

EUROPEAN PROTECTED SPECIES – Consideration of the three tests

Application name and reference number:

14/02730/MAW

Land North West of Brooklands Farm, Dudleston, Ellesmere, Shropshire

Drilling of a temporary appraisal borehole to retrieve a core of coal to surface for analysis of coal structure, permeability and gas content, and potential for Coal Bed Methane (CBM) gas production, followed by restoration of the site back to agriculture

Date of consideration of three tests:

30 September 2014

Consideration of three tests carried out by:

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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’?

Paragraph 91 of the Planning Practice Guidance relating to minerals states that “as an emerging form of energy supply, there is a pressing need to establish – through exploratory drilling – whether or not there are sufficient recoverable quantities of unconventional hydrocarbons such as shale gas or coalbed methane present to facilitate economically viable full scale production”. The proposed development would enable information to be acquired to establish the potential for coalbed methane extraction. The Government’s 2013 Annual Energy Statement states that

“continuing to ensure diversity of gas supplies remains important”, and the growth of unconventional oil and gas may help to ensure this. The proposed development is compliant with national and local planning policies, and would contribute to meeting Government aims with respect to energy supply. There are therefore imperative reasons of overriding public interest for the proposal.

2 Is there ‘no satisfactory alternative’?

The planning application states that the UK Onshore Petroleum Exploration and Development Licence 185 granted to the applicant covers a variety of landforms, including urban areas, settlements, environmental designations, inappropriate topography and other features not suitable for the location of CBM exploration. In addition a geological review has been undertaken by the applicant to determine the area in which the coals are present that will provide the best technical results which further refines the available area for locating an exploratory borehole. The site has previously been granted planning permission for similar exploratory operations, in 2010 indicating that the local planning authority has previously deemed that the site is an acceptable location for temporary exploratory operations. It is considered that a sufficient level of consideration of alternative locations has been undertaken to justify the application site being put forward for CBM exploration.

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’?

No breeding ponds are to be destroyed and sub-optimal foraging habitat is to be lost for a maximum of 3 months only. An outline Great Crested Newt Mitigation Strategy has been submitted. The proposed activity will not be detrimental to the populations of Great Crested Newts at a favourable conservation status in their natural range provided that the following conditions detailed in the memorandum from Sue Swales to Kelvin Hall dated 30 September 2014 are on the decision notice and are appropriately enforced:

The following conditions should be attached to the permission, should it be granted:

Condition:

Work on the site to which this consent applies must be undertaken under a European Protected Species (EPS) Mitigation Licence with respect to Great Crested Newts unless a licence is deemed unnecessary by Natural England Wildlife Licensing Section and in line with the principles of the *Outline Great Crested Newt Mitigation Strategy* by Arcus (2014). A copy of the granted EPS licence and the accompanying agreed mitigation plan and method statement should be submitted to the Local Planning Authority prior to the commencement

of works on the site.

Reason: To protect Great Crested Newts, a European Protected Species, known to be present on this site

Informative

Great Crested Newts are protected under the European Council Directive of 12 May 1992 on the conservation of natural habitats and of wild fauna and flora (known as the Habitats Directive 1992), the Conservation of Habitats and Species Regulations 2010 and under the Wildlife & Countryside Act 1981 (as amended).

If a Great Crested Newt is discovered on the site at any time then all work must halt and Natural England should be contacted for advice.

Reason: To protect the interests of European Protected Species if they should be present on the site

Condition: Mitigation/construction plan

No development or clearance of vegetation shall take place until a Wildlife Protection (mitigation) plan has been submitted to and approved in writing by the local planning authority. The plan 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) to avoid impacts during construction, particularly for badger and Great Crested Newt;
- c. A timetable to show phasing of construction activities to avoid periods of the year when sensitive wildlife could be harmed, where such harm has been identified;
- d. 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 implemented in accordance with the approved details and timing of the plan unless otherwise approved in writing by the local planning authority.

Reason: To protect Great Crested Newts, Badgers and other features of recognised nature

conservation importance.

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.