

District Level Licensing for Great Crested Newts in Kent

Position statement

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This document has been produced by the following organisations and individuals:

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1. Introduction

District Level Licensing is being introduced in several areas in England as pilot schemes and one of these areas is Kent. It is an attempt to introduce a new and streamlined way of compensating for the impact of development on Great Crested Newts. Rather than compensate for each development as an individual entity, development over a whole district is covered by one licence. Compensatory habitat is created off site by a third party prior to development and developers pay a fee based on an estimated impact on Great Crested Newts for each development. Consequently, no survey work or translocation of Great Crested Newts is needed. The perceived advantages of this system is that a higher proportion of money paid by developers goes to the creation of compensatory habitat than under the present system, possible delays to developments are reduced and a more strategic approach to Great Crested Newt habitat creation can be undertaken.

The development of this scheme has taken several years and is likely to be launched in Kent in the near future. This document outlines the concerns of a range of organisations and individuals that have emerged through consultation with Natural England and from the proposed methodology that has been presented. It should be noted that these concerns are with the proposed implementation of District Level Licensing in Kent, not with the fundamental principle of using off-setting to compensate for the habitat loss of protected species.

A pilot District Level Licensing project is also operating in the 'South Midlands'. The contrast between this project and the pilot proposed in Kent is stark. This is of particular concern as some of the conditions imposed on the South Midlands project by Natural England (legal agreements with landowners, obligations to manage and maintain compensatory habitat etc.) do not appear to be in place for the Kent pilot project.

Some of the areas of concern relate to documents circulated to interested parties by Natural England regarding the proposed District Level Licensing scheme in Kent in December 2018. Without full reference to these documents some of the more technical points may lack a degree of context. However, we do not feel that we are in a position to publish these documents at this point as they were circulated to a closed group. Please contact Natural England for more detailed information.

2. Primary Areas of Concern

A presentation of the proposed District Level Licensing (DLL) Pilot in Kent was given by Natural England (NE) in December 2018. There are elements of the project that we believe to be seriously flawed and will lead to a fundamental threat to the conservation status of Great Crested Newts (GCN) in Kent. These are outlined below:

Failure to adequately assess the impact of developments on GCN populations

- NE have allocated risk zones for likely impact on GCN within Kent. The parameters used in NE's risk zone model do not adequately describe the conservation importance of different areas. Some areas of Kent such as the Low Weald, display a tremendously important density of ponds. Whilst NE have attempted to illustrate the importance of different areas in Kent through zoning, the current zones fail to identify the most important areas of the county.
- The lack of any consideration of GCN population size either at the development site or the compensation sites is a major concern. The impact of DLL on Favourable Conservation Status (FCS) can't be measured and there are no proposals for how this may be achieved in the future. It is uncertain whether FCS will even be defined for GCN in Kent.
- Because of the way that the risk zones are allocated in Kent, the most important and largest GCN populations are all almost exclusively within the amber risk zones and therefore no protection is offered to these populations. Consequently, the most important GCN populations in the county can be destroyed without any specific compensation under DLL. Whether the maintenance of Favourable Conservation Status can be achieved under these circumstances is questionable.
- The vast majority of Kent sites considered to hold the key GCN populations of the county have no protection under DLL. They are not within the red risk zone where development using the DLL process is not permitted.

Lack of Conservation Strategy

- District Level Licensing is being implemented outside of the promised Kent Conservation Strategy for GCN. Not only does this result in there being no targets relating to maintaining or improving the conservation status of GCN in Kent but an opportunity has been lost to provide a Conservation Strategy that can be used outside of DLL by conservation organisation to promote the conservation of GCN in the county. NE stated in December 2018 that the Conservation Strategy was dropped at the insistence of groups representing developers.

Failure to adequately compensate for habitat lost

- NE state that new ponds being created as compensatory habitat should be between 100 and 400 m². It is considered that 100m² is too small and will require extensive management to keep them viable. It is possible that a lack of management on small ponds will lead to them falling below the target HSI of 0.7.
- Recent tenders issued by NE's habitat creation partners have not asked contractors to create a single pond over 100m². We believe that the nature of the contract between NE and Kent County Council will result in almost all new ponds created being 100m².
- There are no parameters on terrestrial habitat compensation.
- Ponds are to be constructed or restored in areas modelled by NE. There is no information on whether terrestrial habitat will be created or managed and if so how much.
- There is no obligation on landowners either to manage created or restored ponds or even to commit to not fill in these ponds. We note that the pilot DLL in South Midlands had a condition imposed upon it by NE that obliged all landowners to enter a legal agreement to manage and maintain new ponds.

Failure to keep an updated dataset

- NE has refused to renew its data sharing agreement with Kent Reptile & Amphibian Group (KRAG), instead suggesting an amended agreement that allowed NE to pass data on to third parties without the consent of data providers. This amended agreement was rejected by data providers. Whilst NE may no longer have access to raw data, NE continues to rely on models generated using data previously provided under a data sharing agreement. The original data sharing agreement, whilst co-ordinated by KRAG, contained data provided by multiple organisations and individuals. Continued use of models created under this data sharing agreement is dependent upon the agreement of all data providers. NE does not have the permission of some data providers to do this.

Practical difficulties relating to the implementation of District Level Licensing in Kent

- The proposed DLL fails to account for the importance of the GCN population in ponds that will be lost.
 - Four ponds will be created for each pond occupied by GCN lost, the key here is occupied. The x4 multiplier is applied regardless of whether the pond is low or high quality (in terms of both aquatic and terrestrial habitat). In its current implementation the multiplier appears to be merely a mechanism to discourage developers from undertaking survey work.

- If survey work is not undertaken the multiplier in amber risk zones is only x2. It is probable that high quality ponds that are likely to support important GCN populations will not be surveyed by consultants and their clients will choose the DLL route with a x2 pond compensation.
- Low quality ponds (assessed through HSI etc), are much more likely to be surveyed to demonstrate that GCN are not present and smaller DLL payments therefore need to be made.
- In effect, the advice that is likely to be given to developers by their ecological consultants is being turned on its head - only survey ponds to demonstrate absence. If developers survey and confirm presence (even just one newt), they run the risk of paying much more money for the DLL.
- On sites subject to development where GCN are present, NE recommends that any newts captured during other lawful activities (e.g. reptile mitigation work) are moved to an area that will not be disturbed. There is no clear advice provided about what to do if no such areas are present within the development site (i.e. all land will be lost to development). We believe that DLL does not permit translocation of newts to different sites. From a practical perspective, developers who have been led to believe that they can proceed without further delay from GCN may find that works have to halt because GCN are encountered. At the moment, the only viable mechanism for this situation is that the developer would have to apply for a full European Protected Species licence to relocate the animals off site.
- There is concern about the number of potential different options and cost options that can result for any given development site and that the ecologists' role will become more about creating a cost matrix for clients to show them all of the many options available, which could result in a huge number of cost outcomes, particularly where lots of ponds are involved. The requirement to maintain conservation status may be lost.

3. Recommendations

Whilst the primary purpose of this document is to express concerns about the proposed District Level Licence pilot project in Kent, as well as addressing these concerns, we urge Natural England to consider the following recommendations.

Utilise available data to refine developer cost calculations

Ponds with known GCN populations should be used to inform NE's DLL multiplier (how many compensatory ponds need to be created). KRAG can provide these records and the KRAG offer of a data sharing agreement from May 2018 under the same terms as the original data sharing agreement still remains in place.

Publish a Conservation Strategy for Kent

A Conservation Strategy should be published that includes a definition of Favourable Conservation Status in Kent.

Simplify the complex DLL cost matrix

As described in the practical difficulties section above, a complex and misguided cost matrix has been developed for the Kent DLL. This should be simplified to remove potential loopholes and focus more on creating suitable compensatory habitat irrespective of survey effort.

Make use of examples of better practice from the South Midlands pilot

The following are a few examples from the South Midland Pilot project which we believe would improve the likelihood of both being able to measure the impact of the project on Favourable Conservation Status as well as improving the conservation status of GCN in Kent:

- Habitat management to extend beyond 25 years
- 8:1 pond gain ratio (in Kent the ratio is 2:1 in amber risk zones that are not surveyed and 4:1 if GCN confirmed present)
- Compensation achieved through more than just pond creation:
 - (i) Creation and restoration of breeding ponds,
 - (ii) Improvement of adult terrestrial habitats to provide greater cover, and foraging opportunities,
 - (iii) Improvement of landscape connectivity to increase opportunities for dispersal and maintain genetic diversity.
- New ponds created in clusters not isolated:
A typical five hectare pond creation site is based around a mosaic of 10 largely permanent ponds
- New ponds significantly larger than those proposed in Kent:
On average South Midlands assume that each new GCN pond will be moderately large with a surface area of c. 600m² (20 m x 30 m)
- Pond restoration includes a thorough assessment of what work should be undertaken:
Pond restoration will include:
 - i) Managing ponds that do not have great crested newts

- ii) Enhancing GCN ponds that are currently in poor condition (e.g. HSI<0.7) or have poor prospects to increase population numbers.
- Pond creation will be undertaken in conjunction with terrestrial habitat creation and/or management.
A pond typically requires at least 0.5 hectare of suitable habitat in its vicinity to provide good cover and foraging opportunities for GCN. The management and creation of terrestrial habitats is therefore assumed at all habitat compensation sites.
 - Newly created ponds will be subject to compliance checks to ensure they remain suitable for GCN:
During the first five years, all sites will receive an annual check. This will include:
 - i) A compliance check against the site's habitat management prescriptions.
 - ii) Liaison with the land manager to discuss management for the coming year.
 - iii) Additional checks needed to better understand the site condition for GCN (e.g. water quality, eDNA for GCN or fish, chytrid swabs). Information from these checks will be used to inform site management and, where necessary, update the site management prescriptions for future years.

4. Summary

We have issued this position statement in an effort to identify areas where District Level Licensing (DLL) in Kent, as proposed by Natural England, poses a threat to the conservation status of the internationally important Great Crested Newt populations within Kent. We have also proposed improvements to the scheme that will increase the chances of DLL in Kent achieving the legal requirements regarding the conservation status of the Great Crested Newt. We hope that many of the concerns we have raised will be incorporated by Natural England as this project progresses.