

Viewpoint

Natural England's Pilot Great Crested Newt Project in Woking – what are the implications?

Background

For more than ten years there have been regular newspaper headlines concerning the planning complications and associated costs that can result from the presence of great crested newts on development sites. These articles are often vitriolic: the species has been referred to as the “scourge of the building industry,” and the “months of delays”; and “tens of thousands of pounds of costs” resulting from single animals being recorded are typically referred to as you read on.

While some of the facts concerning individual projects may get lost in translation, great crested newts can and do delay development: the European Protected Species (EPS) licencing process is complicated and large-scale survey, mitigation and compensation for the species is inevitably costly. From a nature conservation perspective, it is also questionable whether the legislation, and the survey and mitigation it drives, are in the long-term interest of the species. Measures aimed at protecting and conserving newts on development projects are often perceived to lack a clear strategic focus.

Frustrated developers typically blame delays in the determination of licence applications and spiralling costs of mitigation schemes on the statutory conservation agencies (Natural England [NE], Natural Resources Wales and Scottish Natural Heritage). Their most common criticisms are that the licencing process is overly complicated and bureaucratic. Consultant ecologists and conservationists can also feel frustrated by the process, as the requirement to mitigate is driven by the need to protect all animals rather than a strategy to conserve the species within geographical areas.

In recognition of some of these concerns, NE has launched a pilot project in the Borough of Woking. This aims to bring more flexibility to the licencing system for great crested newts, while also providing conservation benefits for newt populations through the creation of more breeding habitat (ponds) that are better connected in the landscape to existing newt populations.

This pilot study represents a (potentially) radical change if it is ultimately adopted more widely, and is one that has

wider implications for how EPS licencing is dealt with. The European legislation is clear (there has been no change in great crested newt protection): it is unlawful to intentionally kill, or injure a great crested newt or damage / destroy its habitat (including places of shelter and breeding ponds). Without a licence to derogate from the law, anyone committing such an offence remains liable to prosecution.

The procedural significance of the Woking Borough pilot scheme is that NE is advocating a change in how EPS licences are issued. Under the pilot scheme an organisational licence will be issued to Woking Borough Council. This will derogate the law concerning the strict protection afforded to (low populations of) newts within the local authority area. Developers that ‘opt in’ to the scheme will be required to make a payment to fund (advanced) compensatory habitat creation, but not to complete survey or deliver mitigation themselves. In proposing this there seems to be tacit acceptance by NE that great crested newts within the development sites concerned could or will be killed and/or injured.

This pilot scheme is also of significance in that it brings a more strategic approach to great crested newt conservation (at the borough level in this case). It represents a departure from the current site-by-site approach to mitigation for most clients. Natural England describes this pilot scheme as an *‘exciting win-win opportunity that moves Natural England from tackling the challenges caused by great crested newts on development sites in a reactive site-by-site approach to one that’s proactive and genuinely strategic.’*¹

This article provides an overview of NE’s Woking Pilot Study process, emerging policies and our views on the potential implications these could have for our clients if the scheme sets a precedent for licencing and the general approach to great crested newt conservation. Modelling has also been used by NE and SARG to predict how environmental factors are likely to affect great crested newt distribution across the Borough.

¹ <https://www.gov.uk/government/consultations/great-crested-newt-pilot-scheme-in-woking-opportunity-to-comment>

The Woking Pilot – An Overview of the Process

The first two stages of the pilot approach have been initiated by NE and are as follows:

1. Survey. NE has sought to establish the size, location and connectivity of great crested newt populations across the Borough of Woking. This has involved sourcing existing data on great crested newt presence from Surrey Amphibian and Reptile Group (SARG) and Surrey Wildlife Trust (SWT). This has been supplemented with survey of a sample of 50 ponds that were subject to eDNA surveys (which indicate the presence or absence of great crested newt through sampling water from the pond)². Further habitat-based assessments were made of the potential for 100 further ponds in the Borough to support great crested newts. Modelling has also been used by NE and SARG to predict how environmental factors are likely to affect great crested newt distribution across the Borough.

2. Conservation Strategy. NE has prepared a Conservation Strategy which identifies the main great crested newt populations present within the Borough and strategically examines the impacts of planned and windfall development on these populations. This exercise has identified three core meta-populations, distributed in the western and southern parts of the Borough (although records were also returned for other areas). The locations of the meta-populations were then used to identify distinct zones of relative importance. Mapping shows that areas of the Borough of Woking within an “orange zone” are considered to be of greatest value to great crested newt: development in this area is predicted to have the most significant adverse impact on newts. In the “yellow zone” great crested newt might be affected by development, but occur at lower density (than in the orange zone) so would be subject to a medium impact. Development in areas of lower value to great crested newt (the “green zone”), would be likely to have little or no impact on the population. An additional zone type (red) was also defined, though no “red zones” were identified within the Borough. In red zones, impacts are to be avoided and a strong presumption against development is proposed.

The impacts of planned (using the Draft Site Allocations document) and windfall development proposals in the Borough were analysed by NE based on their zoning exercise. This analysis identified the loss of two ponds in the green zone and development within 500 m of 35 ponds in the orange and yellow zones was likely to occur, although avoidance or mitigation was proposed to address impacts on great crested newts in the latter cases.

The next two stages are as follows:

3. Management Plans. A compensation scheme is proposed that includes the enhancement or creation of a total of eight ponds. These are in three areas of the Borough. They will be created at three different stages, and managed by WBC for a period of 25 years.

4. Developers are Encouraged to Voluntarily Opt-In to the Pilot. To be able to participate in this scheme, and therefore utilise the proposed compensation scheme to offset impacts on great crested newts on their sites, developers will need to sign up to the pilot scheme. With the exception of one area in the orange zone, all developers of proposed sites will be able to avoid the conventional ecological requirements in relation to great crested newts, including surveys, impact assessment and the development and implementation of a capture and exclusion strategy (under a more traditional project-based EPS mitigation licence) as long as they financially contribute to the strategic compensation provided by the council. These contributions would be calculated based on the zone into which a given development falls and the number of potential ponds used by great crested newts within 500 m of the site.

The development of the sites that have been registered in the scheme as well as the advanced compensation works will be covered by an organisational licence for which Woking Borough Council will be the licensee. This will be granted initially for two years and will be renewed subject to submission of monitoring information by Woking. As many of the proposed developments that are likely to be included in the scheme are not likely to commence until 2022, any compensation will be implemented well in advance of the start of works and will be in place and established ahead of impacts occurring.

Following recent public consultation, the proposed strategy is now in the process of review. A programme of subsequent monitoring and review will inform any adjustments to the scheme and the potential of the application of similar approaches for great crested newt elsewhere in the country.

² The pros and cons of this survey technique are discussed in a News and Views article produced by BSG Ecology: <http://www.bsg-ecology.com/edna-detecting-great-crested-newts-effective-it/>

Implications for developers and consultants

As is clear from the requirements of the strategy, at the current time only developers of projects (of a certain size) located within the Borough of Woking are able to participate in this pilot scheme. As the lessons learned are disseminated from the Woking pilot study, there is obvious potential for this to form the basis of similar strategic approaches by other Planning Authorities throughout the UK.

For developers of schemes within the Borough of Woking, participation in the pilot does not replace the requirement to consider priority habitats or other protected or priority species. It will still be necessary, for instance, to survey for priority habitats and protected species in accordance with industry guidance and then avoid, mitigate for and / or compensate for impacts on them. For instance, if a site were to support a pond with suitable surrounding terrestrial habitat for great crested newts, it would not be necessary to carry out surveys for this species under the scheme. However, surveys for reptiles, water vole and other species could be needed. If these were then found to be present, suitable mitigation and / or compensation would still need to be considered.

Should the approach taken in Woking be rolled out more widely, it will be the responsibility of ecological consultants involved in individual projects to advise developers as to whether they would be best served opting in or out of such schemes on a case-by-case basis. Provision of advice will be based on professional judgement and understanding of process.

NE has also recently circulated four new policies for consultation with regard to licensing and European Protected Species. As with the WBC pilot scheme described above, these new policies aim to *'shift the focus away from protecting animals on development sites and towards improving populations in the wider local area; offer flexibility in the location of compensatory habitat provision; allow EPS access to temporary habitats such as mineral workings and brownfield sites; and allow reduced survey effort in appropriate circumstances.'*³

The policies are as follows:

- **Proposed Licensing Policy 1:** Greater flexibility when excluding and relocating EPS from development sites. This policy has parallels with the Woking pilot scheme. It aims to move away from dealing with protected species by spending money and effort on exclusion, capture and removal, and towards reallocating these resources in work to compensate for habitat loss, with the aim of long term benefits for the affected species.

- **Proposed Licensing Policy 2:** Greater flexibility in the location of newly created habitats that compensate for habitats that will be lost. This policy makes it more acceptable to identify receptor sites in locations which might previously have been disregarded, often due to these being 'off-site'. NE accepts that it may be more strategically valuable to remove the constraint of trying to relocate animals to nearby or adjacent habitats that are within the site boundary provided there will be additional benefit to the local EPS population.

- **Proposed Licensing Policy 3:** Allowing EPS to have access to temporary habitats that will be developed at a later date. This policy aims to address potentially contentious situations where EPS (especially great crested newt) have accessed sites which have become suitable due to ongoing works, such as mineral extraction. If this policy were applied, it would allow EPS such as great crested newt to use temporary habitats during the life of the site, providing permanent habitat is also provided and is available to the EPS on completion of the works. In this case measures to ensure great crested newt do not make use of temporary habitats would not be needed and the incidental deaths of individuals would be offset by the long term availability of habitats on completion of the project. In the interim, a management plan would address how the site is managed in as sensitive a way as possible to minimise the killing of great crested newt.

- **Proposed Licensing Policy 4:** Appropriate and relevant surveys where the impacts of development can be confidently predicted. This policy makes it acceptable to reduce time and money spent on surveys in situations where impacts on EPS can be confidently predicted. This aims to reduce potential delays and costs associated with surveying for certain EPS, such as bats and great crested newt. It will aim to secure a good level of mitigation on a precautionary approach even without the need to await full survey results.

Compliance with the proposed policies does not remove the need to apply for a licence. Accordingly, each licensing application would be considered by NE on its own merits and a licence may only be granted when the three licensing tests are met. It is relevant to note that these policies will not be appropriate in all circumstances, so would be applied on case-by-case basis.

³ Natural England (February 2015) Proposed new policies for European Protected Species licensing - Public Consultation.

Viewpoint

The Woking Borough trial and the new policies being circulated by NE represent a shift in their thinking with regard to licencing. The aim of the policies is to provide greater long-term benefits to European Protected Species, whilst at the same time making a departure from unnecessarily complex mitigation schemes that may only save a handful of animals at disproportionately excessive costs of both time and money.

Should these policies be rolled out more widely, the role of consultants such as BSG Ecology would be important in carefully considering the options available to developers on each site. One size will not fit all; so whilst there may be clear advantages to developers (and EPS) posed by the new policies, especially on sites where their distribution is

sparse, there will be circumstances when the conventional approach may be more acceptable both in terms of cost and overall outcome for the favourable conservation status of the EPS. BSG Ecology (which has representation on NE's customer panel on EPS licencing) will be carefully monitoring the emerging policies, should they be adopted, and will be providing training to staff and raising awareness amongst clients on how to get the best out of these policies such that sustainable development may be unhindered without significant detriment to EPS.

If you are involved in promoting development that has great crested newt or other EPS issues, we would be more than happy to talk to you about the implications of NE's emerging policies.