Ecological Survey of land at Cloverfields, near Sheepy Magna, Leicestershire

INITIAL REPORT

1.1 Origins and Objectives

NJL Consultants have undertaken an ecology and protected species survey of the pasture fields, buildings and hedgerows at Cloverfields, near Sheepy Magna, Leicestershire. The survey was commissioned by Strutt Parker land agents on behalf of the owners, Mr & Mrs Lyons, who are seeking to improve the facilities at this smallholding.

Breeding birds and some other protected species are potentially present in this location, while bats, other protected species and some locally valued species could be present in the area around the site. The survey sought to determine whether any protected or valued species were present and in the absence of direct evidence, whether habitats on site were likely to support any populations of protected or valued species. Potential impacts on any local sites that have statutory protection for nature conservation or sites that have designated value for nature conservation have been assessed, and potential development has been considered in relation to the Leicestershire Biodiversity Action Plan. The site survey was carried out during July 2010 by E J Lomas, an experienced ecologist with current bat and great crested newt survey licences.

The results of the survey are given and assessed. Recommendations for a precautionary approach are given in conclusion.

Wildlife conservation in relation to planning policy is effectively covered by national Planning Policy Statement PPS9 and Government Circular 06/2005, with recent amendments and case law changes to the Habitat Regulations. The impact of this is to require survey for protected species where there is any likelihood of their presence, before planning permission is granted. Details about wildlife protection, policy and the principal protected species found in the area are given in an attached document.

1.2 Site Description

In this report 'the development site' or 'the site' refers to the structures and locations where development may take place, together with ground around it that might be affected. The 'survey area' refers to the landscape and buildings within about 250m of the site, while 'the study area' refers to the wider landscape around the site, for which data has been collected in a desk study.

The development site is located in OS grid square SK 338 025, site centre 433870, 302550.

The site comprises a roughly rectangular pasture field of about 1.8ha, subdivided by post and wire fences into several small paddocks. The field is currently used for grazing alpacas on a grass and clover sward, with an area set apart for free range poultry. Some paddocks are kept back in spring, for hay. The sward is dominated by ryegrass and white clover, its low diversity and level soil surface showing that it has been re-seeded in the recent past. Soils appear to be sandy silt loams, moderately permeable. Buildings on the smallholding consist of two modern lightweight wooden structures providing stables,

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storage and workshops, covering roughly 90m^2. These are single storey buildings, open to their roofs, which are clad in corrugated bitumen-fibre 'Onduline' sheeting and supported by light wooden frames.

The west side of the field is bounded by a mature hedgerow of moderate diversity, 120m long with mature oak trees at intervals along it. A post and wire mesh fence cuts off a narrow strip of grass against the hedge, which appears to have the more diverse range of grassland species associated with a 'good semi-improved' grass sward. This is probably a remnant of the previous meadow grassland. The hedgerow also extends for about 70m along the southern edge of the field, and all other boundaries are post, rail and wire fences.

The field just west of the site is under a wheat crop, while fields to the north are under maize and improved grassland. To the east and south there are smaller fields of semi-improved and improved grassland, with the lawns around a group of houses at Rye Hills immediately against the north east boundary of the site. The River Sence lies to the south of the site, about 200m away; there is no evident direct drainage from the site to the river.

Watery Lane, the minor road that runs past the site, is flanked by broad verges and dense hedgerows, with occasional mature trees. These hedges and verges are of moderately diverse plant communities and provide an almost continuous corridor of semi-natural habitat.



View of the north western edge of the site, hedgerow against the lane

1.3 Proposed Works

The owners are seeking to increase the level of agricultural activity on the site, which may require the construction of new buildings. The ecological survey was general in its purpose, considering the whole site rather than being focussed on any specific feature or a particular development. There should be no direct impact on the roadside hedgerows and trees, which may not be part of the site in any case.

1.4 Summary of findings and assessment

The site and adjacent hedgerows have no designation for nature conservation, and comprise commonplace habitats of no designated or listed conservation value. The grass sward of the paddocks is essentially a low diversity improved grassland type. The hedgerows are relatively species poor and do not meet the diversity criteria of an important hedgerow under the Hedgerow Regulations. The remnant grass sward on the field side, the mature oak trees in the hedgeline and the broad moderately diverse verges do however have good habitat value. The oaks could provide roost habitat for bats and the hedgerows could support a range of nesting birds, including some farmland species that are of conservation concern, such as yellowhammer.

There is one site with statutory protection within 1km of the site; this is the Sheepy Fields SSSI, unimproved grassland meadows with some wet grassland elements. The SSSI is over 360m west from the site, on the far side of the road, and at the same level. They are not linked by any drainage features; both sites are slightly higher than the road and drain separately towards the river. It appears highly unlikely that any development related to use of the site as a smallholding would have any impact on the SSSI.

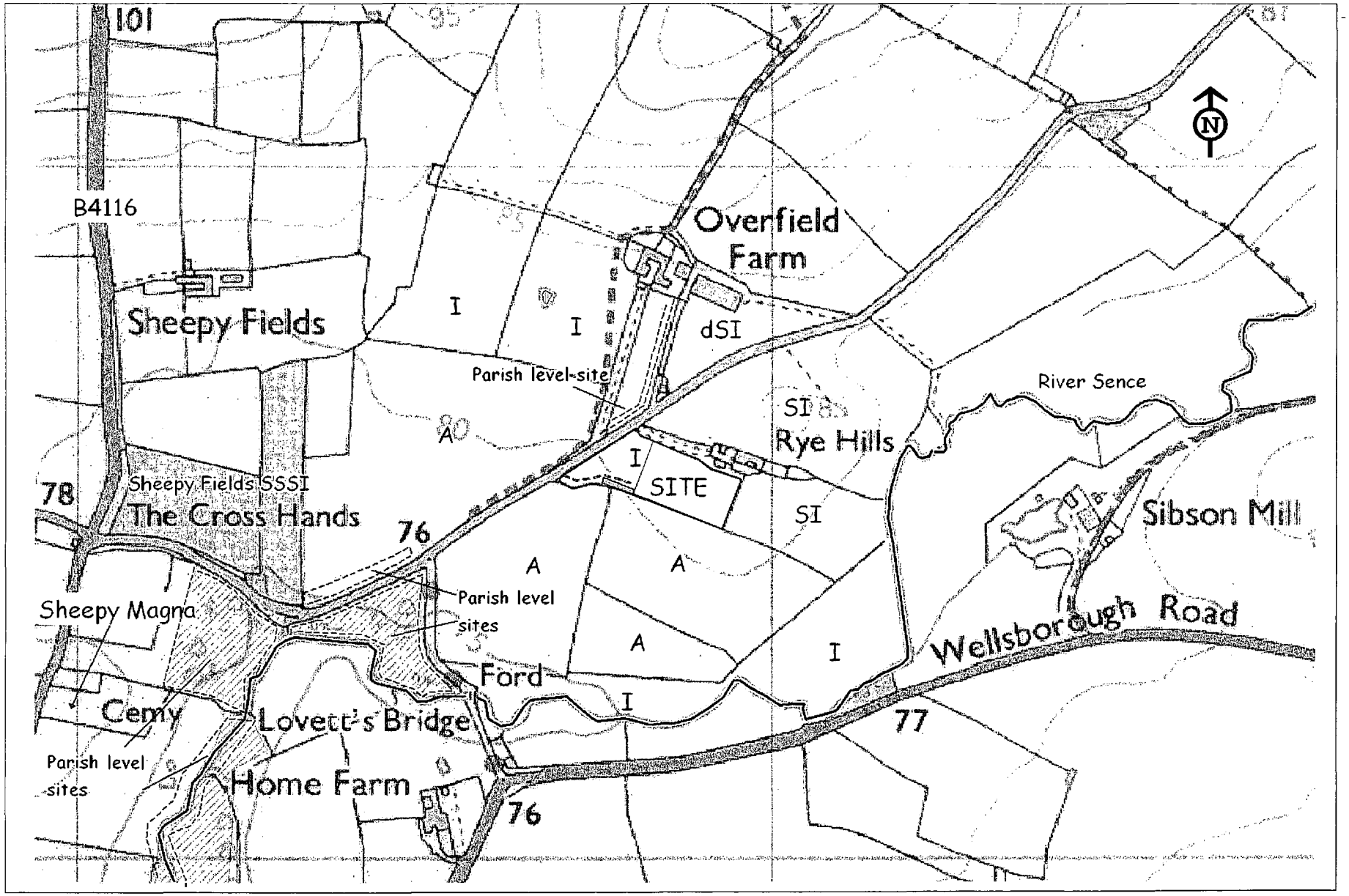
The nearest county level sites are over 1km distant from the site; an upstream section of the River Sence corridor and some meadows south of Sheepy Magna. There is one site with district level importance and a number of parish level sites within 1 km of the development site. These include two sections of verge and hedgerow, one of which is opposite the site, a block of mixed woodland beginning about 225m west of the site, and a section of the River Sence downstream of Lovetts Bridge. Activities on the site will not have any direct impact on these, and are unlikely to have any indirect impact, given basic care over drainage management.

The only protected species seen on site were swallows, nesting in the barns. Other birds may be nesting in the hedgerows. All breeding birds are protected under the Wildlife and Countryside Act 1981, as amended; impacts on breeding birds are usually avoided by timing and careful site management. There was no evidence of activity by any other protected species, while the only suitable habitat was in the mature oak trees. There was some evidence of badger activity over 50m from the boundary of Cloverfields, but this was at a low level and appeared to be on the periphery of a clan territory.

Habitat gain and improved management for wildlife could provide planning gain and meet a statutory duty to conserve biodiversity. There are a number of opportunities around the site, such as hedgerow planting on the site boundaries.

This assessment is based on our survey and current conditions, using standard assessment criteria where appropriate. Precautionary measures and recommendations for habitat improvement will be given in the final report.

A plan showing the location and habitats around the site follows.



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Habitats around Cloverfields

Scale approx. 1:8000

A, I, SI - phase 1 habitat classification (Arable, Improved grassland, Semi-Improved grassland)

SPECIES PROTECTION IN RELATION TO DEVELOPMENT

Survey for protected species can be lengthy, and may require site visits at particular times of the year. Survey may not be fully effective unless commissioned well before submission of a planning application. Large or complex sites, and sites likely to include the most important bat roosts, ideally need a survey period of 12 months or more.

Notes below refer to sites in England, while the species notes reflect the current situation in the English Midlands and the Welsh Marches.

LEGAL CONSTRAINTS

There are three principal sources of legal protection for wildlife in the UK. These are:

The Wildlife and Countryside Act 1981 (the WCA) with its amendments under statutory review every 5 years and by later Acts, particularly the Environmental Protection Act 1990 and the Countryside and Rights of Way Act 2000 (the CROW Act).

The WCA as amended gives protection to plant and animal species listed under its schedules 1, 5 & 8, and to designated sites, typically Sites of Special Scientific Interest (SSSI). Section 9 of the WCA lists offences including killing or injuring, uprooting, capturing, possession, disturbance, destruction of places of shelter, sale and associated activities. A species that is protected from all of the offences that might apply to it is described as 'fully protected', but if only a selection of the offences are applied then it is 'partially protected'. The level of protection given to a fully protected species is here described in relation to water voles (see below).

The CROW Act makes most WCA offences into arrestable criminal offences, and includes offences committed 'recklessly' as well as deliberately. The concept of recklessness can relate to the level of responsibility due from an individual or organisation. It might be considered reckless if a developer, architect or other professional failed to seek specialist ecological advice.

Developers, development professionals, contractors and site workers all need to be aware that individual responsibility under the WCA always applies, and is not removed by any decision by a planning authority, any advice from an ecological consultant, and any EPS development licence.

The Conservation of Habitats and Species Regulations 2010, (the Habitats Regulations 2010) which consolidate the Conservation (Natural Habitats &c.) Regulations 1994 and its amendments in 2007, 2008 and 2009.

The Habitat Regulations are similar in some aspects to the WCA, but put into UK law the European Habitats Directive. The Regulations include annexes that list species for protection, including but not limited to all bats, otters, dormice and great crested newts. These are known as European Protected Species (EPS). The main overall impact of the Regulations on development has been to require developers to commission ecological and protected species survey well in advance of planning decisions, and to establish a rigorous licensing process. Licenses may be granted to permit developments that would otherwise breach the Habitat Regulations.

The Habitat Regulations do provide the means of prosecuting individuals and organisations that commit offences against scheduled species and habitats, but their main effect is to place a duty on national and local government to ensure the survival of populations of these species and their habitats, through policy, legislation and the planning process. A recent judicial review has provided a judgement that planning authorities are expected to ensure that a development meets the requirements of the Habitats Regulations before granting planning consent. This applies whenever the likely presence of an EPS is a material consideration. (Wooley vs Cheshire East Borough Council and Millennium Estates Ltd, June 2009, see Natural England Statement)

The 2010 Regulations take up the 2007 and 2009 amendments which modified the definition of an 'offence' to make the Regulations consistent with the equivalent offence in the WCA 1981, and broadened the scope for proceeding without a licence. The 2010 Regulations do not allow the defence that harm was caused 'as an incidental result of a lawful operation and could not reasonably have been avoided', but do allowed for legal low level disturbance provided that it does not *'Deliberately disturb animals of an EPS in such a way as to be likely to significantly affect 1) the ability of a population of that species to survive, breed or rear or nurture their young, or 2) the local distribution of the species.'* The Regulations include protection for habitat important for hibernation and migration. They establish a requirement for ministerial approved guidance to clarify the scope of offences and to help developers consider whether their operations are likely to breach regulations & require licensing. Most importantly, the current DEFRA guidance (relating to the 2009 amendments) states that *'current changes retain the requirement that for the offence to be committed, the result of disturbance must affect important life cycle processes and so low level or*

inconsequential disturbance that does not have these impacts is not captured by the offence in these Regulations,' and that *'in most cases it is not expected that an action which disturbed a single animal or a small number of animals would have sufficient impact to be caught by the offence'* unless that EPS were to become *'particularly rare'*. Updates to this guidance are likely to appear during 2010, in response to the new regulations.

The Protection of Badgers Act 1992 (The Badgers Act)

The Badgers Act is intended to prevent deliberate cruelty and other actions that cause suffering to badgers, rather than to meet a conservation purpose. Badgers are common and widespread, with no apparent threat to the UK population as a whole. Potential causes of harm, disturbance or suffering are from construction work in the vicinity of their holes and loss of foraging area within the territory of a social group.

PLANNING POLICY

The Local Plan for a planning authority area is based on local needs and conditions, in relation to government policy expressed in Planning Policy Statements such as PPS9 Biodiversity and Geological Conservation from the Department for Communities and Local Government (DCLG). In response to local values, these PPS documents, and other expressions of concern for nature conservation, local plans contain policies to protect biodiversity and habitat features of local and national importance. Local Plans are being replaced by Local Development Framework document sets, which comprise a Core Strategy, Site Allocations or Area Plans, and Supplementary Planning Documents. There is usually a separate SPD for Nature Conservation, stating policies and the level of mitigation expected.

The DCLG has also provided a circular advising on statutory obligations to conserve biodiversity and geological features within the planning system, DCLG Circular 06/2005. Paragraph 99 of this states 'It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted ...'.

The Natural Environment and Rural Communities Act 2006 places a duty to conserve biodiversity on all public authorities. Local planning authorities will respond to this through the implementation of policies and procedures. PPS9 includes a requirement for local authorities to seek benefits to local biodiversity as a planning gain from any planning consents.

National and local organisations, including local government, have developed national and local Biodiversity Action Plans (BAP). These include action plans to conserve named species, which may or may not receive statutory protection In the UK BAP these are now referred to as Priority Species. Paragraph 84 of the DCLG Circular makes it clear that, in addition to legal provisions, UK and local Biodiversity Action Plan habitats and species are a material consideration in planning decisions and therefore require the same scrutiny.

As a consequence of the Wooley vs Cheshire East decision, planning authorities will now seek a higher level of survey information and mitigation detail, approaching that required for an EPS licence application, before planning consent is granted. This means that it is even more essential to start the ecological survey process at the very beginning of a project, allowing the likely costs of full survey and mitigation to be determined, and allowing time to gather complete survey data in the appropriate season.

LICENSING

Licences from Natural England are needed where a development will have a direct adverse impact on a protected species, or where there is potential for significant impact on a local population. Licences in effect permit some otherwise illegal actions under strict conditions. The licensing process is lengthy and demanding in the case of European Protected Species, and is not part of planning consent. Natural England grants EPS licences for development projects in England, and will not consider an application until outline consent has been given. The licence itself will not normally be granted until full planning permission has been given. Licensing authorities expect that licence applications should be based on extensive survey of the local population. Some different arrangements may apply in the case of major public projects and projects that will take place in phases over several years.

SPECIES

Badgers

Badgers are protected under the Badgers Act, from activities that can cause suffering. Vibration from construction plant can cause disturbance, and possibly the collapse of holes. Natural England guidelines suggest that development needs licensing if it involves work within certain distances of a sett (any permanent place of shelter, typically 1 or

more holes): heavy construction plant within 30m, light plant within 20m, and hand tools within 10m. Pile driving and similar operations need site specific consideration.

Loss of foraging area may be an important factor – badger social groups (clans) probably need at least 3.5ha of permanent grassland or an equivalent woodland resource. Where there are close spaced clans a development project may result in starvation or injury from fighting. Survey should take place in winter, but may need to continue up to the start of development. Licenses are not granted during the breeding season (30 Nov – 1 July).

Bat species

All 17 British bat species have EPS status, protected under the WCA and the Habitat Regulations. Bats use a sequence of roosts in an annual cycle, for shelter and breeding. Roost requirements differ between species and suitable roosts are used repeatedly; particular roosts may be critical for the survival of a local population. Legal protection will therefore cover roosts even when they are not occupied. Roost sites include hollows and smaller flaws in trees, roof spaces in houses and other buildings, walls with insulation cavities, cladding, cracks and hollows, and caves, cellars and mines. Recently built properties may be used, and most traditional concepts of bat roosts and behaviour are misleading.

Initial bat surveys to check for unknown roosts can take place at any time, but may be less effective in winter, while 'likely absence' sometimes cannot be determined without activity survey involving several visits between May and September. A site with bat activity in the vicinity and suitable roost features, or key habitat features around it, will need careful investigation.

Otters

Otters have EPS status, protected under the WCA and the Habitat Regulations. They are solitary and territorial, typically marking several kilometres of a watercourse as a territory. Otters hunt for fish in water but usually travel on land and may move away from the sides of watercourses. They may also use canals. Development issues often centre on not severing territories or dispersal routes, not causing disturbance at night and not disturbing otter holts. Survey can be at any time, but is less reliable in winter.

Dormice

Dormice have EPS status, protected under the WCA and the Habitat Regulations. They typically occupy areas of dense old woodland and networks of dense hedgerows where there is high species and structural diversity, but are not restricted to these habitats. They avoid open ground, but spread along hedges and woodland edges. Dormice presence should be considered in any scheme that involves removal of hedgerows, woodland or dense undergrowth in areas that are linked by similar habitat to old hedgerow networks and woodlands.

Survey is difficult, and effective survey may be restricted to autumn and early winter or require long-term methods.

Water Voles

Water voles received limited legal protection under the WCA in 1998, but the protection has recently been extended (2008), so the water vole is now fully protected under Section 9. It is an offence to intentionally kill, injure or take (capture) a water vole; possess or control a live or dead water vole, or any part of a water vole; intentionally or recklessly damage, destroy or obstruct access to any structure or place which water voles use for shelter or protection or disturb water voles while they are using such a place; sell, offer for sale or advertise for live or dead water voles.

There is no provision under the WCA for licensing what would otherwise be offences for the purpose of development, maintenance or land management. Such activities must be covered by the defence in the Act that permits otherwise illegal actions if they are an incidental result of a lawful operation and could not reasonably be avoided. The defence requires that reasonable steps are taken to avoid unnecessary damage, and for developers, this can best be achieved by undertaking a water vole survey at the appropriate time prior to planning any work and ensuring that appropriate avoidance or mitigation measures are included in the proposals.

Survey can take place throughout the year, but is less reliable in winter. Water voles need sloping earth banks on the sides of water bodies, a good mix of plant food, and refuge from high water levels. The introduced American mink is a critically significant predator, which limits the distribution of water voles.

Fully protected bird species

About 80 bird species are listed in Schedule 1 of the WCA; these are in effect fully protected species. The great majority of these are limited to a few areas of Britain, typically in mountainous or coastal habitats. There are 3 winter migrant species that can occur throughout Britain; brambling, fieldfare, and redwing. These may occasionally breed in parts of the UK, but are unlikely to be an issue in development schemes. A further 4 species breed in lowland England and may occur on or close to development sites; kingfisher, barn owl, black redstart and little ringed plover. These all have particular requirements for their breeding sites. Little ringed plover presents a particular problem as it selects nest sites on gravel close to open water. This habitat can be created accidentally in the course of construction work.

Breeding birds

All birds are protected while breeding in the UK, under the WCA. They are protected from killing, injuring, disturbance, destruction of nests and nest sites, and from the taking of eggs. Almost any habitat will provide potential nest sites for some species, including temporary habitat created by construction work. This imposes a severe constraint on development, but the constraint can be removed by careful timing of site clearance and good site management. Sites should be cleared of cover between late August and early March. Other conservation issues mean that the best periods for site clearance are late September to the end of October, or mid February to early March.

Reptiles

Grass snakes, adders, slow worm, and common lizard are widespread reptile species that are partially protected under the WCA. Their protection is against killing, injuring and sale. 'Fear of snakes' is not an acceptable reason for harming any reptiles, and provides no defence against prosecution. These species are often listed in Biodiversity Action Plans, and thus may be a planning issue requiring precautions and habitat mitigation. Survey is not effective in winter, and full survey can be time consuming.

For reptile species the conditions that apply to the 'incidental result' defence (see water vole notes) are particularly relevant; reasonable effort has to be made to avoid harming them. Because they are hard to find and seek shelter when disturbed it is usually necessary to capture and remove them before development begins.

Two fully protected reptiles, smooth snake and sand lizard, are limited to sites in the south of England.

Great crested newts

Great crested newts have EPS status, protected under the WCA and the Habitat Regulations.

They are amphibians that breed in water but hibernate and forage on land. Typical breeding ponds are small, fish free, with aquatic vegetation, and close to other similar ponds. Good land habitat has areas of dense vegetation and hedge banks or loose material that provide shelter. Populations are often localised, and newts may use habitat that is not particularly favourable. They generally remain within 100m of breeding ponds, but can spread further.

Survey can take place between mid February and mid September, but the March to June period is most important. Considerable survey effort may be needed to show that newts are probably absent from any site with or close to suitable ponds.

Other amphibians

Natterjack toad, a European Protected Species, is rare and appears to be limited to a few known sites. The pool frog, which is an EPS as of October 2008, currently has limited populations found in a few known sites in the UK.

Common frog, common toad, smooth newts and palmate newts all have partial protection under the WCA, from sale and associated activities only. Populations in urban areas may be vulnerable, so are included in some local Biodiversity Action Plans.

White clawed crayfish

The endangered native crayfish is partially protected, from taking and sale. Non-native species carry a disease that is fatal to the native species, so must not be introduced or returned to any water bodies, and if taken must be killed. This means that any 'capture' of a crayfish can result in an offence, and accidental introduction of non-native crayfish or their diseases must be avoided. Native populations are now restricted to some streams, large pools and isolated

sections of canal. Licences are needed for most forms of survey, which is effectively limited to the April to October period.

Other fully protected species

There are many more plant and animal species that have EPS status or fully protected status, including for example some fish, rare aquatic plants, and some beetles and lichens associated with veteran trees. These species, such as the floating water plantain, are usually restricted to known and protected sites.

Plant species

The sites where protected, rare or valued plants are found have mostly been recorded and would be reported in record searches, but care needs to be taken around relatively unimproved or undisturbed habitats. No plants should be uprooted or parts of plants collected without the owner's permission.

There is a minor issue concerning bluebells; the true wild native bluebell is protected against commercial harvesting, through protection against sale under the WCA. Hybrid bluebells are often found growing wild, but true native populations should be conserved and where unavoidably dug up in the course of development should not be traded in any way.

These notes are presented as the view of NJL ecologists, based on the understanding of wildlife law and planning policy gained in the course of that work and on advice given in various official publications. These notes are not formal legal advice, which should be sought from members of the legal profession with specialist knowledge of wildlife law.

April 2010