

**KELLOGG'S, BRYN LANE,
WREXHAM:**

**SINGLE-STOREY REAR
EXTENSION CONSENT
REFERENCE 2017/0090**

**Great Crested Newt Reasonable Avoidance
Measures**

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1.0 Introduction

This document has been prepared by SLR Consulting Limited (SLR) on behalf of Lorien Engineering Solutions in respect of Condition 4 attached to the planning consent for a single-storey rear extension to house the new chocolate storage tanks at the Kellogg's building at Bryn Lane, Wrexham (Wrexham County Borough Council planning reference 2017/0090). Condition 4 of the planning consent states:

"4. No part of the development shall commence until the details of the proposed Reasonable Avoidance Measures (RAMs) have been submitted to and approved in writing by the Local Planning Authority (LPA). The development shall be carried out in strict accordance with the RAMs as are approved."

Since no ecological information was submitted with the planning application package it is unclear what the "proposed RAMs" might be. However, documents available on the Wrexham County Borough Council (CBC) planning website¹ include a consultation response from Natural Resources Wales (NRW) which asks that a condition is attached to the consent, as follows:

"Condition: The submission and implementation of amphibian avoidance and mitigation to the satisfaction of the local planning authority".

We therefore surmise that the RAMs are required in respect of the potential for great crested newts to be affected by the proposal, since this species is known to occur at Wrexham Industrial Estate in nationally important numbers.

1.1 Great Crested Newts at Wrexham Industrial Estate

Wrexham CBC has produced guidance in respect of protected species that occur at the industrial estate (refer to <https://www.wrexham.gov.uk/assets/pdfs/planning/lpg/guide29.pdf>). This contains survey data from 2008, which clearly shows the presence of breeding ponds for GCN within 250m of the construction footprint, to the south and east of the Kellogg's premises.

For the purpose of this document, it has been assumed that all ponds within 500m of the proposed extension footprint may support breeding GCN.

1.2 Area Covered by RAMs

The proposed extension has a 15m x 7.5m footprint on the east side of the existing main building, facing Bryn Lane). The area comprises close mown amenity grassland, as shown in Figure 1-1 below.

¹ <http://planning.wrexham.gov.uk/Planning/lg/GFPlanningDocuments.page>

Figure 1-1
Location for Extension



Due to the lack of semi-natural habitat in the location, its small size and context within well maintained industrial complex, it is considered that the planned work can be undertaken following a series of RAM's to minimise the risk of harming great crested newt and prevent any damage or destruction of their habitat, and therefore avoid the need for a European Protected Species (EPS) Licence from NRW. This document sets out the legal considerations of development work at the site, and provides detail on the specification and method of work. It is intended that this document is available to site managers and contractors, prior to any works commencing on site.

2.0 Legal Considerations

What follows below is an outline of how British and European legislation is relevant to great crested newts and their habitat, in this instance. Note that SLR does not provide legal advice, and it may be pertinent for Lorien Engineering Solutions to seek legal advice in this regard.

Great crested newts are protected under The Conservation of Habitats & Species 2010 Regulations, making the great crested newt an EPS. It is an offence to kill or injure great crested newts.

The Regulations state that:

41.—(1) A person who—

- (a) deliberately captures, injures or kills any wild animal of a European protected species,
- (b) deliberately disturbs wild animals of any such species,
- (c) deliberately takes or destroys the eggs of such an animal, or
- (d) damages or destroys a breeding site or resting place of such an animal,

is guilty of an offence.

(2) For the purposes of paragraph (1)(b), disturbance of animals includes in particular any disturbance which is likely—

(a) to impair their ability—

(i) to survive, to breed or reproduce, or to rear or nurture their young, or

(ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate; or

(b) to affect significantly the local distribution or abundance of the species to which they belong.

Offences under these Regulations can be licensed by NRW for a number of purposes, set out in Regulation 53. These include 'imperative reasons of over-riding public interest', which could cover the deliberate disturbance of these species during development operations. Licences can only be issued where there is no satisfactory alternative and where the action authorised will not adversely affect the conservation status of the species involved.

A European Protected Species (EPS) Licence may be required for any activity which:

- Is likely to result in the deliberate capture, injuring or killing of a great crested newt
- Will result in the deliberate disturbance of great crested newts. Disturbance of animals includes in particular any disturbance which is likely – (a) to impair their ability – (i) to survive, to breed or reproduce, or to rear or nurture their young; or (ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate; or (b) to affect significantly the local distribution or abundance of the species to which they belong
- Will damage or destroy a breeding site or resting place used by great crested newts
- Will result in the deliberate taking or destruction of the eggs of a European Protected Species

There are situations where small scale/temporary works in areas of negligible habitat value for great crested newt can be undertaken with a low level of risk and therefore without obtaining a derogation licence.

Great crested newts are also included on Schedule 5 of the Wildlife and Countryside Act 1981 (as amended), and are therefore protected by Section 9 of the Act. The offences covered in section 9 are:

- (4) Subject to the provisions of this Part, a person is guilty of an offence if intentionally or recklessly -
- (a) he damages or destroys any structure or place which any wild animal on Schedule 5 uses for shelter or protection;
 - (b) he disturbs any such animal while it is occupying a structure or place which it uses for shelter or protection; or
 - (c) he obstructs access to any structure or place which any such animal uses for shelter or protection.

In relation to s.9(4)(b) and 9(4A), points to note are that:

- Disturbance must be intentional or reckless. Both these terms have an established legal meaning.
- Disturbance is only an offence if the disturbed animal is occupying a structure or place which it uses for shelter or protection.
- Disturbance is not defined or qualified in any way, so it could apply to disturbance of individuals.

The Wildlife and Countryside Act 1981 (as amended) retains the defence to a charge of disturbing a Schedule 5 species that the action was the incidental result of a lawful operation and could not reasonably have been avoided.

The disturbance of Schedule 5 species can be licensed by the appropriate authority under section 16 of the Wildlife and Countryside Act 1981 (as amended), but the licensing purposes do not include development. To be lawful, any intentional or reckless disturbance of Schedule 5 species during development must therefore be covered by one of the defences referred to here.

2.1 Operating the Legislation in this Instance

The construction works will result in no loss or disturbance to any aquatic or vegetated habitats that could be used by sheltering great crested newts during either terrestrial or aquatic stages of their life cycle. The working area is assessed as being of very low quality for foraging great crested newts and as having negligible potential to support places of refuge for this species.

Works are scheduled to commence in May 2017 and to be completed by mid-August. At this time of year, newts are generally within ponds, or moving from aquatic to terrestrial habitats after mating. The risk of animals being found/disturbed during the development process is therefore possible, but unlikely. This is because great crested newts generally move within/between areas of suitable habitats during night time and the working area contains no places of shelter which may be used by great crested newts during daylight hours, when works are scheduled to occur.

This being the case, the risk of disturbance to one or more great crested newts is considered to be negligible. Nevertheless, there remains a remote possibility that individual great crested newts may be disturbed or damaged as a result of operations.

The degree of deliberate disturbance as a result of the planned work is considered to fall below the threshold for the Regulations (ie is unlikely to affect the ability of any group of great crested newts to survive, breed, or rear or nurture their young; or the local distribution or abundance of the species), therefore no licence under this legislation is considered necessary **providing the Reasonable Avoidance Measures (RAM's) set out below are implemented.**

The disturbance may however still be an offence under the Wildlife and Countryside Act 1981 (as amended). In this case, no licence can be issued, as there is no appropriate purpose, and the 'incidental result' defence is applicable. It is for this reason that reasonable steps need to be taken to avoid committing an offence under the Wildlife and Countryside Act 1981 (as amended). Section 3 sets out RAMs that are intended to minimise the risk of committing an offence.

Following the Reasonable Avoidance Measures outlined in this Method Statement does not waive or derogate any of the offences under the Habitat Regulations should an offence be committed.

Lorien Engineering Solutions should be aware that whilst this method statement aims to reduce the risk of an offence occurring, it does not protect (in a legal sense) Lorien Engineering Solutions or their contractors in the event that an offence does occur. The offences to EPS listed under Regulation 41 are strict liability offences, although it would be up to the Crown Prosecution Service to determine whether or not prosecution was in the public interest.

3.0 Method of Work

The following Reasonable Avoidance Measures (RAMs) are proposed to reduce the risk of impacts or offences and thereby avoid the need for an EPS licence:

- Prior to any work commencing, a suitably qualified ecologist will provide contractors with a toolbox talk about the legal protection of great crested newts, the requirement to work solely within existing hardstanding or close mown grass areas, and what to do in the unlikely event that a great crested newt is found.
- A suitably qualified ecologist will undertake a final search to confirm there are no potential refugia at the work area that may be used by GCN. Any refugia found will be checked for the presence of GCN, and if absent, removed from the work area.
- The creation of trenches or pits will be avoided, but where this is necessary these will be in-filled the same day or be covered with close fitting boards overnight to prevent amphibians becoming trapped;
- Stockpiling of materials is to be avoided if at all possible, to prevent suitable places for rest or shelter from being created. If stockpiling is necessary, materials should be stored within containers that GCN cannot access (skips, dumpy bags, plastic bags), ideally upon pallets to raise them off the ground;
- Ecologist to be available on call throughout the construction process; and
- All works to immediately cease in the event that a great crested newt is discovered, and Emergency Procedures (see below) to be implemented.

3.1 Risk Assessment

Table 3-1 below lists the potential offences under the Conservation of Habitats and Species Regulations 2010 and shows how through the proposed approach these are avoided. It is important to note this has been prepared by an ecologist without input from a legal specialist and you may wish to seek legal advice before proceeding.

In summary, the risks of impacts/offences are assessed as being low, primarily due to the relatively short duration of works within poor quality habitat, during daylight hours.

Table 3-1
Potential Offences, Proposed Actions and Residual Risk

Conservation of Habitats and Species Amendment Regulations 2012 Potential Offence	Proposed Approach/RAMs	Residual Effect/Risk
To deliberately capture, kill or injure an EPS (Reg 41 (1) (a))	No disturbance of aquatic or terrestrial habitats. All trenches or excavations that need to be created to be securely filled or closed at night. Tool box talk and ecologist on call. Short duration of work. Works to cease if great crested newts are discovered.	Low risk of an impact/offence.
To deliberately disturb wild animals of an EPS (note, wherever they are occurring) (Reg 41 (1) (b)) Disturbance of animals includes in particular disturbance which is likely to impair their ability to survive, to breed, or reproduce , or to rear or nurture their young (Reg 41 (2)(a)(i)).	No disturbance of aquatic or terrestrial habitats. Short duration of works. Works during daylight hours only. Works to cease if great crested newt(s) are discovered.	Low risk of an impact/offence.
To deliberately disturb wild animals of an EPS (note, wherever they are occurring) (Reg 41 (1) (b)). Disturbance of animals includes in particular disturbance which is likely to impair their ability in the case of hibernating or migratory species, to hibernate or migrate (Reg 42 (2) (a) (ii)).	No disturbance of aquatic or terrestrial habitats. Works will not affect any potential hibernation sites.	Low risk of an impact/offence.
To deliberately disturb wild animals of an EPS (note, wherever they are occurring) (Reg 41 (1) (b)). Disturbance of animals includes in particular disturbance which is likely to affect significantly the local distribution or abundance of the species to which they belong (Reg 41 (2) (b)).	No disturbance of aquatic or terrestrial habitats. Short duration of works. Works during daylight hours only. Works to cease if great crested newt(s) are discovered.	Low risk of an impact/offence.

Conservation of Habitats and Species Amendment Regulations 2012 Potential Offence	Proposed Approach/RAMs	Residual Effect/Risk
To damage or destroy a breeding site or resting place of a wild animal of an EPS (Reg 41 (1) (d)).	No disturbance of aquatic or terrestrial habitats. Hand search for and removal of potential refugia prior to work. Stockpiling of materials is to be avoided if at all possible.	Low risk of an impact/offence.

4.0 Emergency Procedures

In the event that great crested newts are found during work the following procedures would be followed:

1. All work in the vicinity of where the great crested newt(s) was found would cease until such time as the ecologist has been able to make an assessment of the situation.
2. If it is not possible to work around the great crested newt(s), avoiding disturbance to it and with a negligible risk of harm (killing or injury), all work will be stopped until this can be achieved. Upon the explicit instruction of an appropriately qualified ecologist, works may proceed with care when it is assessed that the risk of harm or disturbance to animals is assessed as negligible.
3. If a significant number of great crested newts (>3 individuals) are discovered in a single location at any time during the operation, or if an individual animal does not naturally migrate within approximately 7 days of discovery, this will be defined as a resting place and all construction works will cease and Natural Resources Wales would be contacted for further advice.

5.0 Closure

This report has been prepared by SLR Consulting Limited with all reasonable skill, care and diligence, and taking account of the manpower and resources devoted to it by agreement with the client. Information reported herein is based on the interpretation of data collected and has been accepted in good faith as being accurate and valid.

The information presented in this report provides guidance to reduce the risk of offences under UK law. However, SLR is not a legal practice and disclaims any responsibility to the client and others for actions that lead to offences being caused, whether or not the guidance contained in this report is followed. Interpretation of UK legislation is presented in good faith; however for the avoidance of doubt, we recommend that specialist legal advice is sought.

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