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NATURE

Wildlife and development



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for people, places and nature

Wildlife and development

This booklet shows how you can use the development planning process to help protect and enhance local wildlife. It is not a technical guide or a policy document but will be useful to wildlife groups, local planning officers and parish councils as well as planning applicants. It refers to some aspects of wildlife law but the relevant Parliamentary Acts, Regulations and Government Circulars should always be consulted for exact legal positions.



What is meant by development?

When planners talk about development they are referring to changes in land use and the physical development of land. These include mineral extraction projects, large-scale developments (such as new housing estates, factories and retail units) and small-scale developments such as house extensions.

Most developments can only go ahead once planning permission has been granted by the local planning authority. There are some exceptions to this. Agriculture and forestry are excluded

from the definition of development and are not covered by the planning system. In addition, a wide range of other developments can go ahead by virtue of permitted development rights granted by the Government. These include developments such as farm buildings and domestic extensions up to a certain size, and works to highways and pipelines.

How development can affect wildlife

Wildlife can flourish in cities, towns and villages as well as in rural areas.

However, whilst certain plants and animals enjoy protection in Sites of Special Scientific Interest or in National Nature Reserves, most occur outside these areas and require some form of direct protection from damaging developments and land management practices.

Not all development is harmful and, given careful location and design, can even be carried out to enhance wildlife. However, without careful attention to location, layout and design, habitats can be partially or totally destroyed by developments. The construction of buildings and roads can also create barriers to animal movements preventing their reaching traditional breeding or feeding sites. Development can also lead to the isolation of habitats and can fragment the remaining ones into ever smaller areas, unsuitable for much wildlife.

Some impacts are indirect, for example a new housing estate built near a wildlife area might result in an increase in visitors. Some adaptable species are able to thrive near humans, but others are more sensitive to disturbance. Sometimes, less obvious changes occur with development, such as the release of pollutants or changes to the water-table.

It is a Government objective to conserve and enhance wildlife through the planning system, and

Right: Apple Day celebration at a community orchard that has been safeguarded through the efforts of developers and local communities.
Tom Stroud



Above New housing can lead to increased visitor pressure, fire incidents and cat predation on heathland species.
Peter Wakely / English Nature

planners must take biodiversity into consideration in decision-making. By working together at an early stage in the planning process, developers and planners can minimise the effects of development on wildlife. They can also offer opportunities for encouraging and protecting wildlife or restoring habitats degraded by inappropriate land management. Better management can often be achieved through development agreements that are tied to planning consents.



To accompany the recent Planning Policy Statement 9 on Biodiversity and Geological Conservation (PPS9), the Office of the Deputy Prime Minister has published a *Guide to Good Practice*, jointly with English Nature and Defra, to identify ways the planning system can help protect and enhance wildlife.

English Nature also publishes a range of literature about managing land for the benefit of wildlife (see 'Further information').



Above: Great crested grebes on a restored gravel pit. Paul Lacey / English Nature

The law relating to species

Laws to protect wildlife date back to Norman times when Royal Forests were set aside for hunting; while more recently the Victorians had to give many bird species legal protection because of the popularity of feathers as hat decorations! Nowadays, much of our domestic wildlife legislation is ultimately derived from three main international treaties on the conservation of nature:

- The 1979 Convention on the conservation of European wildlife and natural habitats (the 'Bern Convention').
- The 1979 European Community Directive on the conservation of wild birds (the 'Birds Directive').
- The 1992 European Directive on the conservation of natural habitats and of wild fauna and flora (the 'Habitats Directive').

The requirements of the Birds Directive and Bern Convention were largely incorporated into Part 1 of the *Wildlife and Countryside Act 1981*. The Habitats Directive has been given effect in the UK by *The Conservation (Natural Habitats, &c) Regulations 1994*, commonly known as the 'Habitats Regulations'.

Certain plants and animals are granted special protection under the Habitats Regulations. These are commonly referred to as 'European protected species'.

The Countryside and Rights of Way Act has further amended Part 1 of the *Wildlife and Countryside Act*, which relates to the protection of species. It has added further offences against protected species, strengthened the enforcement procedures and introduced custodial sentences.

Some species, such as seals, badgers and deer, are protected under their own legislation, which overlaps in



A species-rich hedge forming part of an ecological network of habitats. David Stroud

places with international legislation. It is therefore often necessary to refer to several pieces of legislation to understand the full legal position.

Detailed interpretation of the law relating to wildlife as applied through the planning system is provided in the Office of the Deputy Prime Minister/ Department for Environment and Rural Affairs Government Circular 06/2005. Further information is available to download at www.odpm.gov.uk.

Biodiversity – conserving and sustaining the variety of life on earth

The first global agreement to protect wildlife was signed by over 150 world leaders in Rio de Janeiro in 1992. It is often called the 'Rio Convention' and participating countries are required to draw up plans detailing how they intend to protect their biological diversity.

Our government has published UK Biodiversity Action Plans for those species and habitats most under threat and requiring priority actions to counter losses and declines. The European Union has now made the further commitment to halt biodiversity loss by 2010.

Local Biodiversity Action Plans, drawn up for areas such as counties, help to implement the UK Biodiversity Action Plan national plans. A wide variety of organisations are involved in the implementation of local plans. Details are available at www.ukbap.org.uk and through local libraries. Local planning authorities can play a key role in implementing national and local Biodiversity Action Plans through the planning process and their commitment to sustainable development.



Left: The stag beetle lives in soft rotting wood on warm alluvial soils mainly in southern England. A UK BAP species.
Stuart Ball / JNCC

Which species of animals and plants commonly found on development sites are legally protected?

Not all plants and animals are protected by law, and not all protected species are given the same degree of protection. It is important to bear these differences in mind when assessing the potential effects of development on wildlife.

Birds

The *Wildlife and Countryside Act* provides different levels of protection for birds. A detailed summary is given in *Wild birds and the law* published by the RSPB.

In general the Act makes it is an offence to:

- Intentionally kill, injure or take any wild bird.
- Intentionally destroy or take the egg of any wild bird.
- Intentionally destroy, damage or take the nest of any wild bird while it is in use or being built.

In addition, birds included on Schedule 1 of the Act are given special protection. For these species, it is a crime to intentionally or recklessly:

- Disturb a bird while it is building its nest.
- Disturb a bird while it is in or near a nest with eggs or young.
- Disturb young birds while they are still dependent on the adult.

It is not an offence if any of the actions listed above **are the incidental result of a lawful operation and could not reasonably have been avoided**. However, only a court can decide what is reasonable in any set of circumstances.

On development sites in rural areas the Schedule 1 bird most likely to be encountered is the barn owl. These owls nest in farm buildings with access through open windows and doorways, and their occupation can sometimes be detected from fresh owl pellets on the floor. An English Nature leaflet *Barn owls and development* gives more information and explains how schemes can be devised to accommodate both people and barn owls. Building works should avoid their breeding season. However, although this is generally between March to August, eggs can be found in any month.

Even small-scale renovation of

buildings can destroy the nest sites of more common species such as swifts and swallows, but problems such as these can be overcome through early discussions between developers and planners. An RSPB/British Trust for Ornithology sponsored leaflet *Concern for swifts* is available for download from Action for Swifts (www.actionforswifts.com).

It is not unusual for another Schedule 1 bird, the peregrine falcon, to nest on inaccessible ledges on cliffs or quarry facings. They are also found nesting on buildings in cities where they can be vulnerable to disturbance if work is not timed to avoid the nesting season.

A more unusual bird of urban areas is the black redstart. It breeds on both derelict and operational industrial sites and can be threatened by development, in particular by urban regeneration schemes. By carefully planning schemes it is possible to make provision for them through sensitive landscaping or by creating special 'green' roofs (Frith and others 1999).

Development work near rivers may disturb birds such as nesting kingfishers. Little ringed plovers breeding on shingle banks in mineral workings are very vulnerable to disturbance during the nesting season, as are sand martins which nest colonially on vertical sandy outcrops, often in working quarries. Again, timing works to avoid any disturbance is good practice and often a legal requirement.

Sites chosen for development may contain important habitats for a number of UK Biodiversity Action Plan bird species, or those included in a local Biodiversity Action Plan. In general, if you have evidence that a site may be important for birds, it is important to make your local planning authority aware of it. They can then decide whether a specialist survey needs to be carried out in the planning process.

Other animals

The law relating to animals other than birds is less comprehensive and is contained within several different pieces of legislation. About 100 species, ranging from mammals to invertebrates, are given legal protection against various offences through listing on Schedule 5 of the *Wildlife and Countryside Act*. These offences and the species commonly found on development sites are listed in Table 1. As the Schedule is reviewed every five years the full list of species currently protected should be checked on the Joint Nature Conservation Committee's website www.jncc.gov.uk.

Some Schedule 5 species are given additional protection under the Habitats Regulations (Table 1) of which bats, dormice and great crested newts are those most likely to be affected by development. It is an offence deliberately to capture, kill, or disturb these 'European protected species' or to destroy their resting places or breeding sites.

A development that would result in a breach of the protection afforded

to a European protected species can, in certain circumstances, be covered by a licence. These licences permit otherwise unlawful activities, such as the disturbance and capture of protected animals. Licences are currently issued by the Rural Development Service of the Department for Environment, Food and Rural Affairs (Defra). Further information is available at www.defra.gov.uk/corporate/rds/default.asp. From October 2006, licences will be issued by a new statutory organisation *Natural England* – to be formed from a merger of English Nature, and parts of the Rural Development Service and the Countryside Agency.

Before a licence is issued for a development, planning permission must have been granted and, where appropriate, mitigation agreed to reduce or compensate for any impacts on species or their habitats.



It is important to remember that activities affecting species which are listed on Schedule 5 cannot be licensed under the Wildlife and Countryside Act in order to permit development. However, prohibited activities may not be illegal if **the act was the incidental result of a lawful operation and could not reasonably have been avoided**. How this defence could apply will depend on specific circumstances and legal advice should be sought.

In addition to the above legislation there are separate laws that relate to individual types of animals such as badgers. These are protected under the *Protection of Badgers Act 1992* and their setts are often found on development sites. English Nature is able to issue licences to interfere with badger setts for the purpose of development.

All wild mammals are protected under the *Wild Mammals (Protection) Act 1996* against certain cruel activities.

Left: Surveys for barn owls should take place prior to submitting planning applications for barn conversions. John & Geoff Kaczanow

Below: Conversion of agricultural buildings to dwellings can incorporate accessible ledges for swallows nests. Paul Lacey / English Nature



A restored gravel pit with appropriate management can create an important refuge for waterbirds. David Stroud

Invertebrates

Protected invertebrates such as some butterflies, beetles, bugs, snails, dragonflies, crickets and spiders are often overlooked on development sites due to their size and the need for specialists to identify them. An English Nature publication *Organising surveys to determine site quality for invertebrates – a framework guide for ecologists* will help you determine whether a site is important for these species. Your local Wildlife Trust, English Nature Area Team or local planning authority ecologist should be able to provide you with the names of specialists who could help assess the importance of a site.

The best way to identify potentially important sites for invertebrates is to consider their habitats. Flower-rich grasslands with no regular cutting or grazing can be important, as can wet areas and scrub. Even post-industrial

or ‘brownfield’ sites with a lot of free-draining bare ground can provide warm spots for important heat-loving species.

Plants

All wild plants are given some protection through legislation in England. Under the *Wildlife and Countryside Act* it is illegal to uproot any wild plant without permission from the landowner or occupier. There is also a number of plants, ranging from algae to vascular plants, specially protected as they are listed on Schedule 8 of the *Wildlife and Countryside Act*. This additional protection means they cannot be intentionally picked, uprooted or destroyed. The Joint Nature Conservation Committee’s website (www.jncc.gov.uk) is a useful source of information as is the *Code of conduct for the conservation and enjoyment of wild plants*, published by the Botanical Society of the British Isles, www.bsbi.org.uk.

It is important to remember that activities affecting Schedule 8 plants that are illegal under the *Wildlife and Countryside Act* cannot be licensed in order to permit development. However, as with the animals listed on Schedule 5, prohibited activities may not be illegal if **the act was the incidental result of a lawful operation and could not reasonably have been avoided**.

Although less likely to be found on potential development sites, some species of wild plants are further protected under the Habitats Regulations against deliberate

Table 1: The protection afforded to those species that are most likely to be threatened by development and which are listed on Schedule 5 of the Wildlife and Countryside Act (as amended) and in the Habitats Regulations.

Species	Protection under Schedule 5 of the Wildlife and Countryside Act (as amended)						Protection under Schedule 2 of the Habitats Regulations	
	Kill or injure the animal	Capture or keep (alive or dead) the animal	Destroy, damage or obstruct access to its place of shelter	Disturb the animal while using its place of shelter	Sell or advertise for sale the animal or anything derived from it	Additional protection afforded to European protected species It is an offence deliberately to capture, kill, or disturb these species or to destroy their resting places or breeding sites.		
Water vole			✓	✓				
Otter	✓	✓	✓	✓	✓	✓	✓	✓
Dormouse	✓	✓	✓	✓	✓	✓	✓	✓
All bats	✓	✓	✓	✓	✓	✓	✓	✓
Slow worm	✓				✓	✓		
Sand lizard	✓	✓	✓	✓	✓	✓	✓	✓
Grass snake	✓				✓	✓		
Adder	✓				✓	✓		
Common toad					✓	✓		
Natterjack toad	✓	✓	✓	✓	✓	✓	✓	✓
Common frog					✓	✓		
Great crested newt	✓	✓	✓	✓	✓	✓	✓	✓
Palmate newt					✓	✓		
Smooth newt					✓	✓		

picking, collecting, cutting, uprooting, destruction and sale. All stages in their life-cycles, including seeds or spores, are protected. Even plants which have no roots are protected, ‘uprooting’ being defined as removal from the site. The JNCC website has full details.

Getting involved

Planning and the protection of species and their habitats

The purpose of the planning system is to promote sustainable development by regulating the use of land and deciding what is built, how and where. It involves both national and local government and helps to match our needs for land use with our desire to protect and improve the environment.

The planning system has recently undergone significant change. Local Plans, Structure Plans and Unitary Development Plans are gradually being replaced by Local Development Frameworks (LDFs), intended to streamline the local planning process and better reflect the aspirations of local communities. LDFs comprise a portfolio of planning documents which collectively form the basis for making planning decisions. Community involvement is sought in drawing up these documents giving individuals and groups an opportunity to comment on their content. All LDFs should support the Government’s objective to achieve sustainable development.

In England, Planning Policy Statement 9 (PPS9) sets out the Government’s national planning



Above: Badger leaving its sett.
Gerald Hall / English Nature

policies on the protection and enhancement of biodiversity and geological conservation through the planning system. It is accompanied by a Government Circular 06/2005 which provides detailed advice on the application of the law relating to planning and nature conservation. A Good Practice Guide to PPS9 is also available to assist those involved in the planning process and those individuals and community groups interested in how the planning system can be used to improve their environment. Planning policies and decisions are required not only to protect biodiversity and geological features, but also to enhance and restore them. PPS9, the Government Circular and Good Practice Guide are available from the website of the Office of the Deputy Prime Minister www.odpm.gov.uk.

How to work with the planning system

In drawing up Local Development Frameworks local planning authorities will need to ensure that nature conservation issues in the area are fully assessed and their needs



Cerceris arenaria - a solitary wasp which burrows in sandy soils, often on brownfield sites.
Roger Key / English Nature



Warm south-facing bare ground can be important for a variety of insects and also reptiles.
Roger Key / English Nature

are incorporated along with other land use considerations. To do this, comprehensive and up-to-date information on the presence and status of wildlife, including protected and priority species, is required.

Planning law requires that development control decisions have to be taken in accordance with the development plan unless other material considerations indicate otherwise, so it is extremely important that nature conservation

issues are addressed adequately at this stage. Development control is the part of the planning system that ensures individual developments meet all the requirements of sustainable development and take account of biodiversity.

A picture of the natural resources in the area can be built up from a variety of sources. Information on the boundaries of protected areas – such as National Nature Reserves and Sites of Special Scientific Interest – is available from English Nature’s ‘Nature on the Map’ (www.natureonthemap.org.uk) and English Nature’s Natural Areas classification will show broad biogeographical areas in your region. Both national and local Biodiversity Action Plan Habitats may be mapped as well as local wildlife sites. Information from Local Records Centres (LRCs) and species recording schemes will help complete the picture. Furthermore, discussions with wildlife organisations, local communities and other interested parties should also help identify important areas for wildlife together with other sites suitable for enhancement or restoration. This information needs to be gathered at an early stage in plan production to help formulate planning policies for your area. Your input at this stage will be welcomed, particularly if you have specialist local knowledge.

Information on protected species is often patchy and incomplete but LRCs often work with species recording schemes to collate and manage species records. Some provide a



Above: Green-winged orchid in a meadow – translocating such plants from development sites to new sites is rarely successful.
Peter Wakely / English Nature

‘one-stop shop’ covering a range of environmental information which is constantly being built on. Supplying verifiable records to a LRC can be an important contribution to safeguarding wildlife. There are provisions to ensure that access to information on sensitive or rare species is restricted. The National Federation for Biological Recording website www.nfbr.org.uk provides a list of LRCs and recording schemes.

The Wildlife Trusts, species recording schemes, and special interest groups (such as bat groups or amphibian and reptile groups) will also welcome your

Right: A species-rich meadow. Most have been reseeded with rye grass with little wildlife value.
Peter Wakely / English Nature

help as they will probably be assisting the planners in drawing up Local Development Frameworks.

Development Control

It is essential that legislation, national planning policy and policies in development plans relating to protected species all play their part





Above: Children's enthusiasm for wildlife can lead to a lifetime of enjoying the natural world.
Paul Glendell / English Nature

when local planning authorities consider planning applications.

Early, pre-application consideration of the likely presence of protected species by developers is recommended. Planning decisions can better address species protection if they are based on full information regarding the species' population, the impact the development might have on it and how this might be avoided, mitigated or compensated. Habitat creation or enhancement can also be considered at this stage.

There are two main types of planning permission:

- Full planning permission which includes all or most details of the planned development. If granted it is valid for three years.
- Outline planning permission, which tests the proposal's acceptability in principle. Outline permission is valid for three years.

Applications for waste disposal or mineral extraction are usually made to the County Council (except where there is a Unitary Authority) but all other applications are made to the District, Borough or Unitary Authority. Authorities are required to determine most applications within eight weeks from receipt. Details of current applications are now being made available on many local planning authority websites.

Getting involved at an early stage

Designated wildlife sites which have been mapped should be relatively straightforward to address through the planning system. Widespread species and their habitats can be more problematic.

Once you are aware of any proposals that could adversely affect wildlife, it is important to respond swiftly. If the planning proposals have yet to be submitted to the local planning authority you will have an opportunity to voice your concerns to the planners, applicant and wildlife groups. You can also help ensure that appropriate surveys are undertaken and modifications to the proposals explored that could avoid harm to the protected species and their habitats. These can then be included in the final planning submission. This is the best outcome for all concerned as issues can be resolved before planning permission is sought.



Surveying and recording species and habitats – a key stage in assessing the importance of an area or site for wildlife.

Julian Bateson / English Nature

Responding to planning applications

Once a planning application has been made there is a consultation period within which you must respond. It is important to bear in mind that the planning system seeks to address a wide range of issues. Nature conservation is just one of many concerns which planners have to take into account when considering development proposals and you need to be clear and concise in any objections you lodge.

Stage 1. Fact-finding

If you have good evidence to indicate that protected species may be at risk of harm from a proposed development, the sooner you write to the local planning authority to voice your concerns the better.

You should also contact the local Wildlife Trust or other wildlife groups

to join forces and prevent a duplication of effort, however, individual responses should still be made to proposed developments to add weight to the grounds for objection. Send copies of your local planning authority letters to these wildlife groups and keep a record of telephone calls.

Before making any written comment on a planning application on protected species grounds you need to consider the two key questions below:

What evidence do you have that a protected species may be present on the site?

It is wrong to use the presence of a protected species as a reason for objection if you cannot demonstrate its presence or provide reasonable evidence that the species is likely to use the site. Although it is possible for planning permission to be refused if serious effects on protected species cannot be avoided, it is, in practice, rare for developments to be prevented simply because the species is present. It is more likely that the development would proceed with some form of mitigation. A development will not necessarily be prevented because animals such as bats or great crested newts have been found on a site. More usually, plans will be modified to take them into account.

The local Wildlife Trust or Local Records Centre can be contacted to find out which species have been recorded on the site. Use these records to ascertain the size, distribution and importance of populations both on the site and in the surrounding area.



Above: Visiting a great crested newt site. Meeting with other enthusiasts is a good way to learn more about wildlife.

Jim Foster / English Nature

What is the nature of the development and how will it affect the protected species? The local planning authority can give you details of the application and any previous planning history for the site. Check whether the site has any protective designation and whether the development proposal is consistent with the policies in the Development Plan or Local

Below: Mitigation. A permanent newt fence protecting the great crested newt breeding ponds from a working quarry.

Jim Foster / English Nature



Development Framework. Measures to protect species may be included in the application. In this case, do you consider that the measures are satisfactory? If the development is likely to have a significant impact on a sensitive site there may be a requirement for a formal Environmental Impact Assessment before a planning application will be considered.

Stage 2. Making your views known

It is important that you put your views in writing to the Chief Planning Officer. State the reference number of the planning application, the site location and why you are objecting to the application. Be sure to keep only to the facts relating to planning. Explain the presence, or likely presence, of protected species and what problems you envisage the development will cause. It would also be useful to indicate any changes to the proposal that would overcome these problems.

Your letter need not be long but try to quote the relevant development plan or Local Development Framework policies and whether you consider the development accords with these. Send a copy to the relevant English Nature Area Team office and other interested parties for their information. The local planning authority will make your letter available for public viewing.

Stage 3. Determination of planning application and beyond

After contacting the Chief Planning Officer you will receive acknowledgement of your letter. You

will also be invited to attend any committee meetings. If you wish to speak at these meetings you will have to give advance notification and follow whatever procedures are in place. Planning Committees may, in exceptional circumstances, undertake site visits before determining a planning application.

Where you have made written comment on an application, you will be notified of the outcome and of any subsequent appeal by the developer against a planning refusal or imposition of conditions. Most appeals are heard by means of written representations and third parties may participate in this process. In some situations, a hearing or a Public Inquiry may follow. If appropriate, you may wish to attend such a hearing and prepare a proof of evidence in respect of the nature conservation issues. You will have to be absolutely sure of your facts. It is worth seeking advice from wildlife organisations should this situation arise. As a third party you do not have the right to make a planning appeal yourself.

Enforcement – what to do when problems occur

The law makes it an offence to harm or disturb wildlife in the ways outlined in this booklet. Enforcement of these laws is carried out by the police. Most forces have a Wildlife Crime Officer who will be able to assist. You should bear in mind that these officers often have to fit wildlife work alongside routine police work. There will also be an Enforcement Officer at the local



Above: Discussing a mitigation strategy for great crested newts in a quarry.

Jim Foster / English Nature

planning authority you can contact if a breach of planning control is suspected.

Contact the police as soon as possible if you believe that damage to a site is occurring, or is imminent, and that there may not be the relevant permissions or licences issued to allow the work to take place. Information about reporting a wildlife crime is

Below: Old cottages are often demolished to make way for new houses. Bats may be roosting and they need to be taken into account in early discussions of plans.





Above: Historic buildings are often home to several species of bats.
Phil Richardson

Below: Old mills and barns often provide important roosts sites for bats.
Paul Lacey / English Nature



available from the Partnership for Action Against Wildlife Crime website www.defra.gov.uk/paw/default.htm. For suspected breaches of planning control the Enforcement Officer at the planning authority should be informed. The Rural Development Service should be contacted if there is a suspected breach of a development licence relating to a European protected species.

It is a great help to the police and enforcement officers if you have information about the precise location of the site together with the time and date you observed the crime. Direct contact with a developer is best left to the relevant authorities – these will have powers to enter land and carry out investigations. Once you have notified the proper authority of a suspected breach of planning (or other legislative control concerning wildlife)



Above: Greater horseshoe bats clustered in a cave.
Mike Hammett / English Nature

it is advisable to leave the enforcement action to the authority but continue to give them information as necessary.

The police will liaise with the local planning authority and English Nature in gathering information on the possible breach of the law. If there is sufficient evidence they may refer the matter to the Crown Prosecution Service who may take the case to court.

More facts on protected species found on development sites

The protected species most commonly found in surveys of potential development sites are badgers, bats, great crested newts, slow worms, common lizards, grass snakes and adders.

Badgers are protected under the *Protection of Badgers Act 1992*. This gives them a high level of protection and developers need to be aware that both the animals and their setts are protected. Further details can be found in the English Nature publication *Badgers and development*. English

Nature is able to issue licences to interfere with setts for the purpose of development. A licence will only be issued for a site once all planning issues relating to badgers have been resolved.

Bats and their roosts are fully protected by law under both the *Wildlife and Countryside Act* and the *Habitats Regulations*. All species are less common than they were and some are now very rare. In winter they hibernate for most of the time occupying sites such as caves, mines, trees or buildings where conditions are more stable. Generally, they move to breeding sites in late spring and some of their favourite places are houses, churches, barns and industrial buildings. Because of their dependence on man-made structures they are often found during building works. The English Nature publication *Focus on bats* provides further information.

To comply with the Habitat Regulations a developer may be required to carry out a survey for bats and their roosts on a potential development site, at an appropriate time of year, before any planning permissions are granted. If bats are found provisions can then be made to avoid, or minimise, any effects



on them. Timing development works to avoid disturbance may be necessary and where there are unavoidable effects a licence may have to be obtained from the Rural Development Service to lawfully carry out damaging operations. In these cases compensation may be required, such as providing additional roosting sites within buildings or within the development site, so that there are no overall adverse effects on bats. A licence is only issued once planning permission has been granted. English Nature and the local planning authority are contacted for advice on an application and the Rural Development Service only issues licences once it is satisfied with the proposals. The English Nature publication *Bat mitigation guidelines* and the Scottish Natural Heritage publication *Bats in buildings* provide more information.

If you know of a bat roost site, contact your county bat group via the Bat Conservation Trust website www.bats.org.uk. You may also consider joining the group and getting involved in practical projects.

Top left: Bats can be found during repair work to churches. Contact English Nature for advice when planning restoration works. Paul Lacey / English Nature

Centre left: A great crested newt pond in the open countryside. Jim Foster / English Nature

Bottom left: Brown long-eared bats roosting in the ridge of an old building. Phil Richardson



Great crested newts and parts of their habitats are fully protected, their population decline being mainly attributed to habitat loss and neglect. Although the newts breed in ponds they spend most of their lives on land, sometimes ranging several hundred metres from ponds. *The great crested newt conservation handbook* (published by Froglife and available from their website www.froglife.org) is an excellent source of information on how and where newts live and what can be done to conserve them. It is likely that the local planning authority will be unaware of the presence of breeding ponds for great crested newts. Any information you can give them could be important in reducing the impacts of development on these animals.

As with bats, the developer may be required to undertake a survey of a potential development site if there is a reasonable likelihood of great crested newts being present. If present, mitigation and compensation may be needed to counter the development impacts. Providing additional suitable terrestrial habitat or ponds can often be successful in maintaining their populations. A licence from the Rural Development Service may be required for mitigation work affecting great crested newts. English Nature's *Great crested newt mitigation guidelines* explain the process in more detail.

Above: Great crested newt. Jim Foster / English Nature



Above: Dormouse in typical habitat. Mike Hammett / English Nature

Dormice occasionally occur on development sites and are fully protected under both the *Wildlife and Countryside Act* and the *Habitats Regulations*. They are mainly found in deciduous woods, species-rich hedgerows and areas of scrub. They spend the summer foraging in trees and shrubs and hibernate at ground level from around October to March. The potential presence of dormice should be considered by planners and developers, and appropriate surveys, mitigation or compensation carried out as for other European protected species. A licence from the Rural Development Service may be required for mitigation works affecting dormice. *The dormouse conservation handbook* (Second edition) provides comprehensive information on this species, including habitat management and mitigation techniques.



Above: Grass snakes can be retained on development sites with careful planning.
Allan Drewitt / English Nature



Above: Water vole on a river bank.
Hugh Clark / Environment Agency



Above: A recently laid hedge. It will be stock-proof and soon provide dense cover for wildlife.
Peter Wakely / English Nature

Common lizards, slow-worms, adders and grass snakes are protected against killing and injury under the *Wildlife and Countryside Act* (Table 1). Ideally they should be retained on development sites and works timed to avoid harming them, thereby complying with the law. Where possible, development layouts should be altered to avoid the main areas of wildlife interest. The English Nature booklet *Reptiles: guidelines for developers* includes further advice.

Common frogs, toads and smooth newts and palmate newts are only given protection under the *Wildlife and Countryside Act* against selling or advertising for sale (Table 1). However, it is still possible to make provision for them within development sites. Discussing the planning proposals with the local authority or directly with the developer may be helpful in retaining parts of the area for these species. Ponds that support common frogs or smooth newts, for

example, could be retained, or suitable habitat created elsewhere on the site to compensate for losses. The English Nature booklet *Amphibians in your garden – your questions answered* includes an introduction to creating and managing ponds.

Water voles are protected under the *Wildlife and Countryside Act* from disturbance whilst in their burrows, and the burrows are themselves protected (Table 1). These may be conspicuous in pond banks and along slow-moving rivers and streams. It is preferable if development can be planned to avoid their habitats, as detailed in the English Nature publication *Water voles – guidance for planners and developers*.

Protecting trees and hedgerows on development sites

Most local planning authority websites have information on legislation regarding tree and hedgerow protection. Hedgerows provide excellent wildlife habitat and some link together into important wildlife corridors and networks. As well as being valued for their landscape or historical interest, ancient hedgerows are particularly rich in species and are included in the UK Biodiversity Action Plan.

Apart from the Plymouth pear *Pyrus cordata* (only occurring on five sites in Cornwall) no individual tree species is protected by law. Similarly, no species of hedgerow shrub/tree species is protected.

Hedges

The *Hedgerows Regulations 1997* afford protection to certain hedgerows and individual trees in England and Wales, but hedges forming part of

development sites are not necessarily protected. As recognised good practice, developers should not destroy hedges during the bird breeding season. This helps to ensure that they do not knowingly destroy a bird's nest as this could be an offence under the *Wildlife and Countryside Act*. Hedges can best be protected by conditions, or Section 106 agreements, attached to planning permissions.

If a hedge contains a European protected species, such as great crested newts or dormice, it is protected under the Habitats Regulations. Also, a few hedges are protected if they form part of a protected site such as a Site of Special Scientific Interest. They may also be protected as part of a Scheduled Ancient Monument.

Trees

The current trend towards higher density of housing on new sites can bring trees into conflict with



Left: Management of an ancient oak. Logs provide dead-wood habitat for invertebrates.
Peter Wakely / English Nature

Bottom left: Ancient trees can provide cracks and crevices for bats to roost in.
Roger Key / English Nature



development schemes if they are not well planned. Trees often enhance and increase the value of developments but consideration must be given to the height and width of mature trees so that residents can enjoy them but not be concerned about their size, safety or loss of light to their properties. Where trees are retained care must be taken by contractors to avoid damaging roots by driving machinery over them or by storing heavy materials under a tree's canopy.

The granting of full planning permission may permit the removal of those trees that directly affect the start of a development. Unless there are Tree Preservation Orders, planning conditions, or Section 106 agreements to protect trees on development sites it is likely that trees can lawfully be removed. This emphasises the importance of bringing important trees or woodland blocks to the attention of planners early in the planning process. Registers of protected trees are kept by the local planning authority. In addition, Conservation Areas, designed to protect areas of special architectural or historic interest, give local authorities powers to protect trees that are over 7.5 cm in diameter at breast height.

The Forestry Commission is responsible for the control of tree



Garden ponds are important habitats for frogs, toads and newts and provide drinking water for birds and mammals.
David Stroud

felling. Permission in the form of a Felling Licence is often required if more than five cubic metres is to be felled in any one calendar quarter. Further information can be obtained from Forestry Commission offices and their website, www.forestry.gov.uk.

If you consider that a particular tree is of amenity or nature conservation value, and especially if it could be under threat, you should contact the local planning authority. Very old or veteran trees are of particular value. Those with crevices and holes will be important for invertebrates, and may also contain bat roosts. These should be given special attention by local planning authorities. More information is available from English Nature, the Tree Council (www.treecouncil.org.uk) and in the Bat

Conservation Trust booklet *Bats and trees*.

There may also be a Tree Warden in your parish who can give you advice. If not, you may consider becoming a Tree Warden yourself. The warden scheme is administered by the Tree Council.

Changes to uncultivated land

Although not part of the planning system, The Environmental Impact Assessment Regulations for uncultivated land and semi-natural areas (2002) have been introduced to ensure that land of special environmental importance is protected from certain land use changes. They do not apply to projects requiring planning permission and they reinforce

good farming practices. Land managers wishing to bring uncultivated land such as unimproved grassland and scrubland or semi-natural areas into intensive agricultural use are required to consider the environmental effects of their proposals and apply to the Department for Environment, Food and Rural Affairs for permission. More information can be found at www.defra.gov.uk/environ/eia.

What are the roles of the various organisations involved in protecting wildlife?

English Nature is the agency responsible for advising both central and local government on nature conservation in England. It is a statutory consultee in both the preparation of development plans that affect Sites of Special Scientific Interest, and in the control of these plans. It also provides advice to local planning authorities on protected species issues. It provides advice to the Rural Development Service (part of Defra) on European protected species licences and provides general guidance for developers, environmental consultants and others on protected species. English Nature has a statutory duty to issue licences for badgers affected by development. If you have a query, contact the English Nature Enquiry Service in the first instance.

In 2006 English Nature will merge with parts of the Rural Development Service and the Countryside Agency to form a new statutory body called *Natural England*.

The Forestry Commission is the government department responsible for forestry in Great Britain. It protects Britain's forests, encourages good forestry practice and offers grants for expanding, regenerating and managing forests and woodlands. It also controls the felling of trees and issues felling licences. Contact your local Forestry Commission Office with any queries regarding felling licences.

The Planning Inspectorate has the responsibility of determining planning appeals on behalf of the Secretary of State.

The Office of the Deputy Prime Minister is the government department with responsibility for the planning system. It produces planning policy statements such as Planning Policy Statement 9 on Biodiversity and Geological Conservation (PPS9).

The **Rural Development Service** (part of **Defra**) determines licence applications for European protected species under Regulation 44 (2)(e) of the Habitats Regulations 1994. This function will pass to *Natural England* from October 2006 when English Nature, parts of the Rural Development Service and the Countryside Agency merge to form this new statutory body.

Local planning authorities are responsible for issuing Tree Preservation Orders, implementing the Hedgerow Regulations, preparing development plans (including Local Development Frameworks) and determining planning applications.

They must consider all protected and priority species in the planning process. They must consult English Nature in the production of development plans and development control in relation to SSSIs. They should also consult English Nature before granting planning permission where proposals could harm any European protected species. They must also operate a policy of sustainable development in all development plans and in development control.

Developers and environmental consultants must ensure that they provide local planning authorities with an accurate assessment of the presence of protected species, including surveys and an assessment of the impact of developments on species where appropriate. Where necessary they must apply to the Rural Development Service for a licence if mitigation is required and undertake mitigation schemes that meet the requirements of planning and licensing.

Non-governmental organisations include wildlife groups such as the Wildlife Trusts and special-interest groups such as the RSPB, the Bat Conservation Trust, Froglife and the Amphibian and Reptile Group (ARG). They are often asked to comment on planning applications. They also work with local planning authorities in the production of local Biodiversity Action Plans, the designation of County Wildlife Sites, the designation and management of nature reserves and in the production of development plans.

The police is the enforcement authority for breaches of wildlife law relating to species. If you suspect an offence has been committed you should contact your local police force immediately and, if possible, speak to their Wildlife Crime Officer.

Further information

English Nature publications: The following publications are available from the English Nature Enquiry Service Tel: 01733 455100; e-mail: enquiries@english-nature.org.uk. This is a selection of publications. A full list can be obtained from the Enquiry Service. Many are also available for download at www.english-nature.org.uk.

Amphibians in your garden – your questions answered. English Nature 2002.

Badgers and development. English Nature 2002.

Barn owls on site – a guide for developers and planners. English Nature 2002.

Bat mitigation guidelines. English Nature 2004.

Biodiversity – your questions answered. English Nature 2002.

Bright, P., Morris, P. & Mitchell-Jones, T. 2006. *The dormouse conservation handbook*. Second edition. English Nature.

Farmland wildlife – past, present and future. English Nature 2004.

Focus on bats – discovering their lifestyle and habitats. English Nature 2004.

Grazing management of lowland heathlands. English Nature 2005.

Great crested newt mitigation guidelines. English Nature 2001.

Great crested newts on your farm. English Nature 2003. Available as a PDF at: www.english-nature.org.uk/about/teams/Pubs.asp?PageNo=2&Id=13

Kirby, K. & Goldberg, E. 2002/3. *Ancient woodland: guidance material for local authorities.* English Nature.

Mammals in your garden. English Nature 2005.

Minibeasts in the garden. English Nature 2004.

Old meadows and pastures: ancient threatened habitats. English Nature 2002.

Organising surveys to determine site quality for invertebrates – a framework guide for ecologists. English Nature 2005.

Read, H. 2000. *Veteran trees. A guide to good management.* English Nature.

Reptiles: guidelines for developers. English Nature 2004.

Reptiles in your garden – your questions answered. English Nature 2003.

Water vole – guidance for planners and developers. English Nature 2001.

Scottish Natural Heritage publications

Bats in buildings – a guide for professionals. Scottish Natural Heritage 2004. Available for download at www.snh.org.uk.

Office of the Deputy Prime Minister Publications

Planning Policy Statement 9: biodiversity and geological conservation. August 2004 ISBN 0-11-75394-6.

Government Circular: biodiversity and geological conservation – statutory obligations and their impact within the planning system. (ODPM 01/2005, Defra 01/2005).

Planning for biodiversity and geological conservation: a good practice guide to PPS9. ODPM/Defra/English Nature 2006.

Defra publications

The Hedgerow Regulations 1997: a guide to the law and good practice. Defra (Consultation Draft only). Revised 2002 incorporating The Hedgerows (Amendment) (England) Regulations 2002. Available for download at www.defra.gov.uk.

The Hedgerow Regulations – your questions answered. DoE 1997.

The Environmental Impact Assessment (EIA) Regulations for uncultivated land and semi-natural areas. Defra 2003 Available for download at www.defra.gov.uk/environ/eia.

RSPB publications

Wild birds and the law – a plain guide to bird protection today. RSPB 2003.

Farm hedges and their management. RSPB information leaflet. 2004.

Garden hedges. RSPB information leaflet 2000.

Swifts. RSPB information leaflet 2002.

Bat Conservation Trust publications

Bats and the law – what to do when the law is broken. Bat Conservation Trust 2003. Produced together with the RSPB. Available for download at www.bats.org.uk.

Bats and trees – a guide for the management of trees. Bat Conservation Trust 2000. Available for download at www.bats.org.uk.

Other publications

Concern for swifts. Action for Swifts 2004. Available for download at www.actionforswifts.com.

The great crested newt conservation handbook. Froglife 2001. Available for download at www.froglife.org.

Sotherton, N., & Page, R. 1998. *A farmer's guide to hedgerow and field margin management.* Hants, Game Conservancy Limited.

Woodland management for bats. Forestry Commission 2005.

Tree felling – getting permission. Forestry Commission 2003. Available for download at www.forestry.gov.uk.

Protected trees – a guide to tree preservation procedures. ODPM 2004. Available for download at www.odpm.gov.uk.

Working with wildlife pocket book (C613). Construction Industry Research and Information Association (CIRIA) 2004.

Code of conduct for the conservation and enjoyment of wild plants. Botanical Society of the British Isles 1999. Available for download at www.bsbi.org.uk.

Biodiversity Steering Group. 1995. *Biodiversity: The UK Steering Group report.* Volumes I & II. London, HMSO.

Biodiversity Steering Group. 1998. *UK Biodiversity Group. Tranche 2: Action Plans.* Volume 1 – vertebrates and vascular plants. London, HMSO.

Frith, M., Sinnaduri, P., & Gedge, D. 1999. *Black redstart; an advice note for its conservation in London.* London Wildlife Trust.

Speer, R., & Dade, M. 1998. *How to stop and influence planning permission*. Stonepound Books.

Organisations – contact details

Action for Swifts

www.actionforswifts.com

Amphibian and Reptile Groups of the United Kingdom (ARG UK)

www.arg-uk.org.com

Association of Local Government Ecologists www.alge.org.uk

Badger Trust

www.badgertrust.org.uk

Bat Conservation Trust

www.bats.org.uk

British trust for Ornithology

www.bto.org

Campaign to Protect Rural England

www.cpre.org.uk

Countryside Council for Wales

www.ccw.gov.uk

Department for Environment, Food and Rural affairs www.defra.gsi.gov.uk

English Nature

www.english-nature.org.uk

Forestry Commission

www.forestry.gov.uk

Froglife www.froglife.org

Joint Nature Conservation Committee

www.jncc.gov.uk

National Biodiversity Network

www.nbn.org.uk

NBN Gateway www.searchnbn.net

National Federation for Biological Recording

www.nfbr.org.uk

Office of the Deputy Prime Minister

www.odpm.gov.uk

Partnership for Action Against Wildlife Crime

www.defra.gov.uk/paw

Royal Society for the Protection of Birds

www.rspb.org.uk

Rural Development Service www.defra.gov.uk/corporate/rds/default.asp

Scottish Natural Heritage

www.snh.gov.uk

The Construction Industry Research and Information Association

www.ciria.org.uk

The Herpetological Conservation Trust

www.herpconstrust.org.uk

The Tree Council

www.treecouncil.org.uk

The Wildlife Trusts Partnership

www.wildlifetrusts.org

UK Biodiversity Action Plans

www.ukbap.org.uk



ENGLISH NATURE

English Nature, the Rural
Development Service and
the Countryside Agency:

Working in partnership
to conserve and enhance
our landscapes and natural
environment, to promote
countryside access and
recreation as well as public
well-being, now and for
future generations.

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Front cover photographs:

Main picture:

Constructing a high density housing
estate. Planning for wildlife needs to
be carried out at an early stage in the
planning process.

Jim Foster (English Nature)

Top left: Brown long-eared bat
– frequently found roosting in barns
and lofts of houses

Phil Richardson

Bottom left: Wood vetch and other
wild flowers flourish on “waste
ground” alongside a high density
housing estate. This site is accessible
to the public by voluntary agreement
with the landowner.

Trevor Lawson / www.redfoxmedia.com



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