

REPORT ON NOTICE OF MOTION – GREATER CRESTED NEWTS: LOCAL PLAN POLICY PROTECTION (Minute 183/02)

1. SUMMARY

- 1.1 This report provides information regarding a Notice of Motion received from Councillors JRF Mason and Mrs M Webster regarding the inclusion of policy protection for Great Crested Newts in the local plan, together with a report on comments received from English Nature, Essex Wildlife Trust and The Essex Amphibians and Reptile Group. The Motion was referred from Full Council on 25th April 2002 for consideration at this Committee.

2 INTRODUCTION

- 2.1 To assist Members, the full text of the Notice of Motion is attached to this report as Appendix 1.
- 2.2 Members have previously agreed a new policy on species protection for inclusion in the Rochford District Replacement Local Plan. The text of Policy NR10 is attached as Appendix 2.
- 2.3 Planning Policy Guidance Note No. 9 explains the Government's views on nature conservation issues and land use planning. It provides particular advice about nature conservation matters to be dealt with in local plans and through development control.
- 2.4 English Nature is the agency in England responsible for advising on nature conservation matters: The agency has powers to issue licences under the Wildlife and Countryside Act 1981 and the protection of Badgers Act 1982.
- 2.5 Great Crested Newts (*Triturus cristatus*) and their habitat are protected under both European law and various UK statutes. A licence must be sought from English Nature to handle them and to implement mitigation strategies where for example development of a site has been agreed.
- 2.6 A list of the various types of UK protective designations that may be applied to 'wildlife' sites is attached in Appendix 3. Members will note the last listed designation refers to 'Sites of Importance for Nature Conservation' (SINC). This is the local designation referred to in the current Local Plan (Policy RC4), but in Essex such sites are now referred to as County Wildlife Sites (CWS). References in this report to wildlife sites relate to this designation. Members should also note that CWSs are not a statutory UK designation. Therefore, their status is

below all other designation including that of Local Nature Reserve (LNR)

3 SUMMARY OF CONSULTATION RESPONSES

ENGLISH NATURE

- 3.1 The agency indicates that whilst a verified record of Great Crested Newt (GCN) breeding in a water body may contribute to that site being selected as wildlife site, that would not be the end of the matter. The selection criterion for a wildlife site (CWS) is being reviewed and a new framework is expected soon.
- 3.2 However, the criteria are likely to require a minimum threshold for breeding populations and hence the presence of breeding GCNs per se would be unlikely to qualify a water body for identification as a wildlife site. A suitable terrestrial habitat around the water body is also likely to be a prerequisite.
- 3.3 English Nature concludes that it would be impractical to note in the local plan, every water feature with GCN's because of the dynamic, constantly changing character of nature.
- 3.4 In a land use planning context the agency suggests:
 - The preparation of a database containing information on sites and species (all protected species) to be held in the County Records Office or the nearest natural history museum. In the case of Rochford this would be Southend Central Museum.
 - A policy approach in the local plan which obliges applicants/developers to provide the planning authority with adequate information on any development proposal so that all material considerations can be taken into account.
- 3.5 English Nature concludes that both approaches are necessary since historic records become out of date very quickly. GCN's should be brought to the attention of residents in the district by setting out the Council's approach in the local plan.
- 3.6 In commenting on the suggestion that any development proposal affecting a water feature must have an ecological appraisal, English Nature consider that such an approach would prove too inflexible to be of practical use. Instead the agency advocates the local plan policy approach described above. It would not be appropriate for the local plan to attempt any sort of meaningful description of site appraisal or

mitigation methods.

- 3.7 The local plan should focus on presenting a robust line on protected species generally and make reference to the existence of and the need to refer to detailed guidance from English Nature and elsewhere. It is not for the Council to adopt mitigation measures in relation to amphibians and reptiles.
- 3.8 With regard to the review of the current wildlife sites (previously called Sites of Interest for Nature Conservation), English Nature points out that some work on identifying new sites and deleting sites where damage has occurred has been carried out by the Essex Wildlife Trust. It should be noted that the current and emerging local plan both include policies for the protection of wildlife sites and the replacement local plan will include maps showing the locations of these sites.

ESSEX WILDLIFE TRUST

- 3.9 As a starting point, the Trust indicates that the wildlife maps produced in the early 1990's provide the baseline for sites to be identified and protected through the local plan. (Note: those sites are already protected by Policy RC4 in the adopted local plan). The Trust intends, subject to the availability of financial resources and the adoption of a revised assessment framework (mentioned by English Nature above), to re-survey the district to update this information.
- 3.10 The Trust is of the view that early identification of GCN sites is to be welcomed to avoid eleventh-hour panic if a development scheme is proposed.
- 3.11 The trust supports the inclusion of a policy in the local plan (proposed policy NR5) to deal with the issue of biodiversity on development sites.
- 3.12 In addition, the Trust confirms their view that policies NR6 (European and International sites – minute 120/01), NR7 (Sites of Special Scientific Interest – minute 120/01) and NR8 (Local Nature Reserves and Wildlife Sites – minute 120/01) are worded sufficiently strongly to afford robust protection.
- 3.13 Furthermore, policies NR9 (Other Landscape Features of Importance for Nature Conservation – minute 127/02) and NR10 (Species Protection – minute 127/02) are a welcome recognition of the importance of nature conservation issues in the district.

ESSEX AMPHIBIANS & REPTILES GROUP (EAPG)

3.14 In their response EARG start by listing eleven sites which they say are important for GCN's. These are as follows:

- Magnolia Local Nature Reserve
- Anglia Water Reservoir, Hawkwell
- Butts Hill Pond, Canewdon – needs re-surveying
- Hockley Woods – reported as a GCN site
- Plumberow Woods – translocation site for GCN's
- Beckney Woods – has a restored pond
- Rouncefall, Hawkwell – two old private ponds
- Apton Hall – reported to have GCN's (private)
- Brays Farm – reported to have GCN's
- Millers Pond, Great Wakering
- Rayleigh Mount – newts should be reintroduced

3.15 EARG is keen to see the preparation of a Biodiversity Action Plan (BAP), which would identify all GCN sites in the district. It should be noted that a BAP is not part of the local plan.

3.16 Given the long review times for local plans, the BAP would lead to the preparation of a site register to be updated on an annual basis. This register, it is suggested, could be held by the Wildlife Trust, by Rochford District Council, English Nature and EARG. An officer of Rochford District Council should be nominated to be in charge of the register. EARG end by indicating that the group would like to work with the Council to identify reptile sites to be protected as Wildlife sites in the local plan.

4 DISCUSSION

4.1 Turning then to the details of the Motion on which each organisation has commented. The first paragraph states that all breeding sites for GCN's should be identified as County Wildlife Sites. Under European and UK law, GCN's and their habitat are automatically protected. The designation of a County Wildlife site provides no change whatsoever to the level of protection afforded GCN's.

4.2 Furthermore, English Nature has indicated very clearly in their response that such an approach is not appropriate. There may very well be water features in the district that have breeding newts but these would not necessarily be suitable for designation as County Wildlife Sites.

4.3 Whilst the criteria for designating Wildlife Sites is under review, it is worth looking at the criteria used to identify the existing baseline of

sites. These were identified on the basis of an analysis of habitat taken from a manual produced by English Nature in 1990.

- 4.4 The sites included were those which were at the time regarded as being the best examples of semi-natural habitats in Essex. The survey automatically identified existing sites with European and National designations (SSSI's, SPA's, CNR's, etc.) as wildlife sites. Further sites were designated using the criteria prepared by English Nature. These were based on the following categories; size, diversity, naturalness, rarity, fragility, typicalness, position in an ecological unit, recorded history, potential value and intrinsic appeal. So whilst many domestic and privately owned water features, ponds in particular, may very well harbour breeding colonies of GCN's they would not qualify to be designated as Wildlife Sites. However, that is not to say that such sites might not be included in a register or database as suggested by English Nature and EARG.
- 4.5 It is concluded, based on the advice of English Nature in particular, that it would not be possible or appropriate to seek to try to designate all breeding sites for GCN's as Wildlife Sites and that a far better approach would be a database of such sites. However, Members will need to consider the mechanics of resourcing such work, which is likely to be very time-consuming.
- 4.6 In the late nineties, the district did undertake a survey of ponds in the district and it may be that this exercise should be repeated; though of course as has been pointed out, to be of value, surveys must be repeated at regular intervals. There would be no need for a register/database to be incorporated in the local plan.
- 4.7 Wildlife sites are specifically referred to in the existing and replacement local plans. Proposed Policy NR8 (Local Nature Reserves and Wildlife Sites – minute 120/01) deals with the protection of such sites and a plan showing their location would be published as Local Plan Supplementary Guidance.
- 4.8 The commentary above also deals with paragraph 2 of the Motion, that any water feature with Newts be identified in the local plan. Whilst wildlife sites that may harbour newts would be tied to the local plan, it is clear from the comment of English Nature that the identification of all water features is not required or appropriate in the Local Plan.
- 4.9 Paragraph 3 of the Motion deals with ecological appraisal. English Nature takes the view that such an arrangement would prove to be too inflexible to be of practical use. However, the Wildlife Trust considers that rigorous and timely ecological appraisals are to be welcomed.

EARG make no comment on this issue.

- 4.10 In fact, the emerging local plan makes it very clear that where a development proposal could affect a protected species, the local planning authority will require a satisfactory ecological study to be carried out. However the requirement for a study to be carried out should relate to an initial site assessment and not to a blanket requirement for a study in every case.
- 4.11 Paragraph 4 of the Motion relates to the standards for carrying out ecological appraisals. English Nature, the responsible agency, is very clear on this matter. They consider that it is inappropriate for the local plan to attempt any sort of description of appraisal or mitigation methods. A recently published document (August 2001) prepared by English Nature provides more than 75 printed pages on GCN Ecology and mitigation issues.
- 4.12 English Nature indicate that the local plan should focus on presenting a robust policy line on protected species with reference to the agency as a source of detailed guidance and information. The Wildlife Trust comment specifically on the draft policies for inclusion in the replacement plan and indicate that the wording, in their view is sufficiently strong to afford robust provision for the continued protection of designated sites. The trust welcomes the inclusion of the policies and hopes they will be carried out into the final plan.
- 4.13 Paragraph 5 of the Motion proposes that the Council determine a policy of mitigation measures. This is clearly an issue that is the responsibility of English Nature and not the Council. Therefore, whilst a reference should be made in the local plan to English Nature's role, it is not appropriate for the local plan to seek to deal with mitigation issues.

OTHER ISSUES

- 4.14 The consultation response from EARG raised issues relating to a number of sites in the district
- Magnolia – is a designated local nature reserve with most of the reserve also being identified as a wildlife site. Whilst the nature reserve designation is a national statutory designation, there is a small area at the Southern end of the reserve that is outside the wildlife site local destination. It is proposed that it would be useful to extend the boundary of the wildlife site to incorporate this area.

- Anglia Water Reserve, Hawkwell – this is a designated wildlife site. EARG suggest its status be upgraded to that of SSSI given the number of breeding pairs of newts on the site. However, the responsibility for designating SSSI's rests with English Nature and not Rochford District Council.
- Butts Hill pond, Canewdon – a designated wildlife site
- Hockley Woods – SSSI, LNR and wildlife site
- Plumberow Woods – a designated wildlife site
- Beckney Woods - no evidence of newts, but in any event a designated wildlife site
- Rouncefall – this private dwelling is on the edge of a wildlife site. EARG suggests management work to two old ponds. Given the private ownership of these ponds, it is not clear how this could be achieved. If newts are present, the owner would need to comply with the provisions of the Wildlife and Countryside Act regardless of whether the site is subject to any form of designation.
- Apton Hall – Same comments as for Rouncefall
- Brays Farm – Same comments as for Rouncefall
- Millers Pond, Great Wakering – not clear what EARG would like to see in respect of this site, but again, if newts are present they are automatically protected
- Rayleigh Mount – EARG would like to see newts reintroduced. This is a matter that the group would need to discuss with the National Trust, and of course a translocation licence would be required from English Nature.

5 REPLACEMENT LOCAL PLAN

5.1 The draft of the National Resources chapter of the replacement local plan is proposed to include, together with appropriate lower case text, policies dealing with:

- Biodiversity on development sites (NR5)
- European and International Sites (NR6)
- Sites of Special Scientific Interest (NR7)
- Local Nature Reserves and Wildlife sites (NR8)

- Other landscape features (NR9)
 - Species protection (NR10)
- 5.2 In addition, the local plan will be published with a plan showing the location of the wildlife sites, as well as the location of European, National and locally designated sites.
- 5.3 The aims of the Motion seems to be to provide better protection for Great Crested Newts through the policy framework being developed in the replacement local plan. However, whilst the local plan must provide a land use policy framework for development in the district, including policies dealing with designated protected habitats and species, it is clear that the Wildlife and Countryside Act provides legal protection for GCNs, regardless of any site designation. There is no justification to try and add to this protection through the local plan.
- 5.4 In conclusion, taking account of the consultation responses, particularly from English Nature the responsible agency for GCN's, it is considered that:
- It is not appropriate to automatically designate any site as a Country Wildlife Site as a result solely of the existence of breeding GCN's. The criteria prepared by English Nature for the designation of Wildlife Sites must be followed. The baseline for such sites was established in the early 1990s and appropriate policy protection provided in the adopted Local Plan. This policy protection is proposed to continue in the replacement Local Plan.
 - It is neither realistic nor justified to attempt to list every water feature that may harbour GCN's in the local plan. A far better option, subject to financial resources, would be to prepare a database/register as suggested by English Nature and EARG that can be updated on a regular basis.
 - It is not appropriate to require an ecological appraisal of pond habitats within 500 meters of any development proposal. Such a requirement would be too inflexible and in many cases would certainly go well beyond what it would be justified to seek from a developer. Instead the local plan should provide a robust policy line on protected species (see policy NR10 dealing with Species Protection), and explain the requirement for a study in appropriate cases.
 - It is not for the local authority to advise on the contents of ecological studies where a requirement is identified. In respect

of GCN's English Nature, the responsible agency, provide guidance on the information that is required. If a study does not conform with their requirements then it would need to be repeated

- It is not for the local authority to provide a policy on mitigation. Once again, English Nature the responsible agency provides this information.

5.5 The proposed policies and lower case text in the replacement Local Plan is intended to provide a robust framework in respect of designated sites and protected species. The pre-ambles to policy NR10 on Species Protection clearly highlights the requirement for an ecological study where a proposal could affect a protected species.

5.6 It is however, suggested that this pre-ambles might usefully be expanded to more clearly explain English Nature's role and to highlight the existence of detailed guidance on site appraisal and mitigation issues in respect of GCN's.

6 RECOMMENDED

6.1 It is proposed that the draft Rochford District Replacement local plan include additional commentary on English Nature's role in providing advice and guidance on protected species and particularly Great Crested Newts (HPS).

Shaun Scrutton

Head of Planning Services

Background Papers:

Letter from English Nature dated 29 May 2002

Letter from Essex Wildlife Trust dated 30 May 2002

Email from Essex ARG dated 20 May 2002

For further information please contact Shaun Scrutton on:-

Tel:- 01702 318100

E-Mail:- shaun.scrutton@rochford.gov.uk