

Case Ref: 24/02514/OUT	Date: 03/12/2024
From: NatureSpace	Response: Holding objection - Further Information Required
<p>Recommended Actions:</p> <ul style="list-style-type: none"> - 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 (more details can be found at www.naturespaceuk.com); or - Provide further information on P1 and P2 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 <p>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.</p>	
<p>Summary:</p> <p>This planning application is for Outline planning application for up to 114 dwellings and associated open space with all matters reserved other than access</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 3 ponds within 500m of the development proposal, P1 adjacent to the north eastern corner of the site, P2 230m east and P3 279m east of the site. - There is direct connectivity between the waterbodies/terrestrial habitat in the landscape and the development site, which could aid great crested newt dispersal into the development site. - There are 4 great crested newt records within 510m of the development site. - Natural England Standing Advice guidance for planning authorities advises that surveys on ponds up to 500m from development sites should be requested. 	

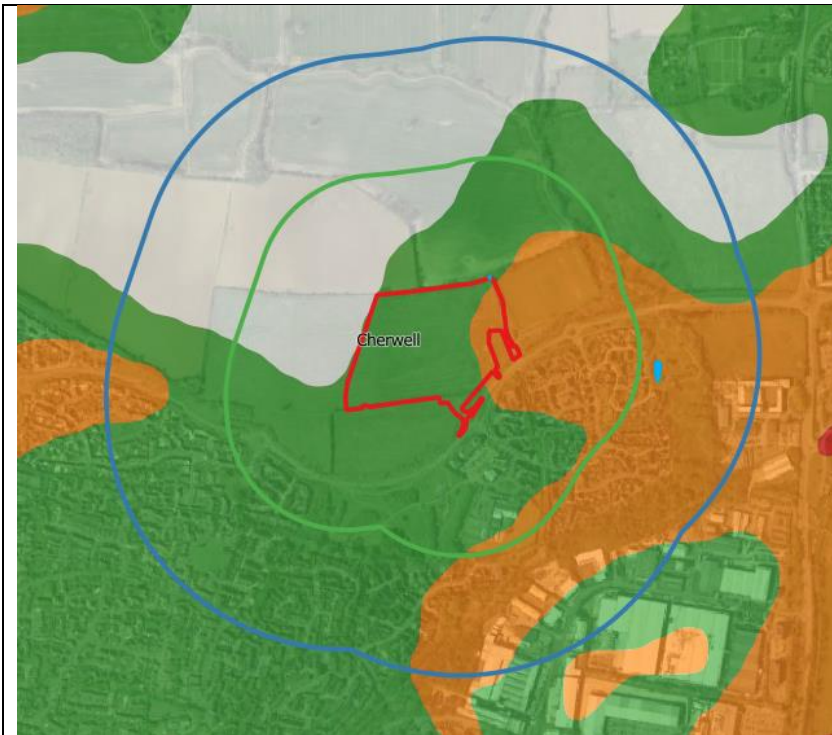


Figure above: Outline of the site (red) in the context of the surrounding landscape, including the Impact Risk Zones for GCN. Ponds are shown in light blue. A 250m buffer is shown around the site in green and a 500m buffer in blue. Contains public sector information licensed under the Open Government Licence v3.0.

Ecological Information

The applicant has provided an ecological report, Ecological Appraisal, Land at Hanwell Fields, Aspect Ecology, September 2024. Within this report it states that:

- The site and wider survey area does not contain any standing water bodies.
- However, local knowledge indicates a small pond approx. 230m east of the site within Hanwell Fields Wetlands.
- The closest great crested newt record is 0.6km north east of site.
- The habitat on site provides potentially suitable terrestrial habitat for amphibians
- Great crested newts do not represent a potential constraint on the proposed development.

Conclusion: more info needed

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

Protected species are a material consideration of the planning process and 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 (ODPM, 2005/06).

Additionally, a lack of nearby records is being used as justification to rule out presence of great crested newts. A lack of records does not mean an absence of GCN, it can simply mean that an area is under recorded. Environmental records can provide an indication of the likely presence of a species on, or within proximity, to the site. The absence of records for protected species and sites does not necessarily indicate absence. The use of historical environmental records is not a substitute for appropriate surveys at the correct time of year when informing land use change and development proposals.

The submitted ecological appraisal does not reference the pond adjacent to the development boundary and the status of this pond is currently unknown. Should great crested newts be using this nearby pond they may well be using the site in their terrestrial phase. In addition the pond 230m east of the site has been ruled out due to distance. It is worth noting that Natural England's standing advice currently states survey efforts should be undertaken on all waterbodies within 500m where there are no barriers. Therefore, it is recommended that an ecological assessment or further evidence is provided to confirm the status of the ponds and if there is a likely impact to great crested newts and/or their habitats.

In response to the information provided in the Preliminary Ecological Appraisal we recommend that more information is needed, either in the form of an outline mitigation strategy or evidence of entry into the District License Scheme to demonstrate that impacts to great crested newts and/or their habitat as a result of the development being approved can be adequately dealt with. If the applicant does not wish to pay to join the district licensing scheme at this outline planning stage, then they must submit an outline great crested newt mitigation strategy, which keeps their licensing options open, and the implementation of this can be secured as a condition of planning consent. The licensing route can then be confirmed as part of the ecological information submitted with a subsequent reserved matters application. However, the applicant must consider whether any site access works or other enabling works that would impact great crested newts or their habitats will be taking place before they submit a reserved matters application, and therefore would need to be licensed at an earlier stage. If this is the case, a detailed mitigation strategy should be submitted for these works specifically as part of the current outline planning application or they must pay to join the district licensing scheme to ensure that they are licensed before the reserved matters application is submitted.

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 (more details can be found at www.naturespaceuk.com); or
- Provide further information on P1 and P2 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.

*i.e., to show that any ponds within 500m are not suitable for great crested newts and/or show how any potential impacts can be avoided.

*To do so, surveys to determine presence/likely absence and population size class assessments may need to be undertaken by a suitably qualified ecologist in accordance with Natural England's Standing (Great crested newts: advice for making planning decisions – GOV.UK) (and if using eDNA surveys, the Great Crested Newt Environmental eDNA Technical Advice Note (Natural England 2014)). If GCN are identified, appropriate mitigation and compensatory measures will need to be identified to satisfy planning requirements and a site-based mitigation licence may be required. 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 (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 as 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"*.