Appeal ref: APP/C1435/W/23/3321978 Planning application ref. WD/2022/1637/MEA	Date: 11th October 2023 Local planning authority name: Wealden District Council
From: NatureSpace Newt Officer	

Detailed Comments:

This planning application is for **Hybrid Planning Application Comprising: Outline Application (With All Matters Reserved Except For Access) For The Erection Of Up To 424 No. Residential Dwellings Including Affordable Housing, The Provision Of Vehicular, Pedestrian And Cycle Access And Separate Emergency Access From The Uckfield Bypass (A22), Pedestrian And Cycle Access From Snatts Road, Open Spaces Including Children's Play Space, Sustainable Urban Drainage Systems, Associated Landscaping, Infrastructure And Earthworks; And Full Application Comprising Creation Of A Strategic Sang, Associated Landscaping And Car Parking, And Demolition Of Existing Residential Property And Other Buildings And Provision Of Pedestrian And Cycle Access From Rocks Road, Associated Landscaping, Infrastructure And Earthworks.**

NatureSpace provided comments on the original planning application on August 3rd 2022 to Wealden District Council. This includes a map to highlight the proposed development site's location and context (e.g. Impact Risk Zone and ponds in the surrounding area). The comments highlighted that updated ecological information was required, as survey information was over two years old.

Discussion:

The Appellant has since submitted sufficient updated survey information, in support of their appeal. We are in agreement with the ecological report that a licence would be required due to the presence of great crested newts on site.

The applicant has two licencing options. Either the District Licensing route can be used to demonstrate that the impacts of the proposed development can be addressed through the Council's District Licence (more details can be found at www.naturespaceuk.com); or the standard EPSL route can be taken which requires submitting a mitigation plan to the LPA.

We cannot comment on whether the contents of the mitigation plan for a European Protected Species Licence are sufficient, this is out of our remit.

Other Planning Appeals:

<u>Inadequate information was provided:</u>

- APP/Q3115/W/21/3273602 Beech Farm decided 17th August 2021
- APP/Q3115/C/21/3271189 Land at Toll Lodge Farm decided 4th February 2022
- APP/Q3115/W/21/3287145 Toll Lodge Farm decided 23rd September 2022
- APP/C1435/W/22/3310319 West Ridge House decided 28th February 2023
- APP/Q3115/W/22/3313822 The Paddock, Preston Crowmarsh decided 27th July 2023

Joined the District Licensing Scheme as part of the Appeal process:

- APP/J0405/W/22/3302716 Land East of Mursley Road decided 2nd December 2022

Contact details: info@naturespaceuk.com

Legislation, Policy, and General Guidance

Reasonable Likelihood of Protected Species

Permission can be refused if adequate information on protected species is not provided by the Appellant, as the Planning Inspector will be unable to assess the impacts on the species and thus meet the requirements of the National Planning Policy Framework (2021), ODPM Circular 06/2005 and the Conservation of Habitats and Species Regulations 2017 (as amended). Information can be requested under Article 4 of the Town and Country (Planning Applications) Regulations 1988 (SI1988.1812) (S3), which covers general information for full applications. Planning applications should not be registered by a planning authority if there is a requirement for an assessment of the impacts of a development on biodiversity interests (CLG, 2007 *The validation of planning applications*).

Section 99 of ODPM Circular 06/2005 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, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted. However, bearing in mind the delay and cost that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by development. Where this is the case, the survey should be completed and any necessary measures to protect the species should be in place, through conditions and / or planning obligations before permission is granted."

Great crested newts

Great crested newts and their habitats are fully protected under the Conservation of Habitats and Species Regulations 2017 (as amended). Therefore, it is illegal to deliberately capture, injure, kill, disturb or take great crested newts or to damage or destroy breeding sites or resting places. Under the Wildlife and Countryside Act 1981 (as amended) it is illegal to intentionally or recklessly disturb any great crested newts occupying a place of shelter or protection, or to obstruct access to any place of shelter or protection (see the legislation or seek legal advice for full details). Local planning authorities have a statutory duty in the exercise of their functions to '*have regard, so far is consistent with the proper exercise of those functions, to the purpose of conserving and enhancing biodiversity*,' as stated under Section 40 of the Natural Environment and Rural Communities Act 2006 (as amended) and amended by the Environment Act 2021, as well as a duty under the Conservation of Habitats and Species Regulations 2017 (as amended) to have regard to the requirements of the Habitats Directive. As a result, great crested newts and their habitats are a material consideration in the planning process.

Lifespan of Ecological Reports and Surveys

Validity of ecological reports and surveys can become compromised overtime due to being out-of-date. CIEEM (Chartered Institute of Ecology and Environmental Management) Guidelines for Ecological Report Writing (CIEEM, 2017) states, if the age of data is between 12-18 months, "*the report authors should highlight whether they consider it likely to be necessary to update surveys*". If the age of the data is between 18 months to 3 years an updated survey and report will be required and anything more than 3 years old "*The report is unlikely to still be valid and most, if not all, of the surveys are likely to need to be updated".*