5251 - Robinson - FMM.

[redacted]

31 August 2013

REF. R121M (MOD)

Dear Mr Berkeley,

I was somewhat concerned at the recent hearing over the issue of the great-crested newts, and that a developer could be wheeled in by Mr Hudson as the 'expert witness'. I felt that the developer did not treat the subject of the Great Crested Newts in an appropriate fashion, which rather surprised me in light of the National and European Laws protecting them and the fact that this was a hearing of some considerable importance for local democracy. It was also very apparent that little was known by the 'experts', and here I include Mr. Hudson, about the true meaning of the word 'habitat' in the context of these creatures. The pond is only one aspect of their life cycle!

SLDC have now made available in their documentation the survey carried out by Derek Whitcher (2008) – which I now comment upon.

Although the survey was carried out primarily for work to be done in the vicinity of Broom Close, which is on the other side of the Sedbergh Road (almost opposite the top end of field R121), he looked carefully at the pond that is in and abuts R141 (pond D), where he found a small colony of great-crested newts, R141 being a key part of R121M.

(From comments recently made by neighbours we would additionally believe that this colony is more substantial than in 2008.)

Translate Whitcher so that Pond D becomes the focal point. His recommendations 5.3 and 5.4 make a mockery of trying to build a road etc. within 10/15 meters of the Pond D and start constructing houses etc, let us say, within 50 meters of the self-same pond. Legislation kicks in at 500m!

Whitcher's recommendations are very clear and logical.

5.3. Although the work (for Broom Close) is more than 500m from Pond D it is recommended that all personnel on site should be briefed on the possible presence of great crested newts within the work area.

5.4. If the work site location is extended to within 500m of pond D a Natural England European Protected Species licence will be required to cover all work within 500m of the pond.

It is likewise worth reminding SLDC off the following official extract:

"Great Crested Newts receive both National and European-level protection in the U.K., under the Wildlife and Countryside Act 1981 and the Conservation (Natural Habitats &c.) Regulations 1994. **They require a range of habitat types throughout their life cycle, and at different times of year, for breeding, foraging and hibernating, and can use terrestrial habitats some distance from their breeding ponds. Developments can therefore have both direct and indirect impacts upon Great Crested Newt populations, by the loss of fragmentation of any of the individual habitats on which the population, or meta-population depends, and potentially through incidental mortality".**

While trying unsuccessfully to re-locate the Whitcher Report on the SLDC website, I came across the document - EvE03a Biodiversity Data for Assessed Sites, January 2012.pdf. On opening it up I searched for R121, anticipating that I would see that great-crested newts were shown as being on the site. They were not. Nor, in fact, was there any indication that there was the potential for a colony, despite the fact that a huge number of other sites were indicated as 'having the potential for great-crested newts'.

You will appreciate from my previous submissions to you (and to the Strategy Team before you came on the scene) how frustrated and angry I have been with the quality and accuracy of the work carried out by SLDC and/or their consultants on this particular site, and I would offer this as yet another example of that sloppiness and lack of attention to detail.

I continue to argue forcibly that this site should be removed from the list of possible sites for development. They have just not assessed the site properly in this and so many other respects.

Yours sincerely,

Austen Robinson (committee member of SOLEK)

References:

Whitcher Wildlife Limited, Cliff Edge, Cliff Road, Darfield, Barnsley S73 9HR.
Tel. 01226 753271 email info@whitcher-wildlife.co.uk

EvE03a Biodiversity Data for Assessed Sites, January 2012.pdf

Derek A Whitcher Ltd.
Wildlife Consultants.

P7E71, CGJ7, BROOM CLOSE.

GREAT CRESTED NEWT SURVEY.

Ref No:- 080209.

Date: 1st July 2008.

Cliff Edge, Cliff Road, Darfield, Barnsley, S73 9HR.
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TABLE OF CONTENTS.

1. INTRODUCTION.

1.1. Birse Rail plan to carry out embankment and toe drainage works between 21m 00ch and 21m 06ch on the CGJ7 railway line near Kendal.

1.2. Existing records of great crested newts were identified within the survey area on the NBN Gateway Web site. As part of the works great crested newt surveys have been carried out to determine the presence of great crested newts and the impact on the proposed works.

1.3. Derek A Whitcher Ltd carried out six surveys between 16th April and 11th June 2008. This report outlines the findings of the surveys and makes appropriate recommendations.

1.4. Great crested newts are protected under both British and European legislation. Appendix I of this report provides details of that protection and some basic guidelines into great crested newts and their behaviour to assist the reader of this report to understand the contents.

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2. SURVEY METHODOLOGY.

The survey area was thoroughly searched for evidence of great crested newt (*Triturus cristatus*) activity by carrying out the following survey techniques:-

Searching aquatic habitats by:-

- Examining vegetation in ponds and areas of static water for newt eggs.
- Looking for newts in ponds and areas of static water with a high-powered torch during hours of darkness.

Searching terrestrial habitats by:-

- Looking for newts under refuges including logs, rocks and debris.
- Looking for newts on land with a high-powered torch during hours of darkness.

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3. SURVEY RESULTS.

A map of the area immediately surrounding the work site highlighted a number of ponds that may provide suitable GCN habitats. The ponds are dealt with individually below with a map showing the location of the ponds being included in Appendix II of this report.

3.2. Pond Surveys.

3.2.1. Ponds A and B were not present at the time of the survey and were subsequently not surveyed.

3.2.2. Pond C is a decorative pond on Broom Close which is shallow with a large amount of over shading by trees and very little vegetation.

3.2.3. Pond D is a large pond with large amounts of marginal vegetation and no over shadowing by trees.

3.3. Great Crested Newt Survey Results.

3.3.1. Six great crested newt surveys were carried out using the techniques of bottle trapping and torch searching.

3.3.2. The tables below outline the findings from each survey, where m = male, f = female, gcn = great crested newt, pal = palmate newt and s = smooth newt.

3.3.2.1. Pond C.

Survey/Date	16th to 17th April 2008.	22nd to 23rd April 2008.	29th to 30th April 2008.	1st and 2nd May 2008	5th & 6th June 2008.	11th June 2008.
Weather	Fine, 6°C.	Fine, 8°C.	Fine, 10°C.	Fine, 9°C.	Showery, 10°C	Fine 12°C.
Surveyors	Steven and James	Steven and James	Steven and James	Steven and James	Steven & James.	Steven.
Bottle traps	Nothing in 20 traps.	12 m palmate & 1 fm palmate in 20 traps.	9 m palmate & 5 fm palmate in 20 traps.	10 m palmate & 5 fm palmate in 20 traps.	33m & 8fm palmate in 20 traps.	N/A
Torch	N/A.	N/A.	N/A	N/A.	N/A	6m & 2fm palmate
Egg Search	Nil	Nil	N/A	Nil.	Nil	Nil

3.3.2.2. Pond D.

Survey/Date	16th to 17th April 2008.	22nd to 23rd April 2008.	29th to 30th April 2008.	1st and 2nd May 2008	5th & 6th June 2008.	11th June 2008.
Weather	Fine, 6°C.	Fine, 8°C.	Fine, 10°C.	Fine, 9°C.	Showery, 10°C	Fine 12°C.
Surveyors	Steven and James	Steven and James	Steven and James	Steven and James	Steven & James.	Steven
Bottle traps	N/A	4m gcn, 3fm gcn,1 m palmate & 2 fm palmate in 20 traps.	5m gcn, 2fm gcn, 15 m palmate & 4 fm palmate in 20 traps.	2m gcn and 4fm gcn, 8 m palmate & 11 fm palmate in 20 traps.	1m & 2fm gcn, 5m & 3fm palmate in 20 traps.	N/A
Torch	N/A.	N/A.	N/A	N/A.	N/A	1m & 1fm gcn, 9m & 6fm palmate
Egg Search	Nil	Nil	N/A	Nil.	Nil	Nil

4. EVALUATION OF FINDINGS.

4.1. Six great crested newt surveys were carried out of the two ponds on site between 16th April and 11th June 2008.

4.2. Great crested newts were identified within one of the two ponds on site with a maximum count of 7 in pond D during the second and third surveys. This represents a small population of great crested newts in pond D.

4.3. A medium population of palmate newts was also identified within both ponds C and D.

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5. RECOMMENDATIONS.

5.1. A small population of Great Crested Newts has been identified within pond D.

5.2. The area the proposed work is to be carried out is over 500m away from pond D therefore a Natural England European Protected Species Licence will not be required to cover these works.

5.3. Although the work is more than 500m from pond D it is recommended that all personnel on site should be briefed on the possible presence of great crested newts within the work area.

5.4. If the work site location is extended to within 500m of pond D a Natural England European Protected Species licence will be required to cover all work within 500m of the pond.

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James Campbell.
01.07.2008.

APPENDIX I.

BACKGROUND GREAT CRESTED NEWT INFORMATION.

The great crested newt population has suffered a major decline in Britain over the last century. Numerous ponds have been lost, unmanaged ponds have become silted up and over-shaded, development has destroyed ponds and associated terrestrial habitat and caused fragmentation of populations. The loss of grassland, scrub and woodland has resulted in fewer opportunities for foraging, dispersal and hibernation.

The UK Biodiversity Plan (BAP) contains a great crested newt Species Action Plan (SAP) aimed at maintaining its existing range and population status, as well as increasing the number of populations through re-colonisation.

The great crested newt is listed on Schedule 5 of the Wildlife and Countryside Act 1981, recently modified by the Countryside and Rights of Way Act 2000.The great crested newt is therefore subject to the provisions of Schedule 9, which make it an offence to:

- Intentionally kill, injure or take a great crested newt.
- Possess or control any live or dead specimen or anything derived from a great crested newt.
- Intentionally or recklessly damage, destroy or obstruct access to any structure or place used for shelter or protection by a great crested newt.
- Intentionally or recklessly disturb a great crested newt while it is occupying a structure or place, which it uses for that purpose.

The great crested newt is also listed on Annex II and Annex IV of The Conservation (Natural Habitats &c) Regulations 1994. Regulation 39 makes it an offence to:

- Deliberately capture or kill a great crested newt
- Deliberately disturb a great crested newt.
- Deliberately take or destroy the eggs of a great crested newt.
- Damage or destroy a breeding site or resting place of a great crested newt.

The legislation applies to all life stages of great crested newts.

The maximum fine on conviction of offences under Section 9 and Regulation 39 currently stands at £5,000. The CroW Act 2000 amendment also allows for a custodial sentence of up to six months instead of, or in addition to, a fine. In addition, items, which may constitute evidence of the commission of an offence, may be seized and detained.

In order to understand the potential effects of development it is essential to understand a little of the great crested newt ecology.

Great crested newts breed in ponds and other water bodies. They can begin to migrate to their breeding ponds as early as the first frost-free days in late January with the majority reaching their breeding ponds by mid March. Timing will be influenced by a number of factors, mainly evening temperatures above 5C and recent rain.

The peak egg-laying period is from mid-March to mid-May. The newts will lay their eggs individually, mainly on the leaves of submerged plants. The larva hatch after three weeks and then take another 2-3 months to complete larval development. Adult newts generally leave their breeding ponds from late May onwards.

Once the larvae have completed metamorphosis (the transition from aquatic larvae to land-adapted juveniles, called efts), they emerge from the pond. This emergence begins in late August and generally continues until late October. It takes 2-4 years to reach sexual maturity, during which time the newts will be land based.

Adults and immature newts spend the winter in places that afford protection from frost and flooding. This will generally be underground amongst tree roots, in mammal burrows, or under suitable refuges above ground like deadwood or rubble piles. Hibernation may last from October to February.

Whilst on land, outside the hibernation period, great crested newts will forage at night, taking a wide range of invertebrate prey.

From the above, it can be seen that great crested newts spend the majority of their time on land and only visit the ponds for breeding purposes. As a result, surveys need to be timed very carefully. Terrestrial surveys are very inaccurate and the only time that surveys can be truly thorough is in the narrow window of opportunity between March and September.

Great crested newts will travel large distances between ponds and terrestrial refuges. It is recommended that anywhere within 500m of a pond should be treated as potential great crested newt habitat and should be surveyed and evaluated.

An experienced surveyor must carry out the surveys and must be in possession of an appropriate Natural England great crested newt survey licence.

It is essential that great crested newt surveys are planned well in advance of any development and ideally before Planning Consent is sought. Surveys can only be carried out at the appropriate time of year and repeat surveys are essential. The guidelines suggest that between four and six surveys need to be carried out, three of these between mid-March and mid-June.

If great crested newts are to be effected by any development, a thorough assessment of the population is essential followed by the design of a comprehensive mitigation package. Only when this has been done can a licence application be submitted to Natural England for approval. It takes 30 working days for a licence application to be determined and the period of time that mitigation measures take can be measured in months. It is therefore essential to plan well in advance of development commencing.

APPENDIX II. POND PLAN.