENTATIONS

None.

8. ASSESSMENT

8.1 In its assessment of the Prior Notification the Council concluded that the ‘Morge Tests’ for European Protected Species had not been robustly shown to have been met. These tests arise from a Supreme Court judgement¹ in a case where a development proposal would impact on bat habitat. The Court concluded that a Council would have discharged its duties in relation to a planning decision and the Habitat Regulations with the tests² effectively being:

¹ UKSC/2010/0120, Morge (FC) (Appellant) v Hampshire County Council (Respondent); [Morge \(FC\) \(Appellant\) v Hampshire County Council \(Respondent\) - UK Supreme Court](#)

² See [NC - EPS and Planning post-Morge NC 1.pdf](#)

(1) The duty of a local planning authority under Reg. 9(3) is simply “to have regard to the requirements of the directives so far as they may be affected by the exercise of those functions.”

(2) As such, there is no need for a planning authority to carry out its own shadow assessment as to whether there would be a breach of Article 12(1) of the Directive (strict protection), or whether derogation from that Article would be permitted and a licence granted.

(3) Instead, planning permission should ordinarily be granted save only in cases where the planning committee conclude that the proposed development would both

(a) *be likely to offend article 12(1) and*

(b) *be unlikely to be licensed pursuant to the derogation powers.*

(4) In circumstances where the statutory nature conservation body had expressed themselves satisfied that a proposed development can be licensed and had therefore withdrawn any objection to the planning application, this allowed planning permission to be granted.

(5) This is because the views of the “appropriate nature conservation body” under the Regulations. are to be given “great weight” – indeed cogent reasons are required for departing from its views on such matters (see *R (Hart DC) v Secretary of State for Communities and Local Government*).

8.2 In this case CNC/NRW have reviewed the information provided and have not objected to the demolition, as such it is reasonable to conclude that there will be no breach of Article 12 of the Habitats Directive (strict protection) and that it is likely that CNC will issue a derogation licence. There is currently no reason to think that they will not. As such the Morge tests are satisfied in this case and the demolition methodology can be approved in regard to EPS.

8.3 The Ecology Officer has reviewed the submission and refers back to the need for full information in relation to protected species. The Ecology Officer Notes the advice of TAN 5 (Nature Conservation & Planning) that:

6.2.2 It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision

This advice arises from the findings of *R. v Cornwall CC Ex p. Hardy*, 2000 WL 1421266 (2000) where it was found that sound planning decisions could not be made in the face of incomplete information regarding European Protected Species (EPS) since there could be no reasonable confidence that the derogation tests could be met if the baseline conditions and potential impacts of the proposed scheme were unknown at the time of the decision. It is clear here that there are bats present and some mitigation is proposed. It is also clear as the Ecology Officer notes that the survey information is currently incomplete and will go out of date within the 3 year demolition period. However the submitted Derogation Licence application proposes further survey and has been seen by CNC/NRW as part of this application and as part of the Derogation Licence submission. The gaps in information have not been objected to in CNC’s response to this application and therefore cannot be seen as fundamental in the mind of the statutory nature conservation body. In effect if the licence (and this submission) allows for the incorporation of additional information in a timely manner and allows for contingency in the demolition process and in the proposed bat mitigation; then the proposal is likely to be (on the balance of probabilities) acceptable. That said the backloading of surveys and responses to those surveys is directly contrary to the advice of TAN 5. However the ultimate arbiter will be CNC/NRW via the Derogation Licence process so a backstop exists.

8.4 The second key concern raised under the prior approval after gaps in survey data was the likelihood of the proposal being given a Derogation Licence. This issue arises out of Morge case where the courts were required to address the extent to which Planning Authorities must engage with the Habitat Regulations in planning decisions that relate to licensable activities. In effect the Court held that LPAs must have regard to the necessary tests but must not duplicate them since they are for the Statutory Nature Conservation Body to apply. In effect the LPA was to consider whether the proposed works were likely to lead to a breach of the Habitat Regulations (strict protection) and whether the relevant licence would be issued to

allow departure from that strict legal protection. The LPA was found to be entitled to rely on the advice of the Statutory Nature Conservation Body in this case that being CNC/NRW.

- 8.5 In this case CNC/NRW have not commented on the Licence point but they have simply said that they do not object subject to a Licence being sought and go no further than this. On its face this gives no indication of whether a Derogation Licence would or would not be issued, simply that one is needed. Which was known in any event. CNC/NRW advise that they would not comment on the likelihood of a Licence being issued in any event since they cannot prejudge that process and would normally not entertain the submission of a Licence application until such a time as agreement to Prior Notification or the issue of a Prior Approval were in place. This sets up an unfortunate circularity that de facto thwarts the Morge tests. The LPA cannot have reasonable confidence that a Licence will be issued because the body that would issue that Licence will not comment on that point and nor would it issue a Licence until such a time as planning agreement (if required) was in place. However what is certain is that the statutory Nature Conservation Body has not objected to the proposal. As such what reason would the LPA have to think a Licence would not be issued? Any decision made under the Planning Acts does not abrogate the developer from seeking all other necessary consents including the CNC issued Derogation Licence. Without that the works of demolition cannot proceed.
- 8.6 In terms of having regard to the Derogation Tests in the Habitat Regulations, Appeal APP/Z6815/A/14/2224216 for 1200 residential units in Lisvane Cardiff is of some use despite being somewhat dated (2015). In that recommendation which was subsequently accepted by the Welsh Government the Inspector concluded that although CNC/NRW had objected to the proposal (Paragraph 128 of the Inspectors' Report) the Inspector concluded that there was no evidence that a Derogation Licence would not be issued primarily because CNC had advised additional information might overcome their concerns. The Inspector also appears to have put significant weight on the fact that the appellant's ecology witness could not think of a single example when a Licence had not subsequently been forthcoming. As such in this scenario where the LPA does not even have a CNC/NRW objection before it then there seems no reason not to follow the Inspector's logic and conclude that there is no evidence a Derogation Licence would not be issued i.e. that the Morge test is met in this case and that the Policy of strict protection will be set aside with the relevant tests being met and a Derogation Licence will, on balance, be issued by CNC/NRW in due course. In any event if this is not so then the works cannot continue anyway. Given the impasse with CNC/NRW and what they are prepared to say at this stage there seems to be no other conclusion the LPA can reasonably arrive at in regard to the Derogation tests and the likelihood a Licence will be issued.
- 8.7 In this case no other objections were made under the prior notification process and all other aspects of the proposed demolition methodology were judged acceptable and remain so.
- 8.8 The proposed demolition methodology is acceptable and prior approval can be granted.

9. OTHER CONSIDERATIONS

9.1 *Crime and Disorder Act 1998*

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.

9.2 *Equality Act 2010*

The Equality Act 2010 identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership.

9.3 Having due regard to advancing equality involves:

- removing or minimising disadvantages suffered by people due to their protected characteristics;

- taking steps to meet the needs of people from protected groups where these differ from the need of other people; and
- encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

9.4 The above duty has been given due consideration in the determination of this application. It is considered that there would be no significant or unacceptable impact upon persons who share a protected characteristic, over and above any other person, as a result of the proposed decision.

9.5 ***Planning (Wales) Act 2015 (Welsh language)***

Section 31 of the Act clarifies that impacts on the Welsh language may be a consideration when taking decisions on applications for planning permission so far as it is material to the application. This duty has been given due consideration in the determination of this application. It is considered that there would be no material effect upon the use of the Welsh language in Newport as a result of the proposed decision.

9.6 ***Newport's Well-Being Plan 2018-23***

The Wellbeing of Future Generations (Wales) Act 2015 imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. This duty has been considered during the preparation of Newport's Well-Being Plan 2018-23, which was signed off on 1 May 2018. The duty imposed by the Act together with the goals and objectives of Newport's Well-Being Plan 2018-23 have been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the proposed decision.

10. **CONCLUSION**

10.1 The proposed demolition methodology is acceptable and prior approval is granted.

11. **DECISION**

Prior Approval is Granted

NOTE TO APPLICANT

01 This decision relates to plan Nos:

- Pre Demolition Asbestos Survey; TATA/LL Hot Mill/003 R01 (24.09.2025)
- PROJECT HAZARD & RISK REGISTER; Revision 00 (02.06.2025)
- Copy of the Site Notice
- F503 – PROJECT QUALITY PLAN; Revision 01 (22.09.2025)
- DEMOLITION METHOD STATEMENT; C0098 MS 001 Rev. 03 (24.07.2025)
- Construction Phase Plan; C0098 Rev. 03 (19.09.2025)
- Demolition Environmental Management Plan (DEMP) Rev. 02 (19.09.2025)
- Summary of Ecological Assessments; 2486598-D06 (02) (26.09.2025)
- HRA Screening Report; 2486598-D04 (01) (26.08.2025)
- Preliminary Ecological Appraisal Report; 2486598-D03 (00) (21.08.2025)
- Breeding Bird Report 2486598-D02 (00) (August 2025)
- Preliminary Roost Assessment and Bat Hibernation - Survey of the Motor Room; 2486598 00 (June 2025)
- Bat Activity Survey Report 2486598-D05 (02) (August 2025)
- Turley's Covering Letter - 29.09.2025
- Drawing 01 - C0059 Llanwern Hotmill Project Access Routes
- Drawing C0098 3 Rev 03 – Demolition Phased Plan
- Drawing TATA /LL Hot Mill/BN – Building Names
- Drawing C0098 01 - HGV Gate Access Routes
- Drawing 0000.60.20.00.0033 B – Site Location Plan

- Template Method Statement to be used within a Bat Development Licence Application
- (Drawing) Figure 4 – Works Pre-Licence Approval & Buffer Zone

02 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). Policies SP1, GP5 & GP7 were relevant to the determination of this application.

03 The proposed development (including any demolition) has been screened under the Environmental Impact Assessment Regulations and it is considered that an Environmental Statement is not required.

04 No demolition works to any building where bats are present or maybe present should be commenced until such a time as the necessary 'Derogation Licence' has been issued by CNC/NRW.