

**M42 Junction 6 Improvement
Scheme Number TR010027
Volume 6**

6.3 Environmental Statement
Appendix 9.19 Draft Great Crested
Newt Licence

Regulation 5(2)(a)

Planning Act 2008

Infrastructure Planning (Applications: Prescribed
Forms and Procedure) Regulations 2009

January 2019

Infrastructure Planning

Planning Act 2008

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

M42 Junction 6 Improvement Development Consent Order 202[]

6.3 Environmental Statement Appendix 19.9 Draft Great Crested Newt Licence

Regulation Number	Regulation 5(2)(a)
Planning Inspectorate Scheme Reference	TR010027
Application Document Reference	6.3
Author	M42 Junction 6 Improvement Project Team and Highways England

Version	Date	Status of Version
1	January 2019	DCO Application

Date: 18 December 2018
Our ref: M42 Junction 6 LONI



Dr M Wainwright-Hicks
AECOM
12 Regan Way
Chetwynd Business Park
Nottingham
NG9 6RZ

Dear Dr Wainwright-Hicks

DRAFT MITIGATION LICENCE APPLICATION STATUS: INITIAL DRAFT APPLICATION
LEGISLATION: THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2017;
THE PROTECTION OF BADGERS ACT 1992
NSIP: M42 Junction 6 Improvement Scheme
SPECIES: Great Crested Newts, Bats, Badgers

Thank you for your three draft mitigation licence applications in association with the above NSIP site, received in this office on 30 October 2018. Reference number are EPS.CWM/BA/000111, EPS.CWM/GC/000111 and SPMWLM/BA/000111. As stated in our published guidance, once Natural England is content that the draft licence applications are of the required standard, we will issue a 'letter of no impediment'. This is designed to provide the Planning Inspectorate and the Secretary of State with confidence that the competent licensing authority sees no impediment to issuing a licence in future, based on information assessed to date in respect of these proposals.

Assessment

Following our assessment of the draft application documents, I can now confirm that, on the basis of the information and proposals provided, Natural England sees no impediment to a licence being issued, should the DCO be granted.

Next Steps

Should the DCO be granted then the mitigation licence applications must be formally submitted to Natural England. At this stage any modifications to the timings of the proposed works (e.g. due to ecological requirements of the species concerned) must be made and agreed with Natural England before a licence is granted. Please note that there will be no charge for the formal licence application determination, should the DCO be granted, or the granting of any licence.

If other minor changes to the application are subsequently necessary (e.g. amendments to the work schedule/s) then these should be outlined in a covering letter and must be reflected in the formal submission of the licence application. These changes must be agreed by Natural England before a licence can be granted. If changes are made to proposals or timings which do not enable us to meet reach a 'satisfied' decision, we will issue correspondence outlining why the proposals are not acceptable and what further information is required. These issues will need to be addressed before any licence can be granted.

Full details of Natural England's licensing process with regards to NSIP's can be found at the following link:

http://webarchive.nationalarchives.gov.uk/20140605090108/http://www.naturalengland.org.uk/Images/wml-q36_tcm6-28566.pdf

As stated in the above guidance note, I should also be grateful if an open dialogue can be maintained with yourselves regarding the progression of the DCO application so that, should the Order be granted, we will be in a position to assess the final submission of the application in a timely fashion and avoid any unnecessary delay in issuing the licence.

I hope the above has been helpful. However, should you have any queries then please do not hesitate to contact me.

Yours sincerely

A black rectangular box used to redact the signature of Dr Paul Horswill.

Dr Paul Horswill
Senior Adviser
West Midlands Team

EUROPEAN PROTECTED SPECIES

LICENSING CONSULTATION ON THE FAVOURABLE CONSERVATION STATUS (FCS) TEST AS PART OF THE PRE-SUBMISSION SCREENING SERVICE

GREAT CRESTED NEWTS (*Triturus cristatus*)

NATURAL
ENGLAND

Applicant:	Mr Chris Harris		
Ecologist:	Paul Benyon		
Site name:	M42 Junction 6 Improvements		
Case reference number:	EPSA: PSS – Case ref: TBC	Grid reference	SP 185815
Application type	<input checked="" type="checkbox"/> 1 st draft application <input type="checkbox"/> Subsequent draft application		
Date 1st draft application received by Adviser:	05/11/2018	Adviser's response deadline:	16/11/2018
Date subsequent draft application received by Adviser:	-	Adviser's response deadline:	-

The Conservation of Habitats and Species Regulations 2010 (as amended)

The appropriate authority shall not grant a licence under regulation 53(9)(b) unless they are satisfied that actions authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

1. Experience

Is the experience written in the application form and attached written references adequate for the proposed work?

Yes ☒ No ☐

- *Experience will usually be taken as adequate if the ecologist has held or been named on a licence in the past three years for the same species and in relation to a project of a similar scale, methodology and mitigation.*
- *A licence to carry out survey work is not considered to be a similar licence.*
- *A new applicant must provide a description of their work experience with great crested newts and include two written references, both of which must contain specific detail of the referees own experience with great crested newts (including licence numbers) and their knowledge of relevant work carried out by the applicant. Please refer to document WMLG05 – link provided above.*
- *At least one of the written references must be from a person who held or been named on a licence in the past three years for the same species and in relation to a project of a similar scale, methodology and mitigation. Details of this licence must be provided.*

If 'NO' please address the following:

N/A

2. Survey

Has an adequate and appropriate survey of the site been carried out in relation to the proposed objectives?

Yes ☐ No ☒

An adequate survey will include:

- *Details of the area and habitat that was surveyed;*
- *An appropriate scaled map(s) of:*
 - i) *The area where the great crested newts will be affected by the proposed work,*
 - ii) *The proposed area where mitigation will occur (if applicable), and*
 - iii) *Adjoining sites if part of a phased or multi-plot development or other great crested newt mitigation licences are held in those areas;*
- *The survey methods used;*
- *The name/s of the surveyor/s who undertook the work;*
- *Dates and weather conditions when the surveys were carried out; and*
- *Clearly presented survey results (for each method used) cross-referenced to areas on the map(s).*

If 'NO' please address the following:

Figure C3.2a and associated C3.3 in the Method Statement:

Needs to detail all waterbodies, even if they did not go forward for additional survey effort due to no longer being present or suitable.

A number of ponds from this Figure appear to be missing. Due to the number of waterbodies, a supporting table can be provided as a separate document or annex.

Access:

Where attempts have been made to access additional land for waterbody surveys, evidence should be provided to support this with the full licence application.

Age of data:

At present, the maximum age of the data is appropriate, if the works were going to be undertaken imminently. If this is also similar to the badger licence, the works were planned to be undertaken in 2020. With the level of impact proposed for this project, the survey data can be no older than 3 breeding seasons so would need to be repeated before submission in 2020. As the Work Schedule is missing and there is no start date outlined in Application Form it has been difficult to cross-reference this for confirmation.

3. Impacts

Are the impacts of the development on the population fully described?

Yes ☐ No ☒

Impacts of the development on the great crested newt population should be described as if taking place in the absence of mitigation:

- *Details of the areas and habitat types that will be lost to the development should be included;*
- *For phased or multi-plot developments impacts for all phases should be detailed in a separate master plan, to be provided as a separate document - please refer to and follow WML-G11(link above). Each individual method statement should only contain details of the impacts from that development proposal; and*
- *The population must be considered in context of the local or regional population of great crested newts.*
- *Post development impacts*

If 'NO' please address the following:

Figure B1.1:

Missing and needs to show details of HS2 and any other licenses in the area.

Figure D:

Required to include a compass bearing.

4. Methodology

Is the proposed methodology of the work programme suitable to meet the stated objectives in the application form?

Yes ☐ No ☒

Suitable methodology will include:

- A clear description of the licensable operations e.g. capture and exclusion, translocation;
- Details of the proposed methods and techniques; and
- A detailed timetable of the proposed works pertaining to all licensable activities and mitigation, including disturbance /destruction of great crested newt habitat. **This should be realistic and updated for each submission.**

The above must correspond with the details contained within the application form.

If 'NO' please address the following:

Part E2 of the Method Statement:

The receptor area around Pond 19 is also entirely enclosed by TAF and the dispersal barrier to the west. Without the work schedule it is not clear how long the works will take and how long the TAF will remain in place. Enclosed GCN populations are not recommended for more than 2 years due to the risk of limited DNA diversity and limited carrying capacity of the enclosed habitat for the GCN.

Work Schedule:

As the Work Schedule has not been provided I am unable to confirm if the timing and sequence of works is appropriate.

5. Mitigation

Is the mitigation proposed adequate with respect to the habitat which will be lost?

Yes ☐ No ☒

Adequate mitigation will include details of:

- Habitat creation, modification and/or restoration (including areas and habitat types);
- Post-development habitat management;
- Post-development habitat maintenance;
- Post-development population monitoring; and
- Details of any mechanism in place for ensuring delivery (e.g. a Section 106 agreement).

It will also include scaled drawings, plans and/or maps and photographs, as appropriate.

If 'NO' please address the following:

Figure E2:

Requires a north compass bearing and must be a separate figure to Figure E4a.

Figure E3.1:

Requires more clarity between reinstated and created habitats. Must be a separate figure to Figure E5.1.

	Number/area (ha)/length**	
	Created	Reinstated / Restored / Enhanced
Hedgerow planting		
Grassland re-seeding	0.4	5.62
Grassland management (just for GCN)		
Scrub planting	0.45	2.07
Woodland planting	0.45	2.07
Hibernacula creation*		
Refuge creation	15	

** Information must be consistent with Table E3.

All of the above needs to be clearly shown on the Figure E3.1 also.

Figure E4a:

25/60 days needs to be shown clearly on this Figure. This must be a separate figure to Figure E2. Turn-backs (or another exclusion method) need to be considered to ensure that any captured GCN remain within the receptor area and do not find their way back to the construction area.

Part E5.1 of the Method Statement:

Management and maintenance is proposed but it is unclear for how long this will be undertaken. The Method Statement needs to be updated.

Repair and replacement of fences is proposed but this would be over and above maintenance that is expected of TAF. Please advise within the full licence application what this relates to- guide fencing, permanent fencing or another.

Figure E5.1:

Required to show when and where the management/maintenance is to be undertaken. Text could be inset into this Figure for clarity but should be similar to the activities that are agreed in the MS.

This must be a separate figure to Figure to E3.1.

Part E5.3 of the Method Statement:

Whilst land owner agreement is noted, a secure legal mechanism is required to fulfil this element. Given the level and extent of impact, it may be possible to safeguard this element through the EPS Mitigation licence alone. Although, I am unable to confirm this until the Work Schedule has been provided to show the duration of management and maintenance activities.

Figure F1:

Please provide this Figure with the full submission.

Part I of the Method Statement:

This will need to be completed in its entirety as part of the Full licence Application.

Work Schedule:

Please provide this with the full submission.

6. Additional Comments and Advice

Application Form to be completed in full:

- No proposed start date included.
- Have you sent data to Local Records Centre?
- Applicant declaration 16b)

Completing Method Statement tables in full:

WML-F14a (10/12) - Pre-submission screening service

<http://www.naturalengland.org.uk/ourwork/regulation/wildlife/default.aspx>

Where no areas of impact/compensation are proposed, please include zeros in the table for clarity.
See D1.3, E3, E3.2.

7. Conclusion in respect of regulation 53(9)(b) for the FCS test:

Satisfied ☐
Not satisfied ☒

Assessed by Wildlife Adviser: Helen Woolley

Date: 16/11/2018

Disclaimer: The advice provided within the Discretionary Pre-submission Screening Service is the professional opinion of the Natural England adviser. It is not intended to represent the corporate position of Natural England nor bind Natural England in any way in the future. Natural England will not accept any liability for the accuracy, adequacy or completeness of, nor will any express or implied warranty be given for, the advice. This exclusion does not extend to any fraudulent misrepresentation made by or on behalf of Natural England.