

Case Ref: SMD/2024/0055	Date: 06/03/2024
From: Newt Officer - Staffordshire	Response: Further Information Required
Recommended Actions In line with the submitted ecological report and guidance from Natural England (Great crested newts: District Level Licensing for development projects, Natural England, March 2021), there is a reasonable likelihood that great crested newts will be impacted by the development proposals and therefore, the applicant must either: - Demonstrate that any impacts to great crested newts can be covered by one of the available licensing options including District Licencing as recommended in the ecological report (see 'great crested newt licensing options' below for further details). - Provide further information (eDNA surveys of ponds within 500m), in line with Natural England's Standing Advice, which may be able rule out impacts to great crested newts.	
Comments: This planning application is for Erection of a Flexible Energy Facility, associated works, landscaping and habitat creation at land south of Cellarhead substation and west of Rownall Road, Wetley Rocks, Staffordshire. Ecological Information The applicant has provided an ecological report, Preliminary Ecological Appraisal (Weddles, January 2024). The report concludes in section 5.1.1. (page 34) that a District Licence should be applied for in order to mitigate for any possible impacts to great crested newts. It should be noted that the Natural England-led DLL scheme is not active in Staffordshire and rather Staffordshire Moorlands District Council have their own District Licensing Scheme with Naturespace. Enquires to join the scheme should be made via the Naturespace website (https://naturespaceuk.com/contact/). Conclusion and recommendation for conditions In line with the ecological report and guidance from Natural England (Great crested newts: District Level Licensing for development projects, Natural England, March 2021), there is a reasonable likelihood that great crested newts will be impacted by the development proposals and therefore, the applicant must either: - Demonstrate that any impacts to great crested newts can be covered by one of the available licensing options including District Licencing as recommended in the ecological report (see 'great crested newt licensing options' below for further details).* - Provide further information (eDNA surveys of ponds within 500m), in line with Natural England's Standing Advice, which may be able rule out impacts to great crested newts.	

If it is determined from further survey work that the likelihood of impacts to great crested newts is very low, then a precautionary working statement in the form of Reasonable Avoidance Measures (RAMs)/Non-Licensed Method Statement (NLMS) strategy documents completed by a suitably qualified ecologist may also be acceptable for the development.

If survey work confirms the presence of great crested newts then it is likely that a licensing option will need to be considered (see 'great crested newt licensing options' below).

*Please note that Naturespace can be contacted at any time for a quote to enter the District Licensing scheme, which does not require further seasonally constrained newt survey work. More details on the District Licensing Scheme operated by the council can be found at www.naturespaceuk.com

Contact details: info@naturespaceuk.com

Great crested newt licensing options

District Licensing

The District Licensing Scheme operated by Staffordshire Moorlands District Council can be applied for in the absence of the further information or in place of the current site-based mitigation licensing required for a European Protected Species Licence. Under the Local Planning Authority's District Licence, development works that may cause impacts upon great crested newts can be authorised as part of the planning process. A NatureSpace Report or Certificate must be submitted prior to determination to demonstrate that the impacts of the proposed development can be addressed the District Licence scheme.

More information on the district licence can be found at www.naturespaceuk.com

European Protected Species Licensing for Great Crested Newts

Before granting planning permission, the local planning authority must satisfy itself that the impacts of the proposed development on European Protected Species (EPS) have been addressed and that if a protected species derogation licence is required, the licensing tests can be met and a licence is likely to be granted by Natural England.

As an EPS licence is required the applicant will need to provide the answers to all three licensing tests, alongside a mitigation strategy. The three tests are that:

1. the activity to be licensed must be for imperative reasons of overriding public interest or for public health and safety;
2. there must be no satisfactory alternative; and
3. favourable conservation status of the species must be maintained.

Together with an ecological report, which answers test 3, the applicant should provide written evidence for tests 1 & 2. This can be contained within the ecological report or as separate document.

If the competent authority is satisfied that the three tests can be met, it should impose a planning condition preventing the development from proceeding without first receiving a copy of the EPS licence or correspondence stating that such a licence is not necessary. This approach ensures compliance with the Conservation of Habitats and Species Regulations 2017 (as amended) and enables a local planning authority to discharge its obligations under the Crime and Disorder Act and its wider duties under Section 40 of the Natural Environment and Rural Communities Act 2006 in relation to protected species.

More information on European Protected Species Licences can be found [here](#).

Low Impact Class Licence (CL33)

Low Impact licences are available for certain types of projects that meet a defined criteria set by Natural England and can only be used by registered ecological consultants. You may need to check whether this is a suitable option for the development to consider, or the applicant's ecologist may have concluded that this is a suitable option.

Read more on CL33 licences [here](#).

District Licence Officers

Staffordshire Moorlands District Council holds a Great Crested Newt Organisational (or "District") Licence granted by Natural England. This is administered by NatureSpace Partnership through their District Licensing Scheme as the council's delivery partner. A dedicated District Licence Officer is employed by NatureSpace to provide impartial advice to the council and help guide them and planning applicants through the process. All services and arrangements are facilitated in an unbiased, independent and transparent manner. You can find out more at www.naturespaceuk.com

Legislation, Policy and Guidance

Reasonable Likelihood of Protected Species

Permission can be refused if adequate information on protected species is not provided by an applicant, as it will be unable to assess the impacts on the species and thus meet the requirements of the National Planning Policy Framework (2023), ODPM Circular 06/2005 or the Conservation of Habitats and Species Regulations 2017 (as amended). The Council has the power to request information under Article 4 of the Town and Country (Planning Applications) Regulations 1988 (SI1988.1812) (S3) which covers general information for full applications. CLG 2007 'The validation of planning applications' states that applications should not be registered if there is a requirement for an assessment of the impacts of a development on biodiversity interests.

Section 99 of ODPM Circular 06/2005 states:

"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. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted. However, bearing in mind the delay and cost that may

be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by development. Where this is the case, the survey should be completed and any necessary measures to protect the species should be in place, through conditions and / or planning obligations before permission is granted.

Great crested newts

Great crested newts and their habitats are fully protected under the Conservation of Habitats and Species Regulations 2017 (as amended). Therefore, it is illegal to deliberately capture, injure, kill, disturb or take great crested newts or to damage or destroy breeding sites or resting places. Under the Wildlife and Countryside Act 1981 (as amended) it is illegal to intentionally or recklessly disturb any great crested newts occupying a place of shelter or protection, or to obstruct access to any place of shelter or protection (see the legislation or seek legal advice for full details). Local planning authorities have a statutory duty in exercising of all their functions to ‘*have regard, so far is consistent with the proper exercise of those functions, to the purpose of conserving and enhancing biodiversity,*’ as stated under section 40 of the Natural Environment and Rural Communities Act 2006 (as amended), as well as a duty under the Conservation of Habitats and Species Regulations 2017 (as amended) to have regard to the requirements of the Habitats Directive. As a result, GCN and their habitats are a material consideration in the planning process.

Lifespan of Ecological Reports and Surveys

Validity of ecological reports and surveys can become compromised overtime due to being out-of-date. CIEEM Guidelines for Ecological Report Writing (CIEEM, 2017) states, if the age of data is between 12-18 months, “*the report authors should highlight whether they consider it likely to be necessary to update surveys*”. If the age of the data is between 18 months to 3 years an updated survey and report will be required and anything more than 3 years old “*The report is unlikely to still be valid and most, if not all, of the surveys are likely to need to be updated*”.