

Natural England District Licensing Project for Great Crested Newt Habitats

Cabinet

Date: 4th December 2019

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Wards:	All Wards
Parishes Affected:	All Parishes

1. Purpose and Reasons

- 1.1 As a European protected species, great crested newts and their habitats are protected by law. Great crested newt habitats exist across Swindon. The current process for protecting great crested newts from the impacts of development is often expensive to apply and may not ensure the protection of the newts.
- 1.2 This report seeks authority for Swindon Borough Council to become part of the national roll-out by Natural England of District Level Licensing (DLL) for Great Crested Newt habitats. This provides an alternative mechanism for protecting newts, which is intended to reduce the costs on developers and which will enable newt populations to flourish in suitable locations.
- 1.3 The report also proposes Council owned land at Mouldon Hill to be used for the creation of habitats for Great Crested Newts.
- 1.4 This project links to Priority one of the Council Vision.

2. Recommendations

Cabinet is recommended to:

- 2.1 Authorise the Head of Planning, Regulatory Services and Heritage in consultation with the Chief Legal Officer to enter into a Memorandum of Agreement to progress the Council's involvement in Natural England's District Level Licensing project for Great Crested Newts (GCN) on such terms and conditions that are necessary in order to protect the Council's interests.
- 2.2 Authorise the Head of Property Assets, in consultation with the Head of Planning, Regulatory Services and Heritage to:
 - 2.2.1 utilise the land at Mouldon Hill, Swindon as shown on the plan attached as an Appendix 1, for GCN habitat purposes.
 - 2.2.2 identify further Council owned land, which is assessed as suitable for GCN habitat and unsuitable for any alternative development, and in consultation with the Cabinet Member for Corporate Services and Operational

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Excellence, to utilise that land for GCN habitat purposes in line with the District Level Licensing initiative.

- 2.3 Authorise the Head of Property Assets in consultation with the Chief Legal Officer to enter into an agreement with Natural England to regulate the use of land identified in 2.2.1 and 2.2.3 above as GCN habitat on such terms and conditions that are necessary in order to protect the Council's interests.

3. Detail

District Level Licensing

- 3.1 This District Level Licensing (DLL) is proposed by Natural England as an improved approach to the conservation of Great Crested Newts (GCN). These protected species are rare in Europe but there are numerous populations across the Borough. Their protection and strict licensing arrangements has a significant impact on developments in terms of both the necessary land take for habitat retention and recreation and the timeframes for their trapping and translocation. Currently licences for GCN populations are considered and issued on a site by site basis by Natural England (NE). They are constrained by seasonal timings for surveys and mitigation, whilst habitat recreation is required on site. Under the traditional licence method, the costs of surveys, trapping and exclusion can outstrip that spent on habitat creation and management by a factor of 7:1.
- 3.2 The new strategic approach focuses on bringing the greatest benefits to GCNs, which have declined dramatically in Europe over the last 60 years, while streamlining the licensing process for developers. Following a successful pilot project DLL is now part of a national roll-out programme supported by government funding as announced in the Department for Communities and Local Government's Housing White Paper in 2017.
- 3.3 The new strategic approach involves surveys of areas where GCN are most prevalent, mapping of the potential impacts of planned development on the species and the creation of new habitats (off-site) at suitable locations. This Borough wide conservation strategy for the species has the potential to significantly assist our growth agenda by providing more certainty and saving developers both time and money, whilst also making GCN populations more healthy and resilient.
- 3.4 Surveys of GCN presence and habitat suitability in the Borough have been completed by NE. This has resulted in a comprehensive evidence base to support DLL. The outputs have been categorised into risk zones of red, amber and green; red indicates areas subject to existing licensing measures and potential high impact on nationally recognised populations of GCN; amber zones indicate suitable habitat for GCN and green zones are where NE predicts there is little or no suitable habitat for GCN. The analysis has resulted in NE Strategic

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Opportunity Areas for the creation or improvement of GCN habitat as part of compensation pond creation

Benefits of District Level Licensing

- 3.5 A key benefit of DLL is that it creates a choice of where to locate compensatory habitat. It also provides a managed solution to potentially complex translocation requirements, speeding up the development process, and consolidating GCN populations in sustainable locations. This can relieve land take in key development locations and also maximise the potential to strengthen, extend and connect up existing newt populations and habitats. The benefit to the Borough is manifold:
- 3.5.1 The timely delivery of the Borough's allocated growth and unlocking development sites could be significantly assisted, expedited and de-risked by DLL
 - 3.5.2 The Council's own land and potential development sites could also benefit from this new streamlined process
 - 3.5.3 There are opportunities to use parts of the Council's land holding that are too constrained for other development, for GCN mitigation. The overall benefit to the GCN species in securing larger, sustainable populations within managed habitat for the longer term
 - 3.5.4 Increased certainty for the development industry in terms of costs and time frames at an earlier stage of the planning process
- 3.6 DLL has been widely viewed as a proactive approach and has been well received by ecologists, land agents and the development industry in general. A summary of DLL and some quotes from these bodies are available here: <https://www.gov.uk/government/news/national-roll-out-of-new-approach-to-great-crested-newt-licensing>.

Current Position District Level Licensing and Memorandum of Agreement

- 3.7 The DLL is funded through NE. NE is seeking to include Swindon and Wiltshire in the next round of DLL and is supportive of habitat creation at Mouldon Hill in order to kick-start the process and secure suitable ponds for the launch of the scheme.
- 3.8 The Council owned land at Mouldon Hill, as shown edged red on the plan attached as Appendix 1, has been identified as a suitable option for the first GCN habitat land. The land is unsuitable for development due to a range of environmental and practical constraints. The land is in part within floodplain and abuts a country wildlife site.

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- 3.9 Following the success from pilot schemes in Kent and Cheshire, NE would initially seek to oversee and run the DLL in Swindon as the licensing body for a period of two years. This would ensure the scheme is up and running as a viable concern. After this interim period there is the opportunity for the Council to become the licensing authority and run the scheme, should it chose to do so. There would be no financial implications if the Council chose not to run the scheme.
- 3.10 Within the DLL scheme developers would apply for an Impact Assessment at a cost of c£700. This would likely be carried out during or before the pre-application planning process. The Impact Assessment confirms if the development is suitable for the mitigation required by the scheme and the applicable DLL tariff. Post planning permission, the developer would apply for the licence through the DLL and pay the tariff upfront. The costs of the DLL are currently anticipated to be c£15K per pond (plus c£700 Impact Assessment fee). The number of ponds is based on evidenced necessary compensation for the relevant development using the NE survey results and risk zones as set out in para. 3.4 above. The developer payments for the DLL scheme have been costed by NE and provide 85% for mitigation, advice, maintenance and monitoring (for 25 years) and 15% administration. The cost to the developer of these payments is expected, in most cases, to be less than the cost of meeting existing requirements.
- 3.11 The MOA includes templates for Land Owner Agreements to secure the land required for habitat creation and a template for pond creation or restoration orders (MOA Schedule 1A) and for Pond Inspection and Maintenance orders (MOA Schedule 1B).
- 3.12 As part of the DLL process there will be a requirement for a Council representative to liaise with NE's representative and agree 6 monthly reviews. The monitoring must be in accord with NE specifications (in MOA Schedule 3B). The monitoring would be carried out by the Local Planning Authority.

4. Alternative Options

- 4.1 NE are rolling out this new form of DLL for GCN and will do so with or without the Council's direct involvement. However, it is recommended that the Council plays an active role in DLL; both in terms of the opportunity to bring forward Council owned sites for development that would otherwise be impeded or delayed by the traditional licensing methods, and also in terms of the use and funding for long term management of areas of Council land that have no development potential.
- 4.2 Other third parties are also able to run a DLL for GCN on behalf of NE on a commercial basis. This would be a separate legal and financial arrangement. Nature Space is an example of an alternative commercial provider which has

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designed, set up and is administering and delivering the South Midlands district licensing scheme. Nature Space provides assessment of development proposals and advises on the scheme's requirements. Costs to developers are dependent upon the location and scale of development and are controlled and determined by Nature Space.

- 4.3 An alternative option for developers: The DLL is likely to be a popular option for developers as this provides more certainty and potential savings in terms of land take, time and costs. However, developers are not required to enter into the DLL. Under the new DLL scheme developers of sites where GCN are present or are likely to be present would continue to have the option of following the traditional licensing procedure with the likely surveys, trapping, and on-site mitigation. The DLL offers an alternative approach where a developer can choose to make a payment for new off-site habitat, habitat maintenance and monitoring.
- 4.4 Options for the delivery body: Where the Council as landowner becomes the Habitat Delivery Body and provides land for DLL mitigation, the MOA provides that the Council is under no obligation to accept the Work Package Order (Pond Creation, Restoration Inspection or Maintenance). There is also a termination option built in to the MOA for either party (Clause 23 - by giving notice) and at that point all obligations on the Council will cease (Clause 24.1) and unused sums are repaid to NE (24.1.3).

5. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

- 5.1 The initial survey work and subsequent report has been funded by NE. The commissioning of pond creation, restoration and GCN habitat will also be funded by NE for the next 2 years through the DLL project. There is the potential for further investment required to facilitate a DLL across the Borough or a wider area. The ongoing maintenance and monitoring costs would be recouped through payments made by developers. Each mitigation package is self-funded and includes sufficient monies for 25 years of maintenance and for a duplication of the mitigation if replacement is necessary. NE would carry the start-up risks and run the DLL project for the initial 24 months before the Council would be asked to consider administering it. By that stage it is anticipated that the financial model would have been fully tested in the Swindon market and any necessary changes made.

Legal and Human Rights Implications

- 5.2 The Council is required to complete a Memorandum of Agreement in order for NE to release the funding for the habitat creation to start up the DLL project in Swindon.

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- 5.3 The Council is required to complete Landowner Agreements with NE to secure the use of agreed areas of Council owned land for DLL mitigation.
 - 5.4 The Chief Legal Officer will complete all legal documentation in order to protect the Council's interest.
 - 5.5 The Memorandum of Agreement (MOA) put forward by NE would enable NE to commission the Council to deliver mitigation on appropriate sites on Council owned land. The DLL can be used for suitable sites for mitigation, outside the Borough and quid pro quo i.e. development outside the Borough may seek to use mitigation within the Borough.

All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

- 5.6 The DLL provides the opportunity to boost the Borough's population of Great Crested Newts (a protected species) without stifling the Borough's future growth.
- 5.7 Further staff resource (expected to be at most 1 FTE ecology post) may be required if after 24 months the Council decide to run the DLL project, but the administration fee income would fully offset the costs of this. There is no requirement to take up the option of running DLL.

Diversity Impact Assessment

- 5.8 A Diversity Impact Assessment has been completed in relation to this report and a copy can be obtained from the report author.

Risk Management

- 5.9 The Great Crested Newt District Licensing Scheme will run for an initial 24 month period, after which there will be a review of its effectiveness. Before the end of this 24 month period a further report will be prepared to evaluate the District Licensing Scheme with recommendations for the next stage.

6. Consultees

- 6.1 The Corporate Director of Finance and Assets (Section 151 Officer) and Chief Legal Officer (Monitoring Officer) are consulted in respect of all Cabinet reports.

7. Background Papers

- 7.1 Not applicable

8. Appendices

- 8.1 Appendix 1: Map showing the land at Mouldon Hill for the creation of habitats for Great Crested Newts

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9. Key Decision/Decision in Cabinet Work Programme

- 9.1 This is not a Key Decision and is included in the Cabinet Work Programme for Month Year.