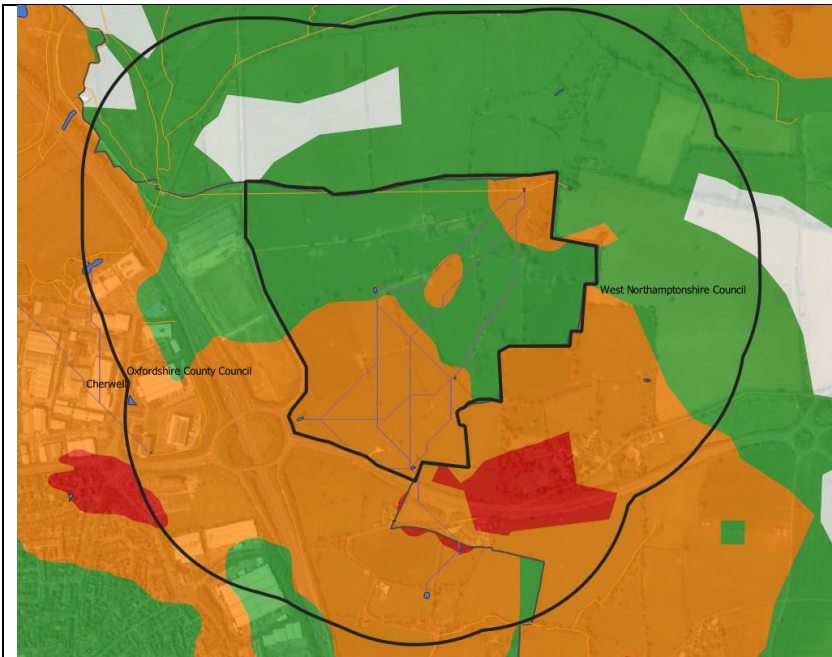


Case Ref: 22/01488/OUT	Date: 15/06/2022
From: NatureSpace	Response: Holding Objection Further Information Required
Comments:	
<p>This planning application is for: <i>Construction of up to 140,000 sq m of employment floorspace (use class B8 with ancillary offices and facilities) and servicing and infrastructure including new site accesses, internal roads and footpaths, landscaping including earthworks to create development platforms and bunds, drainage features and other associated works including demolition of the existing farmhouse</i></p>	
<ul style="list-style-type: none">- The development falls within the amber impact risk zone for great crested newts. Impact risk zones have been derived through advanced modelling to create a species distribution map which predicts likely presence. In the amber impact zone, there is suitable habitat and a high likelihood of great crested newt presence. - There are 14 ponds within 500m of the development proposal.<ul style="list-style-type: none">o 5 ponds on siteo 233m northo 34m easto 249m easto 133m southo 249m southo 340m southo 440m westo 462m westo 441m west - There is direct connectivity between the development and surrounding features in the landscape.	



Summary

The applicant has provided an ecological report, Environmental Statement, Pegasus Group, May 2022. Within this report it states that:

- The habitats on site are suitable for foraging and provides sheltering opportunities for great crested newts
- Habitat on site consists of a mixture of grassland, hedgerow, scrub, and woodland
- 12 ponds were identified within 250m of development
- P8 and P10 ruled out due to the road being deemed a barrier
- Only P1 and P7 eDNA tested (results were negative)
- HSI scores used to rule out P2, 3, 4 and 6

Conclusion and recommendation for conditions:

I am not satisfied that the applicant has adequately demonstrated that there will no impact to great crested newts and/or their habitat as a result of the development being approved.

Although the A422 will likely deter GCN crossing onto site from P8 and P10, due to mortality, it is still possible GCN may be able to cross due to the low curbs, lack of roadside drains, grass verge along the middle of the road and attractive habitat either side of the road.

As P5 was inaccessible we must assume presence rather than absence without further information to prove otherwise

HSI scores and a lack of records are being used to determine that the species is unlikely to represent a constraint to any proposed development. However, HSI assessments are not a suitable replacement to GCN surveys. ARG UK Advice Note 5 (May 2010) states that *'The system is not sufficiently precise to conclude that any particular pond with a high score will support newts, or that any pond with a low score will not do so.'* This is supported by a more recent study (Buxton et al. 2021), which *"found no evidence to support the use of low HSI scores as a justification to rule*

out direct occupancy assessment” because “there is considerable overlap in [HSI] scores for ponds with and without confirmed occupancy”. Also, a lack of records does not mean an absence of GCN, it can simply mean that an area is under recorded.

Therefore, in line with the 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:

- Submit a NatureSpace Report or Certificate to demonstrate that the impacts of the proposed development can be addressed through Cherwell District Council’s District Licence; or
- Provide further information regarding the ponds ruled out due to HSI scores, ponds to the south of the development separated by the A422, and P5, in line with Natural England’s [Standing Advice](#), to rule out impacts to great crested newts, or demonstrate how any impacts can be addressed through appropriate mitigation/compensation proposals*; or
- If it is determined that there is no suitable habitat impacted on site and the likelihood of GCN 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 be acceptable for the development.

*Please be aware that as part of this potential population assessments may need to be undertaken by a suitable qualified ecologist in accordance with the Great Crested Newt Mitigation Guidelines (English Nature, 2001). If GCN are identified, then an EPS site-based mitigation licence may be required. Some of the surveys are seasonally constrained.

More details on the district licensing scheme operated by the council can be found at www.naturespaceuk.com

Contact details: info@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 (2021), 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 biodiversity*', as stated under section 40 of the Natural Environment and Rural Communities Act 2006 (NERC). 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*".