

EUROPEAN PROTECTED SPECIES – Consideration of the three tests**APPENDIX 2**

Application name and reference number:

15/05359/FUL

Westwood Quarry

Stretton Westwood

Much Wenlock

Shropshire

TF13 6DD

Restoration of disused quarry to restore habitat, in particular to encourage the re-growth of calcareous grassland (UK Biodiversity Action Plan priority habitat), utilising surplus material from proposed attenuation ponds that will form the Much Wenlock Flood Alleviation Scheme.

Date of consideration of three tests:

8th February 2016

Consideration of three tests carried out by:

Nicola Stone

Planning Ecologist

01743-258512

1 Is the development ‘in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment’?

It is considered that the provision of an enhanced surface/flood water drainage scheme for Much Wenlock, of which these proposals are an essential element, is a matter of overriding public interest and public safety, meeting this requirement.

2 Is there 'no satisfactory alternative'?

It is considered that there is no satisfactory alternative. A number of potential alternatives have been evaluated. This has included reusing all excavated material at the two pond sites, but this would not be practical due to the topography and the restricted nature of the pond sites. Taking the material to a landfill site would not be a sustainable option and the nearest potential site would be in Telford some 17.7km away and require some 2600 lorry movements from the Shylte pond through the town and past the school. The Sytche pond would require 1400 lorry movements past the school. The use of the material to cap a closed landfill site is not considered to be an option as the nearest one still requiring capping is the Granville landfill in Telford, but this will not take place for approximately 2 years and would involve all traffic going through the town. The nearest recycling facility that could process the material is 48km away and the environmental and financial impact of this option resulted in it being discounted. The excavated material would not be suitable for quarry restoration near Morville and timescales would not coincide. Other quarries in the Much Wenlock area were considered but dismissed for reasons which include vehicles having to pass through the town (Farley Quarry and Shadwell Quarry); a site already capable of grazing use opposite the Shylte pond site not requiring improvement; no requirement for the bulk of the material by the owners of Lea Quarry North; Lea Quarry South is now a large pool since the pumping of ground water ceased; Lilleshall Quarry is a further 2km away compared to Westwood Quarry and would require further environmental impact investigations. It is considered that these investigations have been sufficient to establish that there is no satisfactory alternative to this proposal in respect of the test to be applied in safeguarding European Protected Species.

3 Is the proposed activity 'not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range'?

A medium population of Great Crested Newts has been recorded within 250m of the proposed development site. Since the area is known to be used as a place of rest/shelter, the proposed works would need to be undertaken under a European Protected Species (EPS) mitigation licence from Natural England (Eco Tech Ecological Report 2015).

Exclusion and capture from the application site will be undertaken using corrugated refuge mats will be used instead of the usual pitfall traps. Any newts caught will be released at the proposed receptor site which is wooded. The capture effort suggested is up to 60 nights in appropriate weather conditions (given the medium population size class recorded). The site clearance by trapping would be followed by a destructive hand search comprising a search of all natural and artificial refuges which are present on site.

Two refuges (to Natural England specifications) will be created. The replacement of ephemeral/short perennial vegetation and bare ground (low quality terrestrial habitat) with the equivalent area of uneven calcareous grassland and the creation of 2 refuges should result in a significant increase in

the extent of high quality terrestrial habitat over that to be lost. The creation of two potential breeding ponds would allow what seems currently to be a stranded terrestrial population to breed.

The proposal is considered highly likely to fully mitigate for the predicted temporary adverse impact and ensure favourable conservation status of great crested newt in the locality in the longer term.

The proposed activity will not be detrimental to the maintenance of Great Crested Newts at a favourable conservation status in their natural range provided that the conditions listed in the memorandum from Nicola Stone to Richard Fortune dated 8th February 2016 are on the decision notice and appropriately enforced:

The following conditions should be on the decision notice;

1. Work shall be carried out strictly in accordance with the Ecological Assessment conducted by Eco Tech dated December 2015 attached as an appendix to this planning permission.

Reason: To ensure the protection of Great Crested Newts, Dormice, Bats (Conservation of Habitats and Species Regulations), Badgers (badgers Act), Nesting Birds (Wildlife & Country Side Act).

2. No development, demolition or site clearance procedures that have the potential to impact upon great crested newts shall commence until a European Protected Species (EPS) Mitigation Licence with respect to great crested newts has been obtained and submitted to the local planning authority for the proposed work prior to the commencement of works on the site. Work shall be carried out strictly in accordance with the granted EPS Mitigation Licence.

Reason: To ensure the protection of Great Crested Newts, a European Protected Species

Guidance for filling in the EPS form

The three tests detailed below must be satisfied in all cases where a European Protected Species may be affected and where derogation under Article 16 of the EC Habitats Directive 1992 would be required – i.e. an EPS licence to allow an activity which would otherwise be unlawful.

In cases where potential impacts upon a European Protected Species can be dealt with by appropriate precautionary methods of working which would make derogation unnecessary; since no offence is likely to be committed, it is not appropriate to consider the three tests.

Test 1 ‘overriding public interest’ and test 2 ‘no satisfactory alternative’ should be addressed by Shropshire Council planning team. Test 3 ‘favourable conservation status’ should be addressed by Shropshire Council Ecologists with guidance from Natural England.

- 1 **Is the purpose of the development/damaging activity for ‘Preserving public health or public safety or other imperative reasons of overriding public interest including those of a**

social or economic nature and beneficial consequences of primary importance for the environment?

NB in order to meet this test, the purpose of preserving public health or public safety must also be shown to constitute a reason of overriding public interest. You would need to demonstrate that action is required to alleviate a clear and imminent danger to members of the general public.

If an unstable structure (e.g. buildings, trees) is involved, either through neglect or outside influences (e.g. severe weather or seismic events), supporting evidence from an appropriately qualified person such as a structural engineer, arboriculturalist or tree surgeon should be sought.

If vandalism or trespass is used as an argument, evidence of reasonable measures to exclude the general public from the site must be presented. Evidence may be provided by the local police or fire services in relation to the number of incidents dealt with.

Only public interests can be balanced against the conservation aims of the EC Habitats Directive (1992), projects that are entirely in the interest of companies or individuals would generally not be considered covered.

2 Is there no satisfactory alternative?

An assessment of alternatives needs to be provided. If there are any viable alternatives which would not have an impact on a European Protected species, they must be used in preference to the one that does. Derogations under the EC Habitats Directive (1992) are the last resort.

Where another alternative exists, any arguments that it is not satisfactory will need to be convincing. An alternative cannot be deemed unsatisfactory because it would cause greater inconvenience or compel a change in behaviour.

This test should identify a) the problem or specific situation that needs to be addressed, b) are there any other solutions, and c) will the alternative solutions resolve the problem or specific question in (a)?

3 Is the proposed activity ‘not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range’?

Assessment of the impact of a specific development will normally have to be at a local level (e.g. site or population) in order to be meaningful in the specific context.

Two things have to be distinguished in this test: a) the actual conservation status of the species at both a biogeographic and a (local) population level; b) what the impact of the proposal would be.

In such cases where the conservation status is different at the different levels assessed, the situation at the local population level should be considered first, although ultimately both should be addressed.

No derogation under the EC Habitats Directive (1992) can be granted if it has a detrimental effect on the conservation status or the attainment of favourable conservation status for a species at all levels. The net result of a derogation should be neutral or positive for a species.

In the case of destruction of a breeding site or resting place it is easier to justify derogation if sufficient compensatory measures offset the impact and if the impact and the effectiveness of compensation measures are closely monitored to ensure that any risk for a species is detected. Compensation measures do not replace or marginalise any of the three tests, all three tests must still be satisfied.