Case Ref: WD/2021/2356/MAO	Date: 11 February 2022
From: NatureSpace	Response: No further information required

Comments:

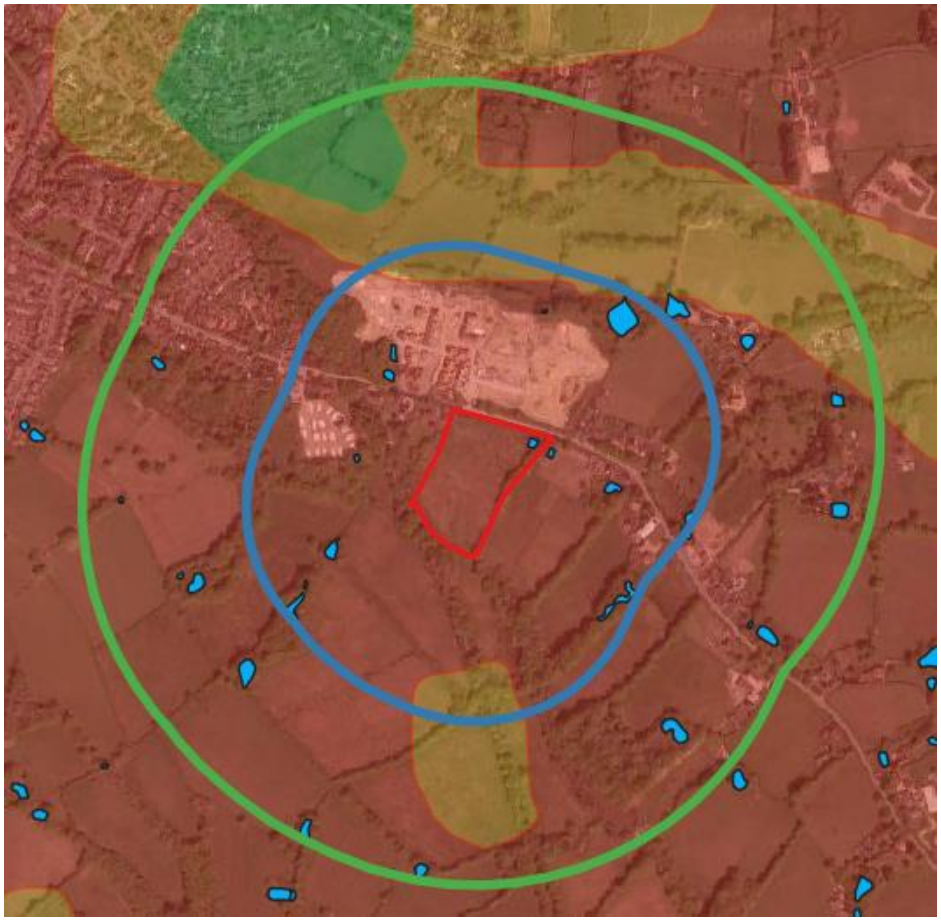
This planning application is for 'OUTLINE APPLICATION FOR THE ERECTION OF UP TO 38 DWELLINGS, ACCESS, LANDSCAPING AND ASSOCIATED INFRASTRUCTURE' at 'LAND AT OLD ORCHARD HOUSE, HOREBEECH LANE, HORAM, TN21 9DZ'.

- The development falls within the red 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 red impact zone, there is suitable habitat and a high likelihood of great crested newt presence.

- There was one pond on-site and a further 27 within 500m of the development proposal.

- The on-site pond has GCN records confirmed from 2014 and 2016. There are also multiple GCN records associated with the other ponds located within 500m of the development site.

- There is direct connectivity between the development and surrounding features in the landscape.



Summary

The applicant has provided an ecological report, [Ecological Update Report, Phlorum, October 2020] and [Great Crested Newt Report, Phlorum, June 2021]. Within this report it states that:

'*Great crested newts were recorded as present in pond 4, the on-site pond, and pond 7. Pond 4 was found to support a small population of great crested newts, while pond 7 was found to support a medium population based on current Natural England guidelines (Natural England, 2001). No great crested newt eggs or larvae were identified in any of the ponds during the six surveys.*

Based on the results of the survey and data search results, it is considered likely that great crested newts utilise the network of suitable ponds throughout the landscape. The possibility that ponds 4 and 7 are likely to support individuals from the same metapopulation cannot be ruled out. Due to the presence of a breeding population of great crested newts within the on-site pond and the extensive area of suitable terrestrial habitat surrounding the pond, it is considered likely that great crested newts will be impacted by the proposed development activities. However, the proposed development will not directly impact on the on site pond (pond 4).

An EPSM licence will be required in order to legally disturb on-site terrestrial habitat within the proposed development area.'

Conclusion and recommendation for conditions:

The great crested newt survey report states that a license is required for the development due to the presence of GCN in the pond located on-site, and one other pond off-site.

The applicant can either choose to use the district licencing scheme or provide information to satisfy the council that a licence can be granted by NE post planning approval (if approved) including all impacts, mitigation, compensation and any monitoring that is required.

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 (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 is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity*', as stated under section 40 of the Natural Environment and Rural Communities Act 2006 (NERC). 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".*