

Case Ref: DM/23/2866	Date: 15/12/2023
From: NatureSpace	Response: Licence required
<p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>- There are positive records of great crested newts within the site boundary and considerable suitable habitat. It is recommended that the development obtain a licence to undertake works. There are two licensing options available: District Licensing via NatureSpace or European Protected Species Licensing (EPSL) via Natural England.</li> </ul>	
<p>These comments are in relation to <b>DM/23/2866   Outline planning application (All matters reserved except for access) for the redevelopment of land to the east of Ansty to create a new Garden Community, comprising of the erection of up to 1,450 homes (including 30% affordable housing), up to 90 residential care units (C2 class), a primary school, a SEND school, health hub, sports facilities including all weather hockey pitches and tennis centre, allotments, retail, community and employment uses together with ancillary and associated development including new and enhanced pedestrian/cycle routes, open spaces, and landscaping   Land East Of Ansty Way Cuckfield Bypass Cuckfield West Sussex</b></p> <p><b>Ecological Summary:</b></p> <p>The development is situated in the red impact risk zone indicating that highly suitable habitat is present in the surrounding landscape.</p> <p>Site context:</p> <ul style="list-style-type: none"> <li>- There are more than 30 ponds within 500m of the site; 11 of these have been surveyed.</li> <li>- Two ponds have been identified as positive for great crested newts.</li> <li>- Suitable habitat on site includes woodland, grassland, ponds and hedgerow. There is direct connectivity with the wider landscape.</li> </ul> <p><b>Conclusion:</b></p> <p>The applicant has provided an Environmental Statement (Environment Statement, Ansty Garden Community, Temple Group Ltd, November 2023). Within Chapter 11: Ecology and Biodiversity, details of great crested newt surveys have been detailed. Six ponds returned negative eDNA results in April 2022, however 4 ponds were taken forward for further surveys. Two of the four ponds were found to sustain a population of great crested newts, the other two ponds were dry at the time of survey.</p> <p>As stated in the submitted Ecological Report, it is recommended the developer submit evidence of procuring a licence to undertake works. There are two licensing options available: the District Licence or a European Protected Species Licence (EPSL). Use of the District Licence can negate the need for further surveys to be undertaken and can be applied</p>	

for outside of the survey season, providing certainty through planning, if the applicant chooses to use this route, a valid NatureSpace report or certificate must be submitted to planning. Should the applicant choose to pursue an EPSL then they must submit a mitigation/compensation proposal to planning to demonstrate how impacts to great crested newts can be appropriately addressed\*.

\*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.



Figure above: Outline of the site (red) in the context of the surrounding landscape, including the Impact Risk Zones for great crested newt. Ponds are shown in light blue – not all ponds are visible on this map. 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.

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### **Relationship between NatureSpace and the Planning Authority**

*Mid Sussex District Council holds a Great Crested Newt Organisational (or "District") Licence granted by Natural England. This is administered by NatureSpace Partnership through their District Licensing Scheme as the council's delivery partner. A dedicated Newt Officer is employed by NatureSpace to provide impartial advice to the council and help guide them and planning applicants through the process. All services and arrangements are facilitated in an unbiased, independent, and transparent manner. You can find out more at [www.naturespaceuk.com](http://www.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 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, great crested newt 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"*.