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Land used for motorcross at Stratford Road A422, Wroxton, Oxfordshire – a review of the great crested newt evidence

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1. Introduction

CGO Ecology Ltd (CGO) was instructed by Hornton Parish Council ('the Client') to undertake a review of the planning file associated with land used for motorcross, Stratford Road A422, Wroxton, Banbury, Oxon, OX15 6HX ('the Site') with respect to great crested newt (*Triturus cristatus*, GCN) evidence. The Local Planning Authority (LPA) is Cherwell District Council (CDC). I (Chris Gleed-Owen, a professional ecological consultant of 15 years' standing) am the author of this report.

The site had been used on an occasional basis for many years by Banbury Motocross Club under the 14-day alternative use rules. Around five years ago, the use became more regular. In 2021, the owner engaged Chris Seabridge & Associates Ltd (CSA) to advise on ecology issues, and applied for retrospective planning consent. The LPA's planning committee appears minded to grant consent, with conditions on GCN safeguard. The application reference is 21/00517/F.

The Client opposes the use of the site for motorcross (commonly known as motocross), and objects to the LPA granting retrospective planning consent. It commissioned this review of GCN-related planning evidence to identify any grounds for refusal of consent.

GCN is strictly protected in the UK by the Wildlife and Countryside Act 1981 (as amended) ('the WCA') and the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations' or 'Habs Regs'). Deliberate killing, injury, or disturbance of GCN can result in imprisonment or a fine. This includes avoidable harm from actions conducted in the knowledge of GCN presence.

With proper mitigation, Natural England (NE) can grant a derogation licence to avoid a criminal offence. This involves two routes: the 'traditional' route or the District Level Licensing (DLL) route. The traditional route involves a lengthy application process presenting detailed survey and mitigation proposals. The DLL route is quicker, simpler, does not necessarily require surveys, and involves a significant offset payment. DLL cannot be applied for retrospectively once any impacts on GCN (i.e. Habs Regs offences) are already likely to have occurred.

2. File review

All documents on the CDC planning portal associated with case 21/00517/F. This comprises 32 items that contain the word "newt" and/or the initialism "GCN". A range of email correspondence was also provided by the Client, including recent exchanges between CDC's ecologist Charlotte Watkins and the Client's planning consultant Julian Philcox.

The main case documents and those referring to GCN/newts ('relevant documents') were reviewed. Any deviations from standard guidelines or best practice, and any potential for legal offences, were identified.

3. Findings and recommendations

The primary observation is that the operation of the site for motocross activities is highly likely to have caused disturbance and/or harm to the local GCN population. As the applicant did not originally know about the GCN presence, a prosecution under the Habs Regs is unlikely to succeed, even though ignorance is no defence.

CSA's eDNA survey confirmed GCN presence, but their advice apparently did not recommend a full population survey or licence. It is not clear whether this was based upon advice from CDC, their own professional judgement, or discussion with the applicant.

In my view, there is no doubt that an early conclusion should have been reached that an offence under the Habs Regs was likely to be occurring, and that a mitigation licence would be required.

The activities have since stopped, and the site has rewilded. This does not materially change whether an offence occurred.

The CDC ecologist Charlotte Watkins initially believed that Reasonable Avoidance Measures (RAMs) would be insufficient to prevent a GCN offence under the Habs Regs. It is not clear why the CDC Officer's Report para 2.20 says she is no longer objecting. It may be an oversight, or it may reveal a deliberate overruling from above.

However, the more important point is that a full population survey of GCN in pond TN6 has not been conducted. Without knowing the GCN population size, the applicant's ecologist (CSA) is speculating that it is a small population. It could be a moderate or a large population. Furthermore, GCN population sizes vary greatly from year to year (both *de facto* and as measured by survey).

Regardless of the population size, I believe RAMs would be an insufficient means of avoiding illegal harm and/or disturbance. It is my firm view that the applicant will need a mitigation licence to avoid an offence under the Habs Regs. This could be either via the traditional route or via the DLL route.

The DLL provider in this District is an organisation called NatureSpace. It has stated that it is unable to offer a DLL because the application is retrospective. Therefore, the traditional route is the only way to go.

A traditional mitigation licence application to NE requires planning consent as a prerequisite. However, planning consent should not be granted if it would not be possible to obtain the necessary licence.

In this case, the applicant would need to conduct a full GCN population survey (i.e. not a simple presence-absence survey by eDNA method). The population survey involves six nocturnal survey visits between mid-March to mid-June (not now possible until spring 2024) using at least three methods (usually torchlight, bottle-traps, and either egg-search or netting).

Following this, the applicant can apply to NE for a mitigation licence, for which the waiting periods are currently several months. NE's standard service terms of 30 working days have slipped significantly in recent years, due to high staff turnover, high caseload, and other problems. Furthermore, the process of obtaining a mitigation licence from NE can be very difficult, especially if the offences have already occurred.

I believe that the proposed mitigation is too little for even a small population, and they have insufficient evidence to say what the population size is anyway. Once a full population survey has been conducted, it is likely that the size of challenge to mitigate the impacts will increase greatly. The achievability of the mitigation strategy must also be considered when making the planning decision.

In her email of 8th June 2023, Ms Watkins stated:

"There is currently no intention to destroy the breeding habitat (ponds) or terrestrial habitat (likely woods and surrounding grassland) of the newts therefore neither Nature Space or Natural England considered this to be a matter for licensing."

This fails to consider the offence of disturbance, and in any case, "NE told me this or that" cannot be used as a defence under the law. Similarly, grant of planning consent does not circumvent an offence under the Habs Regs. A concerned citizen may call the Police to investigate a case where an offence under the Habs Regs appears to have been committed, especially where there is such a strong paper trail as this one.

Lastly, the above assertion from Ms. Watkin cannot be accepted at face value without seeing the associated correspondence with NE.

Ms. Watkins goes on to recommend RAMs to prevent a Habs Regs offence, contrary to her previous stance.

I believe it is highly unlikely that RAMs are justifiable. RAMs can only be used in lieu of a derogation licence if the impacts will be low enough to make an offence unlikely. NE has published guidance on how to assess this, but there is no evidence that the applicant has made such an assessment.

Finally, Ms. Watkins suggests that CDC will grant consent with a condition requiring GCN surveys *post facto*. This is highly irregular to suggest granting consent without the proper population surveys.




















As stated above, a NatureSpace DLL cannot be obtained retrospectively, and the only option is for NE to grant a retrospective licence through the traditional route. This is far from guaranteed, and it would involve a lengthy and costly process. NE would not grant a licence without the proper population survey evidence and mitigation strategy, and would be unlikely to grant it if it felt that the owner would be unlikely to deliver the agreed mitigation.

Furthermore, an LPA should not grant consent if the developer is unlikely to be able to discharge the conditions.

In the ecological consultancy industry, there is a truism along the lines of “It’s cheaper to do the crime and do the time” than to pay for the correct surveys and mitigation.

I wonder if the applicant has costed what the full GCN surveys, mitigation strategy, licence application, and mitigation delivery will cost?

4. References

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-  25-04-2022.pdf
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-  Wroxton Motocross Ecology.pdf
-  Wroxton MotoCross GCN Mitigation Measures 2022 amended.pdf
-  Wroxton MotoCross Landscape Plan Sep 2022.pdf
-  Wroxton MX Ecologist reponse July21.pdf
-  Wroxton MX Track 21 00571 F Hornton PC Response Final-2(1).pdf
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-  Charlotte Watkins (CDC ecol) email chain June2023.msg



Figure 1 – Oblique aerial view of the site during it period of peak use as a motocross track. Photograph provided by the Client.