

Great Crested Newt Review

Project: M54 to M5 Link Road: Allow's Land Holdings

Technical Briefing Note TN02: Review of 2020 Great Crested Newt Data

Date: 19 October 2020

1 Background

1.1 Introduction

- 1.1.1 Aspect Ecology has been commissioned by Allow Ltd to review proposals associated with the compulsory purchase of their land for habitat creation purposes.
- 1.1.2 The habitat creation is being proposed by Highways England (HE) to offset adverse effects associated with the construction of the M54 to M6 Link Road.
- 1.1.3 The reviews to date have been guided by the Environmental Statement for the scheme, submitted January 2020, and subsequent updates and amendments provided by HE. Some of the data sets used to guide the review(s) were incomplete, with additional surveys scheduled for the appropriate seasonal windows in 2020. One such species requiring further data collection was Great Crested Newt.
- 1.1.4 Great Crested Newt (GCN) surveys could not be completed by NE's ecologists along the route of the Link Road in 2019. As such, the magnitude of the impact, along with the assessment of effects and requirement for mitigation and compensation, was based on precautionary (conservative) assumptions about GCN presence and population sizes. It was acknowledged that these assumptions would be refined through further surveys in 2020. These surveys have now been completed and the data provided by HE¹.

1.2 Structure of this note

- 1.2.1 This note firstly summarises the results of the 2020 GCN surveys. It then presents the points raised regarding GCN from the previous review(s) and details if the 2020 data changes or addresses them in any way.

2 2020 Great Crested Newt Surveys

- 2.1.1 A total of 32 waterbodies, along the length of the scheme, that were not subject to survey in 2019 were scheduled for survey by HE in 2020.

¹ M54 to M6 Link Road (TR010054). Volume 6. 6.3 Environmental Statement Appendices. Appendix 8.15 Great Crested Newt (2020)

2.1.2 Of the 32 waterbodies, 12 could not be accessed by HE in 2020. Of the 20 that could be accessed, 11 were subject to Environmental DNA (eDNA) surveys, six were screened out of requiring any further survey and three could not be subject to eDNA or traditional survey methods, either due to only having access withdrawn or the waterbody drying following the Habitat Suitability Index (HSI).

2.1.3 All eDNA surveys undertaken by HE in 2020 returned negative results. As such, **the 2020 surveys did not confirm or identify the presence of GCN in any waterbodies.**

2.2 Combined Survey Results and Assumptions

2.2.1 The 2019 surveys confirmed GCN to be present in three waterbodies, 34, 52 and 128, for which medium populations were assumed for each. In addition, following the 2020 surveys, GCN are still 'assumed' to be present in a further 12 waterbodies (those that could not be accessed or adequately surveyed in 2020). As a result, the combined reports detail 15 waterbodies within 500 m of the Scheme boundary with GCN confirmed (3 ponds) or assumed (12 ponds) present. **As such, mitigation strategies and compensation requirements are still largely based on assumptions.**

2.2.2 Previous, pre-2020 surveys, mitigation and compensation strategies were based on the confirmed presence of GCN in three waterbodies and the 'assumed' presence of GCN in 21 waterbodies (Section 8.6.79 of Chapter 8). **As such, proposals designed to adequately protect the assumed GCN using 24 ponds need to be reviewed and downscaled to reflect the latest assumed/potential presence of GCN in only 15 waterbodies.**

2.2.3 Section 8.9.38 of the Environmental Statement details eight waterbodies which will be lost during construction of the scheme (waterbodies 23, 25, 26, 28, 29, 57, 65 and 73). Previously, pre-2020 surveys, four of the ponds being lost (waterbodies 25, 26, 29 and 65) were considered suitable for GCN and 'assumed' to support the species. These were all visited in 2020 and either returned negative survey results (waterbodies 25 and 26) or are now considered unsuitable for the species (waterbodies 29 and 65). The other four waterbodies being lost to the scheme (23, 28, 57 and 63) were either considered unsuitable for the species or returned a negative survey result (waterbody 28). As such, **the eight ponds being lost to the scheme do not support GCN and mitigation/compensation strategies need to reflect this.**

3 Points Raised by Previous Reviews

3.1 Introduction

3.1.1 A review of the 2019² survey results, assumptions and mitigation/compensation strategies identified several points which required further justification, namely:

- Screening distance
- Overly Precautionary Approach
- Ponds known to support GCN are to the east of the scheme
- Mitigation ponds are proposed to the west of the scheme
- Pond ratios dictating habitat creation

² Review of Proposed Habitat Creation on Land Owned by Allow Ltd. Aspect Ecology, September 2020

- Terrestrial habitat provision and location

3.1.2 Information regarding each point is provided below, along with any changes/amendments arising due to the results of the 2020 surveys. For a complete overview of each point, the Aspect Ecology September 2020 report should be read in conjunction with this Technical Briefing Note.

3.2 Screening Distance

3.2.1 A screening distance for GCN surveys of some 500m appears to have been utilised (see Section 3.1.5 of Appendix 8.11) whereas 250m is appropriate. Indeed, this distance (250m) was selected for standard sampling surveys.

3.2.2 Guidance set out within Natural England's Method Statement template³, to be used when applying for a Great Crested Newt development licence, states that surveys of ponds within 500m of the site boundary are only required when '(a) data indicates that the pond(s) has potential to support a large Great Crested Newt population, (b) the footprint contains particularly favourable habitat, (c) the development would have a substantial negative effect on that habitat and (d) there is an absence of dispersal barriers.' Given that in this instance, none of the four points listed above are applicable to the project, as it crosses large tracts of arable and improved land (largely unsuitable GCN habitat) with few confirmed records of GCN, it is considered that survey of ponds within 250m of the site boundary would have been more appropriate. This increased screening distance could have led to over-inflated requirements for GCN compensation and habitat creation.

3.2.3 This point remains following the 2020 GCN surveys. As such, it is recommended that the screening distance is re-visited and a more targeted approach employed.

3.3 Overly Precautionary Approach

3.3.1 Four of the ponds being lost to the scheme (ponds 25, 26, 29 and 65) were not surveyed sufficiently during the baseline assessment and, as such, were 'assumed' to support 'Medium' metapopulations (Metapopulations 5 and 8b - Table 8.20 Environmental Statement Chapter 8). The presence of these 'assumed' populations has guided mitigation and habitat creation proposals.

3.3.2 However, the 2020 surveys have now confirmed that these ponds are either unsuitable for GCN (waterbodies 29 and 65) or, if suitable, do not support GCN (waterbodies 25 and 26). As such, impacts regarding the local GCN population have been over-inflated and proposals for pond and habitat creation designed to offset impacts on GCN need to be reviewed.

3.3.3 There are 11 ponds on Allow Ltd's land with 250m of the scheme. Of these, Five (31, 32, 33, 127, 129) were considered unsuitable and scoped out of further assessment, one was dry (30) at the time of survey, four returned negative eDNA results (27, 28, 115 and 126) and one returned a positive eDNA result (34). As such, there is no evidence to suggest that the area is significantly important to the species or that habitat creation for the species in this location would be effective.

³ <https://www.gov.uk/government/publications/great-crested-newts-apply-for-a-mitigation-licence>

- 3.3.4 The negative results obtained by the 2020 surveys further supports the assumption that the land owned by Allow Ltd is not significantly important to/for GCN.
- 3.3.5 The scheme appears to result in the loss of three ponds on Allow Ltd's land. None of these supported Great Crested Newts during baseline surveys or the 2020 surveys. However, eight 'Ecological Ponds' are proposed to be created on the land as set out in the Environmental Statement (EP05, EP06, EP07, EP08, EP09, EP10, EP11 and EP12). Therefore, the need for, and effectiveness of, locating the ponds here is highly questionable.
- 3.3.6 As noted in paragraph 2.2.2, very few ponds along the entire route have been confirmed as supporting GCN. In addition, the 2020 surveys did not identify any GCN populations and confirmed absence in some of the ponds with previously 'assumed' presence. Therefore, the **continued** assumption by the project of worst case scenarios for unsurveyed ponds supporting GCN does not reflect the actual (and contextual) survey data, and is far too overly precautionary.
- 3.3.7 ODPM Circular 06/2005 (see NPPF footnote 56) is clear at paragraph 99 that:
- "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".*
- 3.3.8 Similarly British Standard BS42020: Biodiversity sets out at section 4.1 that:
- "Professionals involved in both the preparation and determination of planning applications where biodiversity could be a material consideration should ensure that they have adequate access to appropriate ecological expertise in order to:*
- a) establish whether any particular development proposal is likely to have a significant effect on biodiversity; and*
- b) identify any measures necessary for compliance with all relevant statutory obligations and national and local planning policy.*
- In doing this, professionals should take a **proportionate** approach to ensure that the provision of information with the application is appropriate to the environmental risk associated with the development and its location"* (our emphasis).
- 3.3.9 Mitigation and Compensation strategies for the scheme are still based on incomplete data and assumptions and do not follow best practice as per Circular 06/2005 and BS42020. As such, it is recommended that impact assessments and habitat creation measures should be withdrawn until all relevant data are collected in 2021.
- 3.3.10 In the interim, prior to collection of data from the 12 remaining unsurveyed ponds in 2021, pond and habitat creation proposals, need to be reviewed and downscaled in recognition of the 2020 survey results (decreasing the amount of possible GCN ponds along the route from 24 to 15).

3.4 Ponds known to support GCN are to the east of the scheme

- 3.4.1 Figures 8.28 and 8.29 of the ES, plus the results obtained through the 2020 survey, show that historic, and current, known presence of Great Crested Newt is greatest to the east of the

proposed scheme. However, compensatory ‘ecological ponds’ will be created to the west of the scheme.

3.4.2 Based on the known local distribution of GCN being to the east of the scheme, the locations of the proposed ‘ecological ponds’, and their ability to effectively contribute to Great Crested Newt conservation (and alleviation of predicted project effects) is inappropriate. New ponds would not link to existing populations of Great Crested Newts and hence would not serve to mitigate effects from losses to the scheme. This is particularly important for this species which has a population ecology that functions as a meta-population, typically requiring clusters of ponds for long term population success. This allows temporary losses of a population from an individual pond, for example due to an environmental event, to be recovered by colonisation by GCN from a nearby pond.

3.4.3 It is still recommended that the siting of mitigation is re-visited and this re-located to the east of the scheme.

3.5 Mitigation ponds are proposed to the west of the scheme

3.5.1 The new ponds proposed as mitigation (e.g. EP05 and EP06) lie to the west of the link road and hence will be isolated from the known GCN populations east of the Link Road (as mentioned in section 3.4).

3.5.2 Paragraph 4.4.3 of the HE Environmental Mitigation Review (EMR) provides justification for the location of mitigation ponds. Guidelines are referenced and mention the need to locate replacement ponds as close as possible to the ones being lost (donor sites). However, the 2020 surveys have confirmed that the ponds in this area being lost (25, 29 and 29) do not support GCN. Furthermore, other surveyed ponds to the west of the scheme in 2020 also did not support GCN (e.g. waterbodies 40, 41 and 42). As such, there is no ‘need’ to site the location here.

3.5.3 Similarly, Paragraph 4.4.3 of the EMR also takes into consideration the perceived importance of Lower Pool Local Wildlife Site (LWS) and Site of Biological Importance (SBI) in terms of Great Crested Newt mitigation. The location of retained habitats from the LWS, to the west of the scheme, is used as justification for providing ponds in the eastern portions of the Plots. However, this is still to the west of the scheme, whilst the majority of the retained LWS, plus newt populations, are to the east of the scheme. As such, this explanation for the location of compensatory ponds to the west of the scheme does not bear scrutiny. In particular the Conservation of Habitats and Species Regulations 2017 requires the conservation of the species at a favourable conservation status within its ‘natural range’⁴ i.e. east of the link road.

3.5.4 It is recommended that the rationale for locating proposed ponds should be re-visited and consideration be given to relocating ponds to the east of the link road.

3.6 Pond ratios dictating habitat creation

3.6.1 The scheme seeks to replace lost Great Crested Newt ponds on a ratio of 2:1 (as per Natural England guidance) and the Environmental Statement details that eight of the twelve proposed ‘ecological ponds’ will be created on Allow Ltd’s land.

⁴ Regulation 55 (9b)

- 3.6.2 However, Great Crested Newt presence has not been confirmed in any of the ponds being directly affected by the scheme. **Furthermore, the negative results obtained through the 2020 surveys have confirmed that fewer compensatory ponds are required.**
- 3.6.3 Previously, of the eight ponds being lost, four were ‘assumed’ to support GCN. As such, using the ratio above, eight new ponds were required to compensate for this loss, and four additional ponds created to replace the four unsuitable GCN ponds being lost (hence the twelve ‘ecological ponds’ proposed). Surveys have now confirmed that none of the eight ponds being lost support GCN. As such, only eight replacement ponds are required, not twelve. This is likely the reasoning behind the HE proposal to remove ‘ecological ponds’ EP07, EP08 and EP09 from the scheme. However, EP05 and EP06 are still proposed to the west of the scheme (on Allow Ltd’s land) with surveys showing no GCN in the vicinity.

3.7 Terrestrial habitat provision and location

- 3.7.1 All background records for the species (Figure 8.28 of the ES) and ponds confirmed to support GCN (confirmed through eDNA surveys for the scheme – see ES Figure 8.29) are located to the east of the proposed scheme. As such, the appropriateness and effectiveness of creating compensatory habitat for this species to the west of the scheme is in question. If the location of compensatory ponds is inappropriate, then the current habitat creation proposals for land within 500m of these ponds (designed to benefit the species) should also be reviewed alongside proposed pond locations. This must all be based on up-to-date survey information⁵.
- 3.7.2 The Environmental Statement describes Ecology Ponds EP05 and EP06 as being provided for ‘assumed’ metapopulation 5a (although only metapopulation ‘5’ is shown on Figure 8.29). However, surveys in 2020 have confirmed that this ‘assumed’ metapopulation does not exist. As such, there is no apparent need to site EP05 and EP06 in this location.
- 3.7.3 Paragraph 4.4.4 of the EMR cites Natural England’s ‘Great Crested Newt Mitigation Guidelines’ for justification of habitat creation up to 500m from new ponds. The paragraph states that the guidelines “require that pond creation should include the area up to 500m around the created pond”. However, this is not entirely accurate. Section 8.3.2. of the Guidelines state that “the area up to around 500m surrounding a mitigation pond *should be considered* as potential newt habitat, depending on the site layout” (our emphasis).
- 3.7.4 The mostly commonly used range for GCN is 250m, with the first 50m within a pond strongly favoured. Very limited use is made of land beyond 250m with a maximum extent of use being 500m. It is therefore recommended, to ensure that mitigation provision is effective, that this is provided within 250m of affected GCN ponds. Mitigation beyond this distance may not be effective and therefore may not satisfy the requirements the Conservation of Habitats and Species Regulations 2017 and their associated licensing requirements.

3.8 Summary

- 3.8.1 Based on the background data search and the results of eDNA surveys to date, Great Crested Newt activity is greater on the eastern side of the proposed scheme. As such, siting habitat creation measures for the species to the west is likely to be ineffective and its provision should be relocated to the east of the scheme.

⁵ Advice Note ‘On the Lifespan for Ecological Reports and Surveys’. CIEEM. April 2019

3.8.2 At present the scheme is not in accordance with the requirements of the NPPF (ODPM Circular 06/2005) and British Standard 42020:Biodiversity while the proposed mitigation also falls outside the 'natural range'⁶ of the local GCN population.

3.8.3 It is recommended that:

- the screening distance is re-visited and a more targeted approach employed;
- the impact assessments and habitat creation measures should be withdrawn and reviewed/downscaled based on the results of the 2020 surveys;
- the siting of mitigation is re-visited and is re-located to the east of the scheme within the natural range for the local GCN population;
- actual data of GCN presence / absence is obtained for the remaining 12 ponds and the mitigation provision re-visited based on this information to ensure that mitigation provision is effective, that this is provided within 250m of affected GCN ponds.

⁶ As per the requirement to maintain the 'favourable conservation status of the species within its natural range' within the Conservation of Habitats and Species Regulations 2017