

EUROPEAN PROTECTED SPECIES – Consideration of the three tests

Application name and reference number:

16/03225/OUT
Proposed Residential Development Land To The West Of
Ellesmere Road
Shrewsbury
Shropshire
Outline Application (including access, appearance, layout and scale) for the erection of three blocks of 48 residential units and associated infrastructure.

Date of consideration of three tests:

13th June 2017

Consideration of three tests carried out by:

Nicola Stone
Planning Ecologist
Shropshire Council

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’?

See Report Paragraphs 6.2.43 – 6.2.46

2 Is there ‘no satisfactory alternative’?

See Report Paragraph 6.2.42

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’?

I have read the above application and the supporting documents including the;

- Preliminary Ecological Assessment conducted by Turnstone Ecology (May 2016)
- Natural England DAS response. Reference DAS/11746/207322 dated 3rd March 2017.
- Great Crested Newt Mitigation & Management report prepared by Turnstone Ecology (15th May 2017)
- Site Plan – Ecology, drawing number LO14E. Prepared by aiparchitects ltd dated 28th February 2017

A medium population of great crested newts has been recorded in the pond within the development site boundary (max count 22).

Turnstone Ecology and the applicant have used Natural England’s Discretionary Advice Service to inform an appropriate mitigation strategy at this site.

The pond and associated marginal vegetation, hedgerows, trees and scrub around the site will be retained. Proposed access will be via a new road directly off Ellesmere Road, resulting in the loss of a short section of poorly connected hedgerow.

A Natural England European Protected Species Licence will be required prior to the commencement of development.

In order to avoid killing and injuring of great crested newts the following reasonable avoidance measures will be put in place;

- Translocation program that will last a minimum of 60 days between April – October inclusive and when overnight temperatures are over 5 degrees
- Temporary Amphibian Fencing
- Permanent log piles will be created to the south of the pond, acting as an area for translocation
- Vegetation within the exclusion area will be maintained short to minimise suitable habitat for great crested newt and aid capture

In order to mitigate for the loss of great crested newt habitat;

- The total area of the development is 0.8 ha, of which the pond makes up 0.211 ha and hard-standing makes up 0.078 ha.
- All optimal gcn terrestrial habitat will be retained, protected and enhanced as part of the proposal (0.148 ha of dense ruderal and grass habitat around the edges of the pond) and 0.042 ha of sub-optimal habitat will be temporarily lost during works but then recreated and enhanced post-construction.
- Unit B will be constructed on columns to raise it up to the levels of the eastern half of the site and although there will be temporary loss of sub-optimal habitat during construction, the area under the unit will be recreated as habitat suitable for foraging and hibernating gcn.
- A new hedgerow and an associated earth, wood and rubble bund vegetated with tall herb and shrubs will be recreated along part of the northern boundary.
- The proposal within the 0.8 ha site will therefore result in the permanent loss of 0.23ha sub-optimal great crested newt habitat and 0.078 ha of unsuitable hard-standing with 0.54 ha of optimal great crested newt habitat (pond, dense vegetation around and beyond the pond and hibernaculas/refuges) being retained, created and/or enhanced.

In order to enhance the site and mitigate for the loss of great crested newt habitat;

- Enhancements to the pond
- Improved terrestrial habitat around the boundaries
- Drainage during and post construction will ensure the water table and pond will not be effected
- The pond will be fenced (post and wire) to prevent and deter human and dog disturbance other than for monitoring or management purposes.

Monitoring of the pond will be completed on an annual basis for 10 years and include survey for great crested newts to monitor the breeding population and also check on water quality, diversity of aquatic life and presence of any fish. If a notable negative change in the GCN population is recorded and/or it is clear water quality and aquatic life has deteriorated, then the source of the cause will be established and appropriate measures put in place under guidance from a suitably qualified ecologist. If fish are found to be present measures will be put in place to remove them.

Natural England

Natural England has provided discretionary advice regarding this proposal and its potential to impact on the favourable conservation status of great crested newts. Natural England was able to conclude that the favourable conservation status of great crested newts can be maintained, and

that a licence from Natural England is likely to be granted.

Following the guidance of Natural England, Shropshire Council can conclude that the proposed development will not be detrimental to the maintenance of the population of great crested newts recorded at a favourable conservation status within their natural range provided that the following conditions detailed in the response from Nicola Stone to Mark Lynch dated 13th June 2017 are on the decision notice and are appropriately enforced:

REM Condition 1:

1. The first submission of reserved matters shall include a detailed ecological mitigation strategy submitted to the local planning authority for approval. The proposed Great Crested Newt mitigation shall be no less than the area shown on the 'Site Plan – Ecology, drawing number LO14E, Prepared by aiparchitects ltd dated 28th February 2017' and as detailed in the 'Great Crested Newt Mitigation & Management report prepared by Turnstone Ecology (15th May 2017)'. An area of 0.54ha of great crested newt habitat shall be retained and fenced off from the public open space and managed as great crested newt habitat. The updated ecological mitigation strategy, recommendations and method statements will be implemented as approved in writing by the local planning authority unless changes are required by Natural England in order to obtain a European Protected Species Mitigation Licence. Notification of any changes required by Natural England, including a copy of the licence, must be submitted to the planning authority prior to development commencing.

Reason: To ensure the protection and enhancement of biodiversity and protected species, including Great Crested Newts, a European Protected Species.

REM Condition 2:

The first submission of reserved matters shall include a Construction Environmental Management Plan (CEMP) for approval in writing by the local planning authority. The plan will be implemented as approved and shall include:

- a) An appropriately scaled plan showing 'Wildlife/habitat Protection Zones' where construction activities are restricted and where protective measures will be installed or implemented;
- b) Details of protective measures (both physical measures and sensitive working practices, including lighting) to avoid impacts during construction (may be provided as a set of method statements);
- c) A timetable to show phasing of construction activities to avoid harm to biodiversity features (e.g. avoiding the bird nesting season);
- d) The times during construction when specialist ecologists need to be present on site to over-see works;
- e) The role and responsibilities on site of an ecological clerk of works (EcCoW) or similarly competent person;
- f) Persons responsible for:
 - i) Compliance with legal consents relating to nature conservation;
 - ii) Compliance with planning conditions relating to nature conservation;
 - iii) Installation of physical protection measures during construction;
 - iv) Implementation of sensitive working practices during construction;
 - v) Regular inspection and maintenance of physical protection measures and monitoring of working practices during construction;
 - vi) Provision of training and information about the importance of 'Wildlife protection zones' to all construction personnel on site.

All construction activities shall be adhered to and implemented strictly in accordance

with the approved CEMP unless otherwise approved in writing by the local planning authority.

Reason: To protect features of recognised nature conservation importance.

REM Condition 3 Landscape Plan

At first submission of reserved matters a scheme of landscaping should be submitted and approved in writing by the local planning authority. The works shall be carried out as approved, prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the local planning authority, unless the local planning authority gives written consent to any variation. The submitted scheme shall include:

- a) Planting plans, including wildlife habitat and features (e.g. integrated bird, bat boxes, hibernacula)
- b) Written specifications (including cultivation and other operations associated with plant, grass and wildlife habitat establishment)
- c) Schedules of plants, noting species (including scientific names), planting sizes and proposed numbers/densities where appropriate
- d) Native species used are to be of local provenance (Shropshire or surrounding counties)
- e) Details of trees and hedgerows to be retained and measures to protect these from damage during and after construction works
- f) Implementation timetables

Reason: To ensure the provision of amenity and biodiversity afforded by appropriate landscape design.

REM Condition 4: Habitat Management Plan

The first submission of reserved matters shall include a habitat management plan. The plan shall include:

- a) Description and evaluation of the features to be managed (no less than 0.54ha of land should be retained and fenced off from the public open space and managed as great crested newt habitat as indicated in the Great Crested Newt Mitigation & Management report prepared by Turnstone Ecology (15th May 2017)
- b) Ecological trends and constraints on site that may influence management;
- c) Aims and objectives of management;
- d) Appropriate management options for achieving aims and objectives;
- e) Prescriptions for management actions;
- f) Preparation of a works schedule (including a 5 year project register, an annual work plan and the means by which the plan will be rolled forward annually);
- g) Personnel responsible for implementation of the plan;
- h) Monitoring and remedial/contingencies measures triggered by monitoring.
- i) The financial and legal means through which the plan will be implemented.

The plan shall be carried out as approved, unless otherwise approved in writing by the local planning authority, for the lifetime of the development.

Reason: To protect features of recognised nature conservation importance.

Planning Condition

1. No development, demolition or site clearance procedures 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.