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Planning, Licensing and Ecology

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Welcome

Ecologists and environmental managers lean heavily on the planning system to achieve their objectives of biodiversity conservation and enhancement. Equally, planners rely on ecologists to help deliver their objectives. But it is not always a happy relationship; usually, in my experience, because of a lack of understanding of each other's roles and professional obligations. Failures on both sides to exercise due diligence in contributing to the planning process can cause frustration and distrust, lead to unnecessary tensions and ultimately to bad decisions.

Even where there are no biodiversity issues, planning has frequently been the 'Aunt Sally' for developers, who accuse the planning process of being slow and cumbersome. It is easy to blame the planners. Those on the 'front-line' in development management are under intense political, resource and time pressures, frequently dealing with opposing views vehemently expressing often irreconcilable conflicts caused by development proposals.

I have lost count of the number of times Ministers have decided that planning needed a 'root and branch' reorganisation. On the one hand, planners must speed up the decision-making processes. At the same time, they must improve the evidence base of decisions and make sure that all parties are fully involved in decision-making. These laudable objectives are, of course, mutually exclusive, so the planning process struggles on. Ecologists were next to be blamed for delay.

When European protected species became potential 'show-stoppers', developers complained, conservationists rejoiced, local objectors shouted (some even deviously manipulated) and planners despaired. Because of the lack of in-house ecological expertise it was another 'material consideration' they were supposed to know enough about to weigh in the balance. Legislative requirements were confusing. Roles and procedures were unclear and the scientific evidence base was inadequate, largely because mitigation monitoring was rarely carried out. These problems persisted for longer than they should have done. Tensions between legitimate interests grew as high profile cases of 'newts stop development' were misrepresented. Gradually we are seeing changes, trying out new ideas with a greater sharing of responsibility and trust. So, this edition of *In Practice*, focusing on planning and protected species licensing, is timely. It has contributions from a range of authoritative authors, many of which I have had the pleasure of working with.

Ecologists and environmental managers have made a huge contribution to planning decisions in delivering a better environment for wildlife and people. What each of you do makes a difference. It is all of the small contributions of ecological knowledge and understanding of the natural environment, which you feed into the planning system every day, that combine to influence better environmental decisions.

Planning for site, habitat and species protection remains imperfect. But it has worked far more often than it has failed. We must improve understanding of what and how each profession can contribute. Despite the set-backs, the changes in licensing are going in the right direction. I commend this journal because it will improve that understanding and help to deliver a better planning and licensing system.

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Information

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Front cover:

District Licensing for Great Crested Newts – A Successful First Year for the South Midlands Scheme

Tom Tew MCIEM and Pascale Nicolet Keywords: District Licensing, great crested newts, planning, species net gain

The South Midlands ‘District Licensing’ scheme for great crested newts, the first large-scale organisational licence issued by Natural England, has been in successful operation for one year. The scheme is perhaps unique in aiming to deliver landscape-scale habitat conservation gain (with four ponds created for every one lost) that is funded *in perpetuity*. The scheme received 85 enquiries from developers, issued 29 reports and 16 developments have entered the scheme in the first year. Over £200K has been allocated directly into a conservation fund run by the NGOs, and 40 new ponds and associated terrestrial habitat have been created.

Introduction

Under the new ‘District Licensing’ system, Natural England may issue an Organisational Licence to a Local Planning Authority which then enables that Authority to authorise operations that may harm great crested newts through the planning system (Cameron *et al.*, this issue). This ‘one stop shop’ allows developers to receive authorisation under a newt Licence at the same time as they receive planning permission, and removes the necessity of separately applying to

Natural England for a great crested newt licence. The system is designed to help developers by significantly reducing delays, risks and costs, and also helps planning authorities to deliver their legal obligations efficiently. The system also allows authorities to demonstrably deliver net gains in newt conservation through their planning decisions, which it does by creating, managing and monitoring habitats for great crested newts according to a long-term and landscape-scale strategy. We described the scheme fully in *In Practice* last year (Tew *et al.* 2018).

The South Midlands scheme was licensed in February 2018 and operates across seven contiguous Local Planning Authorities from Bedford Borough to South Oxfordshire; the scheme is voluntary and offers an extra option for developers alongside the existing methods of applying to Natural England (NE) for newt licences. Two new organisations were created – NatureSpace Partnership (NSP) liaises with developers and planning authorities to administer the scheme, whilst the non-profit South Midlands Newt Conservation Partnership (SMNCP) liaises with landowners to deliver newt habitats.

The District Licensing process

There are three fundamental principles behind the South Midlands scheme:

- It is based on a landscape-scale, evidence-based conservation strategy that defines both risk and conservation targets – it is spatially literate (see Figure 1)
- It embeds the mitigation hierarchy, including avoidance and mitigation, into decision making – it is conservation driven
- It specifically calculates costs according to the impact of each development – it is proportionate.

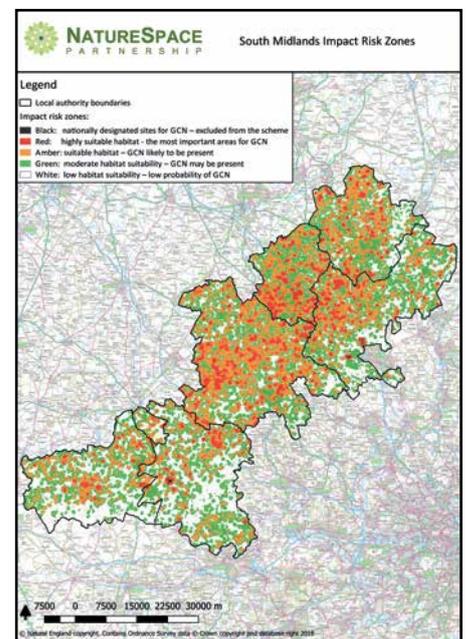


Figure 1. Map of South Midlands identifying Impact Risk Zones for great crested newts.

The impact of each development, and therefore any compensatory costs, are calculated by applying the (scheme-specific, NE-approved) great crested newt metric, so there are potentially two stages for a developer to secure authorisation to work under the District Licence:

1. Complete an application form, and then pay the authorisation fee **or** commission a full report.
 - a. For most low-impact developments (especially in the white and green impact risk zones, Figure 1) there is no need for further analyses and developers can enter the scheme for a standard charge of £500 or £1000. The developer will receive an authorisation to work under the District Licence when they receive their planning permission; or

b. For potentially high-impact schemes it is necessary to commission a specific assessment that calculates the impact and, therefore, the second stage charge to compensate for that impact. The metric assessment establishes whether there is a need for site avoidance or any on-site mitigation and calculates whether a payment is necessary to compensate for the specific net impacts of that development. For development that avoids or mitigates impact then the second stage charge could be zero and the assessment considers the impacts of the proposed development not only at the site but also the wider implications for the local newt populations, considering for example, impacts to range and connectivity. The NatureSpace report is held by the developer, ahead of applying for planning permission, who is thus certain of all their future costs relating to great crested newts.

2. Enter the scheme and pay a compensatory charge as per b) above. Should the developer choose to enter the scheme, they submit the NatureSpace report to the Planning Authority alongside their planning application. The Planning Authorities (who hold the District Licence and are active participants in the scheme) will always accept the NatureSpace report recommendations. If planning permission is granted, consent is conditioned to tie the District Licence into the planning permission.

Where does the money go?

Developer payments are received by NatureSpace and allocated strictly according to the terms of the District Licence (specified by Natural England). In the first year of operation the scheme has taken approximately £0.5M in developer payments. These funds are allocated as follows:

- 20% to a great crested newt habitat creation and management fund held by the SMNCP – this fund pays for the creation and management of habitat.
- 20% to a great crested newt habitat endowment fund held by the SMNCP – this fund is set aside to accrue to pay for

the long-term (ultimately *in perpetuity*) management of all the habitat that is being created and will remain in place when (if) the scheme ever ceases – we believe this is the first ever conservation strategy to do so.

- 20% to pay for the staff and operational costs of the SMNCP itself – governance, administration, reporting, communication costs, etc. SMNCP staffing is currently at 2.6 FTE.
- 20% to pay for the staff and operational costs of NSP – this includes liaising with developers and planning authorities, creating and delivering the reports to developers, administering the scheme and funding the placement of ‘LPA newt officers’ who work for the planning authorities alongside the LPA planners and ecologists. There are currently seven full-time staff.
- 20% to pay for all other costs, especially scheme monitoring costs, but also legal and governance costs. Monitoring of both outputs and outcomes is shared by NSP and SMNCP and all data go into the freely available public domain, via Local Record Centres.

Illustrative case studies

The following case studies illustrate the operation of the District Licensing scheme in the South Midlands.

The first case demonstrates the advantages of good on-site mitigation in the design



Figure 2. Case study 1.

of development schemes. In this case, the development was designed by the environmental consultants to keep the impacts low, with on-site creation of good quality habitats and restoration of existing habitats (ponds and hedgerows). Despite being in the high-risk red zone (Figure 2) and near to several ponds, there was no overall impact on newts and hence the second-stage payment was zero. Some on-site mitigation works were required, and secured through planning conditions – including fencing and trapping, hand and destructive searches, and timings to avoid the hibernation period – but these were less than would normally be applied through a conventional licence.

The second case illustrates a moderate impact, major development in the medium-risk amber zone that covered a 6 ha mixed commercial and residential use site (Figure 3). There were no ponds on site, although there was one within 10 m of the boundary



Figure 3. Case study 2.

and another two within 500 m. The development affected some high-quality terrestrial habitat. As the site was outside the sensitive red zone, there were no surveys, delays, or on-site mitigation or management works required, and no planning conditions applied. The second stage charge was below £10,000.

The third case concerns a high impact, major development in the red zone, that covered 6.8 ha, with a mixed commercial and residential use site (Figure 4).

Feature Article: District Licensing for Great Crested Newts – A Successful First Year for the South Midlands Scheme (contd)

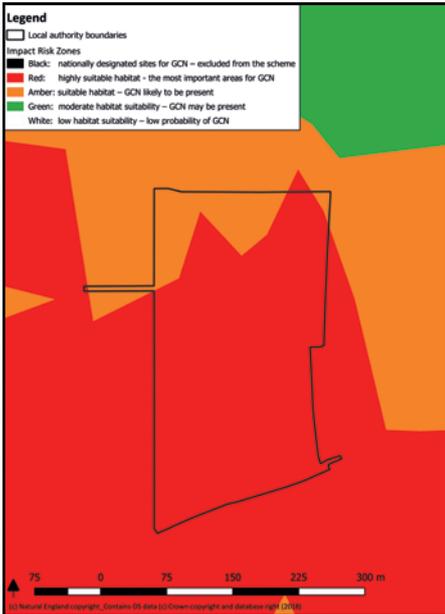


Figure 4. Case study 3.

There were no ponds on site, but there was a wet ditch just outside the boundary and seven ponds were located within 500 m; the development caused the loss of both good terrestrial habitat and some hedgerows. As this was within the red zone, some on-site mitigation works were required (sensitive ground clearance using best practice methodology, etc.) through a planning condition and the second-stage charge was calculated to be less than £20,000.

Scheme take-up in the first year

It was expected that such a voluntary scheme would be slow to take off, as professionals in the industry (planners, developers, planning consultants and environmental consultants) took time to understand and recognise the advantages (see Murray *et al.*, this issue). In the first 12 months of the scheme (February 2018 – February 2019) we received 85 applications and 29 of those chose to enter the scheme, thus far the Planning Authorities have issued 10 authorisations under the District Licence.

Uptake was initially slow but has been rising steadily (Figure 5). As noted above, developers paid £0.5M into the scheme over the first year.

During the first year:

- Over £400K has gone into great crested newt conservation – either directly for pond creation, set aside for long-term habitat management, or for staff (in SMNCP, NatureSpace and the LPAs) to administer the scheme
- There were no legal challenges to either the scheme or individual planning consents
- The NSP performance targets (for delivering the certificates or reports to developers within the specified timeframes) were met 100% of the time.

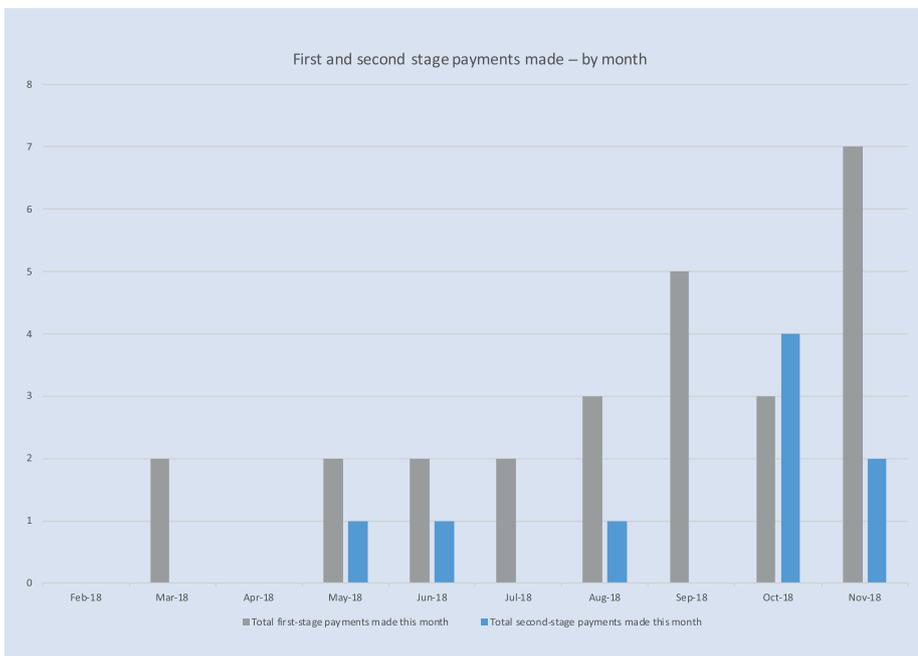


Figure 5. Number of stage payments made under the scheme showing increased uptake over time.

- The impacts arising from developments authorised under the South Midlands District Licence totalled 0 ponds directly lost, 1 pond indirectly lost and 50 ha of suitable terrestrial habitat lost. The following sections explain how these impacts have been compensated for through the District Licensing scheme.

Conservation outcomes

Compensation activities are guided by the District Licensing scheme's spatial Implementation Strategy, which sets out the objectives of the scheme for great crested newt conservation, including conservation priority zones (Figure 6), best practice principles for newt habitat creation and management, and a monitoring framework to assess the outcome of the scheme for great crested newt conservation at the site and landscape scale.

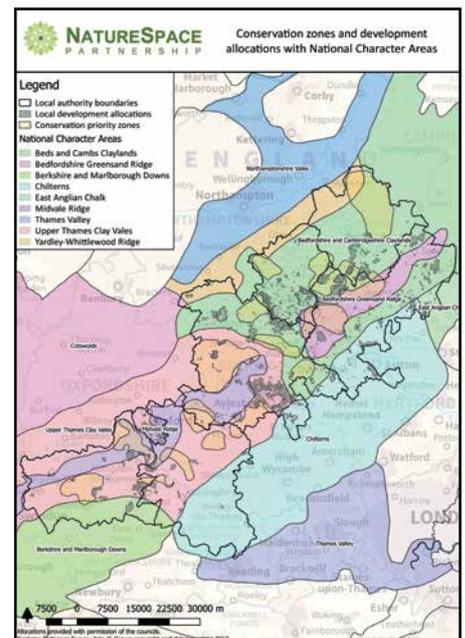


Figure 6. Conservation priority zones, development allocation and National Character Areas in the South Midlands.

In the first year of the scheme, SMNCP has created 40 ponds at 12 sites in the South Midlands to provide new habitat for great crested newts in advance of developer impacts. *The District Licence requires a 4:1 ratio of high quality new ponds created to occupied ponds lost in each National Character Area* (Figure 6). Only one pond was lost or damaged by development in the South Midlands in this first year, and so habitat creation under the scheme is running significantly ahead of habitat loss.

The first tranche of new ponds was targeted on land owned or managed by organisations with an environmental remit or sympathetic landowners, to give extra assurance on their long-term management. Agreements with landowners guarantee an annual payment for the management of the ponds on a 5-year rolling contract to allow for flexibility, with a commitment to provide this funding for at least 25 years. Payment rates to land managers are individually negotiated and the scheme has proved to be popular with landowners and land managers.

All first-year compensation sites are within semi-natural terrestrial habitats, already suitable for great crested newts, and near existing newt populations, as required by the licence. Hibernacula were created near new ponds where there were opportunities and fencing was used to protect ponds from disturbance at sites with public access (see Figure 7). In year two, more sites will be targeted where we might need to create or restore terrestrial habitat and landscape connectivity between great crested newt populations, a key objective of the District Licencing scheme in the South Midlands.

The habitat creation strategy also focuses on expanding newt range around existing high quality sites by working with neighbouring landowners and farmers. At Berkshire, Buckinghamshire and Oxfordshire Wildlife



Figure 7. One of three new ponds under construction at the Millennium Woodland in Milton Keynes. The pond is in an area of public access and has now been fenced. Annual monitoring will enable SMNCP to address issues and adjust management requirements for great crested newts for both the terrestrial and aquatic habitat. Photo credit SMNCP.

Trust's Finemere Wood, for example, SMNCP has created four ponds in low diversity grassland at the edges of the woodland SSSI, and we are now looking to work on private agricultural land surrounding the site to expand the new population in the wider countryside (Figure 8).

SMNCP has created ponds on sites where past habitat creation has already been shown to be successful. At the Forestry Commission's Shabbington Wood SSSI, for example, monitoring of eight new ponds created as part of the Million Ponds Project in 2011 reported they had all been

colonised by great crested newts. This spring, SMNCP dug another nine ponds in other parts of the woods with low pond density, in areas already disturbed by recent forestry activities. These new ponds will provide stepping stones, opening up new areas of the wood to newts. At this important site, SMNCP is now identifying suitable areas to continue newt population expansion both within and around the SSSI. Similarly, on a privately owned farm near Oxford, an isolated great crested newt population expanded from one breeding pond when six new ponds were created by the Million Ponds Project in 2010 in the adjacent grassland. SMNCP has now



Figure 8. One of four new ponds at the edge of Finemere Wood SSSI, on extensively managed, low diversity grassland. The surrounding woodland and hedge provide good dispersal routes from existing ponds with a great crested newt population. The pond maximum depth is 1.2 m and it will be fed from surface run off from the grassland. Photo credit SMNCP.

Feature Article: District Licensing for Great Crested Newts – A Successful First Year for the South Midlands Scheme (contd)



Figure 9. A new pond in semi-improved grassland being dug next to a pond created in 2011 as part of the Million Ponds Project and colonised from an isolated great crested newt population in the woods. Photo credit SMNCP.

created another three ponds to further enhance the newt population at that site (Figure 9), and our monitoring programme will allow us to assess the success of this work in future years.

Potential compensation site screening is key to the delivery of high quality habitat for newts. The Implementation Strategy set out criteria for the SMNCP delivery team to work to, and Freshwater Habitats Trust and Amphibian and Reptile Conservation staff provide technical advice as needed. We are guided by a landscape strategy which has identified priority conservation areas near newt hotspots, but where few records currently exist, and where there is a high proportion of suitable newt habitat and a low risk of development (Figure 6). Opportunities outside of priority conservation zones are also considered and so not all compensation sites will be within these zones.

At the site level, SMNCP are following best practice principles for creating great crested newt habitat and our objective is for all new ponds to reach an Habitat Suitability Index of 0.7. We are also integrating advice from the Million Ponds Project's Pond Creation Toolkit (see <https://freshwaterhabitats.org.uk/projects/million-ponds/pond-creation-toolkit/>) so that habitat creation and management benefits other freshwater and pond-associated plants and animals. We aim to create pond complexes or networks, for ponds to be permanent or semi-permanent and to have a clean water source, and we apply design principles that, depending on the site characteristics, includes extensive shallow

margins and wide drawdown zones. Tried and tested protocols are in place to ensure that the risk of negatively affecting existing wildlife and habitats at proposed compensation sites through creation or management activities is very low.

Site-specific plans are developed in collaboration with landowners at the outset, including a five-year management plan. These plans will be reviewed annually following a monitoring visit by SMNCP project officers to assess the great crested newt colonisation at new ponds using eDNA and population counts, as well as any potential risks, e.g. fish introduction or colonisation, natural vegetation establishment or other factors that might affect new populations, including terrestrial suitability and management. If the annual monitoring visit has a positive outcome, then this will trigger the payment of the management fee to landowners, otherwise we will work with landowners to address these issues as quickly as possible. Evidence from triannual, landscape-scale monitoring covering 150 1-km squares throughout the whole of the District will provide evidence of the contribution of the District Licensing scheme to delivering great crested newt Favourable Conservation Status in the South Midlands.

Summary

The South Midlands District Licensing scheme:

- is the only landscape-scale District Licensing scheme in the country where authorisation under an organisational licence is made directly by Local Planning Authorities

- is delivering a better administrative process that saves developers and planning authorities money and, especially, time and uncertainty
- considers developmental impacts according to scale and location, and embeds the mitigation hierarchy to incentivise avoidance and mitigation
- is delivering significant conservation outcomes for great crested newts through a funded, long-term, landscape-scale conservation strategy delivered by a non-profit conservation organisation.

References

- Cameron, R., Burgess, K. and Payne, B. (2019). The Rationale for Great Crested Newt District Level Licensing. *In Practice: Bulletin of the Chartered Institute of Ecology and Environmental Management*, **103**: 22-27.
- Murray, B., Madden, N. and Girvan, M. (2019). Great Crested Newt Licensing in England: A Practitioner's View. *In Practice: Bulletin of the Chartered Institute of Ecology and Environmental Management*, **103**: 33-37.
- Tew, T., Biggs, J. and Gent, T. (2018). 'District Licensing' for Great Crested Newts – Delivering a Big Idea. *In Practice – Bulletin of the Chartered Institute of Ecology and Environmental Management*, **100**: 33-37.

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