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Inspector McGlone
Planning Inspectorate/o QUADIENT
69 Buckingham Avenue
Slough
SL1 4PN
By email only

11 September 2026

Dear Inspector McGlone,

6007402 - Patshull Road, Albrighton, Shropshire, WV7 3BH
European Protected Species Licence Tests

This letter has been prepared by Marrons and Beamsley Ecology, with input from Christopher Katkowski CBE KC, on behalf of the Appellant in response to your request for comment on the proposal's effect on European Protected Species (EPS) and the three tests.

The Council's 1st September 2026 reply concerning the three tests for the grant of an EPS licence by Natural England with regards great crested newts contends that tests 1 and 2 are "not satisfied" and test 3 is.

The Appellant agrees with regards test 3 but disagrees with regards tests 1 and 2.

The background to the point is that the Supreme Court held in Morge [2011] UKSC 2 that:

*"...the Planning Committee whose only obligation under regulation 3(4) is, I repeat, to "have regard to the requirements of the Habitats Directive so far as [those requirements] may be affected by" their decision whether or not to grant a planning permission. Obviously, in the days when the implementation of such a permission provided a defence to the regulation 39 offence of acting contrary to article 12(1), the Planning Committee, before granting a permission, would have needed to be satisfied either that the development in question would not offend article 12(1) or that a derogation from that article would be permitted and a licence granted. Now, however, I cannot see why a planning permission (and, indeed, a full planning permission save only as to conditions necessary to secure any required mitigating measures) should not ordinarily be granted save only in cases where the Planning Committee conclude that the proposed development would both (a) be likely to offend article 12(1) and (b) **be unlikely to be licensed pursuant to the derogation powers**. After all, even if development permission is given, the criminal sanction against any offending (and unlicensed) activity remains available and it seems to me wrong in principle, when Natural England have the primary responsibility for ensuring compliance with the Directive, also to place a substantial burden on the planning authority in effect to police the fulfilment of Natural England's own duty."*

Per Lord Brown in paragraph 29 of his Judgment. (Emphasis added.) The references to “the Planning Committee” should be read in the context of an appeal to “the Inspector”.

As Natural England’s Guidance Note: “European Protected species and the Planning Process [NE 292] explains in paragraph 5:

“In determining whether or not to grant a licence Natural England must apply the requirements of Regulation 53¹ of the [Habitats] Regulations and, in particular, the three tests set out in sub-paragraphs (2)(e), (9)(a) and (9)(b).

(1) Regulation 53(2)(e) states: a licence can be granted for the purposes of “preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment”.

(2) Regulation 53(9)(a) states: the appropriate authority shall not grant a licence unless they are satisfied “that there is no satisfactory alternative”.

(3) Regulation 53(9)(b) states: the appropriate authority shall not grant a licence unless they are satisfied “that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.”

Test 1

In relation to how test 1 should be interpreted, Natural England state at paragraph 22 of NE292 that it: *“will take into account whether the activities/ developments are required to meet or provide a contribution to meeting a specific need”* including amongst other things *“complying with planning policies and guidance at a national, regional and local level.”*

The planning appeal is put forward in two, alternative, ways, namely (1) grey belt, or (2) if (1) is not accepted, then very special circumstances. In scenario (1) in order to allow the appeal the Inspector would need to be satisfied that “there is an evidenced unmet need” for the appeal proposals (NPPF GB7 g ii) and that the benefits would not be substantially outweighed by any adverse effects [S5 5]. If the appeal is allowed on this basis then that would constitute the requisite “imperative reasons of overriding public interest” required to satisfy test 1. In scenario (2) in the event that the Inspector concludes that there are very special circumstances to allow the appeal, which doubtless would include the contribution the appeal proposals would make to meeting housing need, this also would constitute “imperative reasons of overriding public interest” required to satisfy test 1.

The Council’s 1st September 2026 reply summarises its case on the planning merits but misses the point that in order for the appeal to be allowed, the Inspector must necessarily decide against the Council’s case.

¹ Note Paragraph 53 is now Paragraph 55

Test 2

The Council's 1st September 2026 reply treats "no satisfactory alternative" as being related to alternative locations that would avoid or reduce harm to the Green Belt. This misunderstands the nature of test 2 which concerns alternatives which minimise the impact on the EPS (here great crested newts). (See paragraphs 26 – 29 of NE 292). Accordingly for the Council to be able to legitimately contend that test 2 is not satisfied the Council would, at the very least, have to demonstrate that there are deliverable sites to make good the shortfall in housing land supply which would not involve the need to obtain a licence from Natural England with regards EPS. The Council cannot of course demonstrate this. In which case, the question then becomes one which concerns the way in which the appeal proposal would be carried out on the appeal site.

Within the appeal site, the mitigation hierarchy has informed the design of the proposals. The majority of the site comprises arable land of limited suitability for great crested newts, and all existing ponds would be retained. The proposals therefore avoid the direct loss of waterbodies and concentrate development within habitats of lower suitability for the species, with residual effects addressed through the proposed District Level Licensing route.

Conclusion

There is no basis upon which the Inspector can legitimately conclude that NE is unlikely to issue the requisite licence should the Inspector decide to allow the appeal.

Yours sincerely,



Megan Wilson

Planning Director - Marrons



Daniel Ross

Director – Beamsley Ecology