

Flintshire County Council

Village Road, Northop Hall

Ecological Review
29 June 2012

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Notice

This ecological report is intended for advice in respect of a planning application, this advice is based on a review of documents provided in conjunction with application No: 048855 lodged with Flintshire County Council.

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1. Introduction & Background

Atkins Limited (Atkins) were requested to provide specialist ecological advice regarding the decision taken at a Planning and Development Control Committee meeting on 14th March 2012 to refuse planning application No: 048855 for four reasons, in summary:

- The ecological impact of the development on great crested newts and badgers
- Highway Safety issues to do with the capacity/design of the existing network (Village Road)
- Density of the development too high
- Lack of a geological survey

The officer recommendation was one of approval, largely on the basis that the application site is allocated for residential development in the newly adopted Unitary Development Plan (UDP) and the fact that issues surrounding the four reasons set out above had been addressed by the applicant and are covered in the report to committee (Appendix A: Report of Planning and Development Committee 14th March 2012).

A report by the Flintshire County Council Head of Planning to the planning committee seeking further consideration was submitted and considered in a meeting of the planning & development control committee on the 23rd May 2012; the purpose of this report was to seek guidance regarding the reasons for refusal to be attached to the decision. The report to that committee is appended to this report in Appendix B: Report to Planning & Development Control Committee 23rd May 2012. We have not been supplied with a report of the conclusions of this committee meeting.

An appeal against the non-determination of the application was submitted by the applicant at the same time (23rd May 2012). This appeal is to be considered at an inquiry (date to be determined).

This report draws on previous ecological advice reported by Ecological Design Consultants (EDC), who conducted an Ecological Impact Assessment (EclA) in 2004 and carried out further surveys in April 2007 and December 2009 in order to establish presence/absence and potential for the application site to support protected species (Appendix C). This report focuses specifically on the reasons given for refusal of the application (i.e. potential impacts on great crested newts and badgers); no other ecological issues are considered and no review of other ecological issues has been undertaken.

Summary of Ecological Survey Reports

Title	Issued by	Date
Ecological Impact Assessment	EDC	October 2004
Impact Assessment Addendum	EDC	June 2005
Impact Assessment (Update)	EDC	May 2007
Phase 1 Extended Report – Seasonal Review	EDC	December 2009
Phase 1 Extended Report – Seasonal Review	EDC	November 2010

2. Development Proposals

2.1. Surveys Undertaken and Methodologies Used

The full planning application comprised a mix of 51 dwellings on 5.56 hectares of land at an

EDC were commissioned, in 2004, to undertake an Ecological Impact Assessment (EclA) of the proposed development. An ecological walkover survey and desktop study was undertaken during October 2004. As part of the desktop study EDC conducted a search for water bodies suitable for great crested newt utilisation within 250 m of the proposed development. This study identified two small and shallow ponds within 250 m of the proposed application site boundary: one of these is described as approximately 35 m to the south of the application site; no details are given for the second pond.

Great crested newts can utilise suitable terrestrial habitat up to 500 m from a breeding pond¹, although recent research suggests that newts are likely to travel no more than 250 m from ponds where suitable habitats for foraging and hibernation exist². EDC do not give any justification as to why a 250 m search area from the application site boundary for water bodies was used rather than the recommended 500 m³

Following the ecological walkover survey and the desktop study, presence/absence surveys for great crested newt were recommended on the basis of the initial findings. A report addendum (Appendix C – Ecological surveys) in June 2005 stated that the ponds had receded to water filled depressions at the time of survey (no date was given) and no further detail as to the surveys was given. A consultation with the Countryside Council for Wales (CCW) is included in this addendum report that states that the ponds had previously been surveyed and great crested newts had been noted as being present during the 2005 breeding season confirming presence of this species this survey was carried out as part of a separate highways project. Wepre Brook approximately 160 m south of the site was also assessed in the 2005 season for potential to support great crested newts owing to a proposed surface water run-off connection to the brook but ruled out due to 'grey water pollution'.

Two ponds were described in the 2005 report. The 2007 report refers to a pond throughout but the survey results section refers to smooth newts being found in 'the ponds'. Update surveys post 2007 only refer to one pond and only one pond appears on the plans.

A further survey using high powered torches to search for GCN activity was conducted on the 25th April 2007 on one pond.

CCW has no guidance specifically relating to Wales regarding methodology for surveying for great crested newts. However, the Natural England guidance⁴ which is widely accepted states as a minimum for presence/absence surveys for great crested newts four visits should be undertaken during the breeding season (mid-March to mid-June, with at least two visits between mid-April and mid-May) using at least three different techniques on each occasion. Techniques typically would include torchlight survey, netting, bottle trapping and egg searching. In order to assess population size class assessment if great crested newts are present, a further two survey visits (six survey visits in total) are recommended in the same survey period.

EDC only conducted one torchlight survey on one occasion in 2007 and their survey effort does not conform to the standard Natural England guidance to demonstrate presence or absence of great crested newts.

The terrestrial habitat within the application site consists of hedgerows, improved grassland, gorse scrub and mine spoil and appears to be suitable habitat for great crested newt foraging, dispersal and shelter.

A 'seasonal review' (Appendix C), which was undertaken in 2009 and again in 2010, of the initial surveys indicated that the condition of the ponds had deteriorated due to poaching by horses, only one pond is detailed by this stage and it is described as 'small puddles of water...unlikely to sustain a breeding population of amphibians'.

¹ Great Crested Newt Mitigation Guidelines (Natural England – formerly English Nature, 2001)

² Cresswell & Whitworth, 2004. An assessment of the efficiency of capture techniques and the value of different habitats for great crested newt *Triturus cristatus*, English Nature Research Report Number 576. Natural England.

³ Great Crested Newt Mitigation Guidelines (Natural England – formerly English Nature, 2001)

⁴ Great Crested Newt Mitigation Guidelines, (Natural England – formerly English Nature, 2001) Sections 5.7.1 and 5.7.2

2.2. Proposed Mitigation

Proposed mitigation was supplied in the form of a plan by EDC shown below (Figure 1). The plan shows a large mitigation area (approx 2.5 ha) consisting of planted scrub, two new ponds, and re-profiled/re-seeded grassland. A management plan of the re-profiled/re-seeded grassland was recommended whereby one cut a year would be used, this may provide a dense diverse sward suitable for great crested newts to use as foraging habitat. Maintenance of existing hedgerows where possible and implementation of a new hedgerow along the western boundary of the application site are also recommended in the ecological reports (Ecological Impact Assessment – secondary survey (May 2007) see Appendix C). However, these recommendations for maintaining and increasing hedgerows do not appear on the mitigation plan supplied. No additional hedgerows are present on the soft landscaping proposals (Appendix D – Soft Landscaping Proposals) by Tirlun Barr, submitted by Anwyl as part of the planning application.

It is noted in the seasonal review carried out by EDC in 2009 that areas of scrub and hedgerows offer suitable foraging habitat, refugia and hibernacula for great crested newt and that 'suitable mitigation would have to be offered to offset the impact of the development'. The plan presented as the mitigation, however, shows no detail as to how these areas of suitable terrestrial habitat will be cleared without harming great crested newts. If great crested newts are present, standard methods for an operation like this would be undertaken under a European Protected Species Licence from Welsh Government on the advice of the Countryside Council for Wales. The methods could include the erection of newt proof fencing, and periods of drift netting/pit fall trapping in order to exclude newts from the construction area and move them into the mitigation area. Without this detailed information, it cannot be said with any degree of certainty that great crested newts will not be harmed and their conservation status maintained.

2.3. Excerpts from Report to Planning and Development Control Committee (Appendix A – March 2012)

2.3.1. Relevant Sections for Great Crested Newt:

'Countryside Council for Wales raise no objection subject to the imposition of planning conditions/obligations in respect of safeguarding the nature conservation interest of the site.'

There is no direct effect on the great crested newt (GCN) although there is one pond adjacent to the site with a GCN record. This pond has been surveyed regularly since 2004 and since then it has been heavily poached by horses and is not considered suitable as a breeding pond for GCN. Scrub and woodland habitats within and adjacent to the site have potential as terrestrial habitat for GCN.

Currently there is no suitable breeding habitat on or adjacent to the site for GCN and there hasn't been since 2004 although GCN eggs had been previously recorded in the pond south east of the site. The presence of potential terrestrial habitat – scrub and hedgerows means that reasonable avoidance measures will need to be undertaken prior to the development of the site. The GCN population will ultimately benefit from the creation of 2 new ponds within the mitigation area approximately 150m from the existing pond. Provision of new ponds and secured terrestrial habitat, providing it is secured with long term management, will help to maintain the favourable conservation status of GCN in this locality.

The issues of whether development could give rise to a breach of the Regulations' requirements, and whether there may be a potential need for a licence to avoid such a breach, are a material consideration in a relevant planning decision. Where a licence may be needed, the three licensing 'tests' required by the Directive should be considered by the local planning authority. The requirement for a licence and the application of the three licensing tests is equally a material consideration in planning appeals. Local planning authorities should give due weight to the presence of a European protected species on a development site to reflect these requirements and this may potentially justify a refusal of planning permission." Paragraph 6.3.7 then states:- "It is clearly essential that planning permission is not granted without the planning authority having satisfied itself that the proposed development either would not impact adversely on any European protected species on the site or that, in its opinion, all three tests for the eventual grant of a regulation 44 (of the Habitats Regulations) licence are likely to be satisfied."

In this case to satisfy test 1, the social or economic nature of a development, the proposals seek to establish the use of the site for residential development. The site lies within the identified settlement boundaries of Northop Hall and is specifically allocated for residential development. The application is accompanied by survey data to indicate that the proposals would not adversely affect European Protected Species (EPS). In

considering this data, together with the intention to undertake the identified Mitigation Measures, Countryside Council for Wales and the Local Planning Authority are satisfied that there are no adverse effects upon the EPS. It is considered that this proposal will ensure that the species and habitats are brought into favourable conservation status, where, without the development, this would not be the case.

Test 2 is about whether there is a satisfactory alternative. This do nothing option is not satisfactory because without management the nature conservation value of the existing pond will continue to deteriorate. The land is heavily horse grazed and the pond has been poached by horses and has been dry for the last summer. The creation of new ponds will enhance the locality for GCN.

Test 3 is about whether the development will be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range. In terms of the GCN, these are annually surveyed at Wepre Country Park and adjacent sites some 700 m north of the application site and Buckley sites over 1 km south of the application site. The provision of an identified protected mitigation area during all stages of construction and operation will ensure maintenance of the range & dispersal route available for GCN. The protection of this area in the long term will provide for the long term prospects. Reasonable avoidance measures will be undertaken prior to development to prevent harm to GCN if present on site. Conditions & s106 agreement proposed to cover: Reasonable Avoidance Measures; Submission and implementation of habitat creation and enhancement Scheme; Long Term Site Management Scheme; Long Term Site Wardening Plan and Long Term Monitoring Plan.

The proposed development and mitigation proposals have been assessed and it is considered that the development is not likely to have a significant effect on protected species. It is considered that this application satisfies the three tests required by the Habitats Directive.

In conclusion, providing the mitigation area is protected and managed in the long term there will be no detrimental impact on the maintenance of the favourable conservation status of the Great Crested Newt. CCW have no objection subject to the imposition of planning conditions/obligations in respect of safeguarding the nature conservation interest of the site.'

2.4. Excerpts from Flintshire County Council Head of Planning Comments (Appendix B – May 2012)

'At the March Committee Members were concerned about the need to provide new habitat for the great crested newt, which had been resident in the pond to the east of the application site. The report explained that GCNs had not been found in that pond since 2004, even though there had been regular surveys, and the pond did not provide a suitable breeding ground. This application provides a betterment of the existing situation by the provision of 2 new ponds within the mitigation area to the south of the proposed residential development.

Subject to this mitigation both the Countryside Council for Wales and Flintshire's ecologist are satisfied that there will be no ecologically detrimental aspect of the proposals, subject to the conditions recommended and a legal obligation. On this basis it is strongly recommended that this reason cannot be substantiated and that it is not included on the decision.'

3. Conclusion

A level of doubt remains over the status of great crested newts on and around the Application site. Great crested newts and their habitats (terrestrial and aquatic) have full legal protection (see Appendix E – Summary of Legislation). The terrestrial habitats on the application site are suitable to support great crested newt, specifically the hedgerows, scrub, mine spoil and to a lesser extent the grassland. A pond approximately 35 m from the application site boundary was recorded as having great crested newts present in 2005 (this date taken from the EDC reports).

The desk top waterbody survey only covered 250 m from the application site boundary whereas great crested newts will travel up to 500 m from a breeding pond⁵. The mine spoil noted as being present on site could provide hibernacula for several ponds in the surrounding area over 250 m from the application site. If

⁵ Great Crested Newt Mitigation Guidelines (Natural England – formerly English Nature, 2001)

this was the nearest available hibernaculum for the newts, then they may still use the application site and the survey effort would not have been sufficient to detect this.

EDC only conducted one torchlight survey on one occasion in 2007 and their survey effort does not conform to the standard Natural England guidance to demonstrate presence or absence of great crested newts. No full suite of great crested newt surveys following the survey guidelines⁶ has been completed/reported in the ecological survey information. Results should be made available for all surveys undertaken for great crested newts, including methodologies used and dates. If the two adjacent ponds have become unsuitable for great crested newts/survey as the planning document suggests, terrestrial survey including refugia searching could be undertaken.

EDC recommend a development licence is sought for great crested newts. A great crested newt record exists within a pond 35 m from the site and newts could be using the terrestrial habitat on the site therefore a licence is required in order to clear newts from the site.

Population size class surveys are required in order to inform any licence application and to inform the mitigation design. Without detailed survey information regarding the population size class of great crested newt, it is difficult to assess whether the mitigation would be sufficient to maintain the favourable conservation status of great crested newt. Owing to the deterioration of the pond located within 35 m of the application site, the addition of two new ponds would provide sufficient replacement breeding habitat.

Appropriate GCN surveys are required to confirm the location and detail of the proposed mitigation measures and that a European Protected Species licence would be required to conform with due legal process. These are matters that may be appropriate for a planning condition. If appropriate survey and mitigation is put into place and the Countryside Council for Wales and Flintshire's ecologist are satisfied that there will be no ecologically detrimental aspect of the proposals then there should be no cause for them to object to the proposals.

⁶ *Great Crested Newt Mitigation Guidelines (Natural England – formerly English Nature, 2001)*

4. Badgers

3.1. Surveys Undertaken and Methodologies Used

EDC were commissioned in 2004 to undertake an EcIA of the proposed development. Their ecological walkover survey and desktop study undertaken during October 2004 was designed to identify setts, pathways, latrines and associated foraging habitat. The initial ecological survey found an active eight hole sett in an area of gorse scrub and evidence of tracks, feeding signs and latrines, although the number of these on the application site was described as 'limited' and the cattle using the application site and potentially trampling evidence was noted as a limitation to the survey. The badger sett identified falls within the application site.

This survey was repeated at a later date (date not given) and was reported in the May 2007 'secondary survey' report. At this time, only four of the holes were noted as being active.

No classification was given to the sett (*i.e.* main sett, subsidiary sett, annexe sett or outlier sett). It is implied that the sett is a main sett and the recommendations section of the same Secondary Surveys report states that a new sett is required which should be situated as close as possible to the existing sett in order to '*minimise the risk of the animals straying into the territory of a neighbouring clan of badgers*'. In the same paragraph it is stated that the area to the south and west of the sett (the mitigation area) is '*best suited to this as the land lies within the clan's current territory*'. However, no territorial mapping survey of the badger clan in the area is mentioned within any EDC reports, and no plans were provided showing the neighbouring clan or the neighbouring clan's territory.

The seasonal review survey from 2009 noted one new hole at the sett and additional snuffle holes (feeding signs) and tracks in an area to the east of the application site. During the 2010 survey an '*abandoned*' outlier sett was also noted within the application site.

3.2. Proposed Mitigation

Proposed mitigation was supplied in the form of a plan by EDC shown below (Figures 1 & 2). The plan shows a large mitigation area (approx 2.5 ha) consisting of planted scrub, two new ponds, and re-profiled/re-seeded grassland with a new artificial sett situated just to the north of the ponds indicated on the plan by an orange circle. The proposed new grassland would provide suitable foraging habitat for badgers, the scrub and tree planting would also provide cover and foraging habitat suitable for this species. A badger-proof fence is shown at the northern end of the mitigation area to prevent badgers entering the development area.

3.3. Excerpts from the Report to Planning and Development Control Committee (Appendix A)

2.4.1. Relevant sections for badger:

'Northop Community Council object on the grounds that they doubt whether re-location of badgers would be successful.

CCW raise no objection subject to the imposition of planning conditions/obligations in respect of safeguarding the nature conservation interest of the site.

There is a badger sett within the scrub on mine spoil within the application site. The size of the sett was confirmed by the Clwyd Badger Group in July 2011 as 4 holes, 3 active and 1 part used plus two new holes on north side of the spoil possibly dug by yearlings.

The best option for the badgers would be to leave them in situ and develop the land around them, although this would isolate the population from their foraging areas.

Due to the need to locate mine shafts within the area of scrub, the proposal is to create a new sett on land immediately to the south of the application site within 100 m of the existing sett. The aim is to build the sett

into a created mound using the existing free draining mining spoil, re-plant some of the existing scrub to create immediate cover and plant the remaining area with native species and fence from public access.

Research into the use of artificial setts by badgers concludes success rates can be high (over 90%)⁷ depending on proximity to the existing sett and proximity to an existing path or foraging area. Also while they don't need to be overly large or complex they do need to have correct thermal properties and drainage plus 6 months to "bed in". To ensure success the sett needs to be re-located as detailed in the application and undertaken in accordance with the submitted details and licence application.'

2.4.2. Flintshire County Council Head of Planning Comments (Appendix B)

'Members were also concerned about the effect of the proposed development on the badgers which inhabit part of the site. The report to the March committee explains that the proposal involves creating a new sett on land immediately to the south of the proposed dwellings, within 100 m of the existing sett and fence from public access.'

Subject to this mitigation both the Countryside Council for Wales and Flintshire's ecologist are satisfied that there will be no ecologically detrimental aspect of the proposals, subject to the conditions recommended and a legal obligation. On this basis it is strongly recommended that this reason cannot be substantiated and that it is not included on the decision.'

5. Conclusion

The status of the badger sett appears to be constant with 4 – 5 holes active on most survey occasions. The suggested presence of yearlings also suggests that this is a main sett, and the mitigation measures recommended and outlined in the plans provided by EDC appears to be suitable and proportionate. Retaining the sett within the development area would be impractical as the badgers would be cut off from foraging habitat.

Doubts, however, remain over the location of the proposed artificial sett. The artificial sett would be situated within 100 m of the existing sett and it is likely to be within the clan's existing territory. However, none of the survey work detailed in the ecological reports confirms this. The ecological reports also mention neighbouring clans and territories but no evidence is provided to show where these neighbouring territories are or where the nearest setts are. A territorial analysis survey would have shown the location of territory boundaries and allowed for the appropriate siting of the artificial sett. There is no mention of any such surveys being undertaken in the ecology reports submitted.

If the artificial sett were to be based within another badger clan's territory the likelihood of the sett being successfully colonised would drop and the committee's reason for rejecting the application could be proved correct. This could be addressed by further justification of the mitigation location through territorial mapping of the local badger clans.

Appropriate badger surveys are required to confirm the location and design of the proposed mitigation measures and that a badger licence would be required to conform with due legal process. These are matters that may be appropriate for a planning condition. If appropriate survey and mitigation is put into place and the Countryside Council for Wales and Flintshire's ecologist are satisfied that there will be no ecologically detrimental aspect of the proposals then there should be no cause for them to object to the proposals.

⁷ No reference was provided for this statistic

6. Summary for Great Crested Newts and Badgers

Further survey for great crested newts and territorial analysis survey for badgers is required in order to inform licence applications and to determine whether the mitigation recommended is appropriate and adjust it where necessary in order to render it appropriate. Licences will be required in order to clear the application site of great crested newts and to close the badger sett and these licence applications will need to be backed by detailed survey information.

These requirements for further survey and licence applications that will detail appropriate mitigation are matters that may be appropriate for planning conditions.