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Why Newts Will Stop You Shopping at John Lewis Next Christmas

Alex Ground comments

News in January that the start of building work on a major £90m shopping development in York was delayed due to a breeding newt population found at the site brought to attention again the often unexpected headache for investors and developers that newts and protected species can have on a development. The John Lewis store which will be part of the Monks Cross development in York was expected to be open in time for next Christmas but will now be delayed until Easter 2014.

The great crested newt is a European protected species; along with numerous other fauna and flora such as sand lizards and bats, it is designated as such in the UK pursuant to the Conservation of Habitats and Species Regulations 2010 which was required in order to comply with a European Directive. It is protected as it is judged to be under grave risk of extinction. It should be noted however that it is still currently dispersed all over the country so it is an issue that can affect numerous sites throughout the UK.

Offences under the Habitats Regulations involving European protected species include deliberately killing or disturbing them. If found guilty of such an offence, a person is liable for up to six months in prison, and or a fine up to £5,000. Reputations can also be at stake and if on-going relationships with a Council are important these aspects can also cause even more problems long term.

So how do you find out if newts are on your development site?

These newts spend the majority of their lives on land but migrate to water in the spring in order to breed. The larvae then stay in the ponds for 2-3 months before migrating back onto land. For certain larger categories of development an

Environmental Impact Assessment (EIA) is needed when making a planning application and this will assess the impact of the development on any European protected species. For smaller proposed developments where an EIA is not needed, but where certain habitats are in the surrounding area, the Council are likely to require the applicant to carry out an ecological survey and include the report as one of the planning application documents.

What can be done if newts are on your site?

If great crested newt mitigation is needed, a licence application will be required, supplemented by a thorough method statement highlighting the activity to be completed under the licence. The great crested newt licence will only be granted for reasons of overriding public interest and it must be demonstrated that the favorable conservation status of the great crested newt is preserved and that there is no acceptable alternative to the proposed development. A mitigation strategy can be secured via agreement with the Council (and possibly Natural England who are the body who will carry out inspections of licensed activities and prosecute where necessary) or by conditions attached to the permission. In the case of Monks Cross shopping centre, the mitigation strategy involved a relocation package and recreating suitable habitat; it came with a price tag of £300,000.

If newts are found on a site: ways of avoiding delays and costs to your investment?

For developers with a selection of a number of development sites, a quick ecology site check to evaluate potential for these newts (as well as other protected species) is well worth your time. If potential for great crested newts is discovered on the site,



commissioning an ecological consultant to review methods of avoiding or minimising the effect of the development on the species is prudent; often minor changes in the design of a site can make a big difference and reduce project timeline and costs significantly. If an impact on the great crested newt population is inescapable, a solution should be sought with the ecological consultant and in time for surveys. The survey window for great crested newts is limited to between March and June. Missing this survey window will result in a wait of another 12 months.

The recent wet weather caused the unanticipated delay at Monks Cross. The newts were using the trenches dug up for archaeological purposes and in previous years had not successfully bred in there but this year the trenches remained wet and they did successfully breed. They will now have to be transferred to a specially created nearby habitat. Given that the wet weather looks set to continue, it would be sensible on sites either pre or mid development to make sure that the site is as well drained as possible and any appropriate works are undertaken that could minimise these breeding grounds occurring. **PIN**

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