

Appendix 1

Applicable Nature Conservation Related Legislation and Policy

Appendix 1 is intended to provide an overview of the main features of legislation and policy relating to nature conservation in England and the implications for development.

KEY WILDLIFE LEGISLATION

Conservation of Habitats and Species Regulations 2010 (as amended)

The Conservation of Habitats and Species Regulations 2010¹ (known as the “Habitats Regulations”) transpose Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the European “Habitats Directive”) into UK legislation. These regulations consolidate all the various amendments made to the preceding “Conservation Regulations” 1994 for England and Wales.

The Habitats Regulations were amended by the Conservation of Habitats and Species (Amendment) Regulations 2012.²

The Habitats Regulations provide for the designation of both Special Protection Areas (SPAs) and Special Areas of Conservation (SACs) in the UK, which form part of the Natura 2000 network of protected areas across Europe. The Regulations also prohibit the deliberate capture, killing or disturbance of European Protected Species (EPS), which include *inter alia* Dormouse *Muscardinus avellanarius*, Great Crested Newt *Triturus cristatus*, Otter *Lutra lutra* and all native species of bat, and make it an offence to destroy or damage either the nesting or breeding sites of these species. The above actions can be made lawful through the granting of licenses after Natural England (the licensing authority in England) is satisfied that there are no satisfactory alternatives and that such actions will have no detrimental effect on wild population of the EPS.

Further information on SPAs, SACs and European Protected Species (Licensing and Protected Species) is provided in the relevant sub-sections of this Appendix.

Wildlife & Countryside Act 1981 (as amended)

The Wildlife and Countryside Act 1981³ is the principal mechanism for the legislative protection of wildlife in Great Britain. Various amendments have occurred since the original enactment. Certain species of bird, animal and plant (including all of the European Protected Species listed above) are afforded protection under Schedules 1, 5 and 8 of the Act. Reference is made to the various Schedules and Parts of this Act (**Table A1.1**) in the section of this Appendix dealing with Legally Protected Species. The Act also contains measures for the protection of the countryside, National Parks, Sites of Special Scientific Interest (SSSIs) and public rights of way as well as preventing the establishment of invasive non-native species that may be detrimental to native wildlife.

¹ The Conservation of Habitats and Species Regulations 2010. Available from:

<http://www.legislation.gov.uk/uksi/2010/490/contents/made>

² The Conservation of Habitats and Species (Amendment) Regulations 2012. Available from:

<http://www.legislation.gov.uk/uksi/2012/1927/contents/made>

³ The Wildlife and Countryside Act 1981. Available from:

<http://www.legislation.gov.uk/ukpga/1981/69/contents>

Table A1.1: Key Schedules of the Wildlife & Countryside Act 1981 (as amended)

Schedule	Protected Species
Schedule 1 Part 1	Protects listed birds through special penalties at all times.
Schedule 1 Part 2	Protects listed birds through special penalties during the close season.
Schedule 5 Section 9.1 (killing/injuring)	Protects listed animals from intentional killing or injuring.
Schedule 5 Section 9.1 (taking)	Protects listed animals from taking.
Schedule 5 Section 9.2	Protects listed animals from being possessed or controlled (live or dead).
Schedule 5 Section 9.4a	Protects listed animals from intentional damage or destruction to any structure or place used for shelter or protection.
Schedule 5 Section 9.4b	Protects listed animals from intentional disturbance while occupying a structure or place used for shelter or protection.
Schedule 5 Section 9.5a	Protects listed animals from being sold, offered for sale or being held or transported for sale either live or dead, whole or part.
Schedule 5 Section 9.5b	Protects listed animals from being published or advertised as being for sale.
Schedule 8	Protects listed plants from: intentional picking, uprooting or destruction (Section 13 1a); selling, offering for sale, possessing or transporting for the purpose of sale (live or dead, part or derivative) (Section 13 2a); advertising (any of these) for buying or selling (Section 13 2b).
Schedule 9	Prohibits the release of species listed in the Schedule into the wild.

Further information on legally protected species, designated wildlife sites and invasive non-native species is provided in the relevant sub-sections of this Appendix.

Countryside & Rights of Way Act 2000

Many of the provisions of the Countryside and Rights of Way (CRoW) Act 2000⁴ have been incorporated as amendments into the Wildlife and Countryside Act (1981) and some provisions have now been superseded by later legislation such as The Natural Environment and Rural Communities Act (2006).

The most relevant changes provided by the CRoW Act include the added protection given to SSSIs and other important sites for nature conservation. Importantly, under the Act it became a criminal offence to "recklessly disturb" Schedule 1 nesting birds and species protected under Schedule 5 of the Wildlife and Countryside Act. It also enabled heavier penalties on conviction of wildlife offences.

⁴ The Countryside and Rights of Way (CRoW) Act 2000. Available from: <http://www.legislation.gov.uk/ukpga/2000/37/contents>

The Natural Environment and Rural Communities Act 2006

The Natural Environment and Rural Communities (NERC) Act 2006⁵ was intended to raise the profile of biodiversity amongst all public authorities (including local authorities, and statutory undertakers) and to make biodiversity an integral part of policy and decision-making processes. The NERC Act also improved wildlife protection by amending the Wildlife and Countryside Act 1981.

Section 40 (S40) of the Act places a 'Biodiversity Duty' on all public bodies to have regard to the conservation of biodiversity when carrying out their normal functions. This includes giving consideration to the restoration and enhancement of species and habitats.

Section 41 (S41) of the Act requires the Secretary of State to publish a list of habitats and species which are of Principal Importance for the conservation of biodiversity in England⁶. Public authorities have a responsibility to give specific consideration to the S41 list when exercising their normal functions. For planning authorities, consideration for Species and Habitats of Principal Importance will be exercised through the planning and development control processes. Further information on species and habitats of Principal Importance is provided in the relevant sub-section of this Appendix.

PLANNING POLICY & GUIDANCE

Listed below is the main planning policy and government guidance that relates to the conservation of nature and development at all levels of government.

National Level

National Planning Policy Framework (NPPF)

The National Planning Policy Framework⁷ sets out the Government's planning policies for England and how these should be applied in local-level policy and decision making. The NPPF has a clear "presumption in favour of sustainable development" (paragraph 14), with a requirement to consider its economic, social and environmental dimensions. This does not apply where development requiring Appropriate Assessment under the Habitats Directive is being considered, planned or determined (paragraph 119).

Section 11 of the NPPF provides guidance on conserving and enhancing the natural environment through the planning system and replaces the preceding Planning Policy Statement 9 (PPS9): Biodiversity and Geological Conservation. It specifies that when determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:

⁵ The Natural Environment and Rural Communities Act 2006. Available from: www.legislation.gov.uk/ukpga/2006/16/contents

⁶ The S40 list replaces the previously prepared list of habitats and species of Principal Importance for the conservation of biological diversity in England that was published under Section 74 (2) of the Countryside and Rights of Way Act 2000.

⁷ DCLG (2012). *National Planning Policy Framework*. Available from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf

- if significant harm resulting from a development cannot be avoided, adequately mitigated or (as a last resort) compensated for, then planning permission should be refused;
- proposed development that is likely to have an adverse effect on a Site of Special Scientific Interest (either individually or in combination with other developments) should normally be refused;
- planning permission should normally be refused for development resulting in the loss or deterioration of irreplaceable habitats, including ancient woodland and the loss of aged or veteran trees found outside ancient woodland;
- development proposals where the primary objective is to conserve and enhance biodiversity should be permitted;
- opportunities to incorporate biodiversity in and around developments should be encouraged.

In the case of SSSIs and irreplaceable habitats, exceptions *may* be made if it can be clearly demonstrated that the benefits of the development, at this particular site, outweigh the costs in terms of loss or adverse impacts.

Section 11 also specifies that listed or proposed Ramsar sites, potential European sites, and sites identified or required as compensatory measures for adverse effects on designated/listed or potential/proposed European and Ramsar sites should be given the same protection as designated European sites.

Government Circular 06/05: Biodiversity and Geological Conservation

The Government produced Circular 06/05⁸ to provide guidance on the application of the law to the conservation of nature. Although the document is in the process of being updated, Paragraphs 98 and 99 remain relevant as they and set out the following principles and obligations:

- The presence of protected species is a material consideration when determining a development proposal;
- Local authorities should consult with Natural England before granting permission, and consider imposing planning conditions or obligations to secure the long-term protection of the species;
- The presence or otherwise of protected species, and the extent to which they may be affected by the proposed development, must be established before permission is granted;
- Given 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 the development.

⁸ ODPM (2005). *Circular 06/05: Biodiversity and Geological Conservation - Statutory Obligations and Their Impact Within the Planning System*. Available from: <http://www.communities.gov.uk/publications/planningandbuilding/circularbiodiversity>

Good Practice & Standards

DCLG Planning Practice Guidance

Revised and updated Planning Practice Guidance (PPG)⁹ was launched by the Department for Communities and Local Government (DCLG) as a web-based tool in March 2014 to accompany the National Planning Policy Framework. The webpages are set out in an accessible Q&A format. The PPG consolidates and supersedes existing guidance on a range of planning-related topics, clarifies some of the statements made in the NPPF, and provides links to relevant legislation and other sources of advice.

The Guidance outlines a number of important principles in relation to nature conservation and biodiversity, including the need to integrate biodiversity into all stages of the planning process and to consider opportunities to enhance biodiversity and contribute to the Government's commitments and targets set out in *Biodiversity 2020: A strategy for England's wildlife and ecosystem services* (see below). It also lists a number of issues that should be considered in relation to biodiversity, including local biodiversity plans and strategies, Section 41 species and habitats, the need for ecological surveys, local ecological networks, and statutory obligations with regard to internationally and nationally designated sites – all of which are discussed throughout this Appendix.

The guidance also requires that “an ecological survey will be necessary in advance of a planning application if the type and location of development are such that the impact on biodiversity may be significant and existing information is lacking or inadequate” and recommends that “local planning authorities should only require ecological surveys where clearly justified, for example if they consider there is a reasonable likelihood of a protected species being present and affected by development.”

Other guidance

In addition to the Planning Practice Guidance, various other forms of guidance and standards are available to help manage biodiversity through the development process. Of particular note is *British Standard BS42020:2013 Biodiversity – Code of practice for planning and development*,¹⁰ published in August 2013, which replaces *Planning to Halt the Loss of Biodiversity (PAS 2010): Biodiversity conservation standards for planning in the United Kingdom*.

This document is designed to complement the National Planning Policy Framework and is aimed at organisations concerned with ecological issues throughout the planning process, including local authorities, developers, planners and ecological consultants. It sets out clear, step-by-step recommendations on how to incorporate biodiversity considerations at all stages of the planning process, with a focus on the provision of consistent, high quality and appropriate ecological information, effective decision making, and high standards of professional conduct and competence.

⁹ DCLG (2014). Planning Practice Guidance. Available from: <http://planningguidance.planningportal.gov.uk/>

¹⁰ The British Standards Institution (2013). BS42020:2013 Biodiversity – Code of practice for planning and development. Available from: <http://shop.bsigroup.com/ProductDetail/?pid=00000000030258704>

Local Level

The London Plan¹¹ and adopted London Borough of Hillingdon Local Plan¹² (2012) sets out the overarching objectives and planning policy for the Borough. Those of relevance to ecology are described below.

The London Plan includes a specific policy on biodiversity and access to nature, **Policy 7.19**. This states the following considerations with regards to planning decisions:

Development proposals should:

- “*wherever possible, make a positive contribution to the protection, enhancement, creation and management of biodiversity*”;
- “*prioritise assisting in achieving targets in biodiversity action plans (BAPs)...and/or improve access to nature in areas deficient in accessible wildlife site*”;
- “*not adversely affect the integrity of European sites, and be resisted where they have significant adverse impact on European or nationally designated sites or on the population or conservation status of a protected species, or a priority species or habitat identified in a UK, London or appropriate regional BAP or borough BAP.*”

On Sites of Importance for Nature Conservation development proposals should:

- “*give the highest protection to sites with existing or proposed international designations (SACs, SPAs, Ramsar sites) and national designations (SSSIs, NNRs) in line with the relevant EU and UK guidance and regulations*”;
- “*give strong protection to sites of metropolitan importance for nature conservation (SMIs). These are sites jointly identified by the Mayor and boroughs as having strategic nature conservation importance*”;
- “*give sites of borough and local importance for nature conservation the level of protection commensurate with their importance*”.

When considering proposals that would affect directly, indirectly or cumulatively a site of recognised nature conservation interest, the following hierarchy will apply:

- “*avoid adverse impact to the biodiversity interest*”;
- “*minimize impact and seek mitigation*”;
- “*only in exceptional cases where the benefits of the proposal outweigh the biodiversity impacts, seek appropriate compensation*”.

The London Plan also acknowledges the importance of trees and woodlands in **Policy 7.21** and stipulates that “*existing trees of value should be retained and any loss as the result of development should be replaced following the principle of ‘right place, right tree’*. Wherever appropriate, the

¹¹<https://www.london.gov.uk/priorities/planning/london-plan>

¹²<http://www.hillingdon.gov.uk/23501>

planting of additional trees should be included in new developments, particularly large-canopied species”.

Policy EM7 of London Borough of Hillingdon’s Local Plan sets out how Hillingdon’s biodiversity and geological conservation will be preserved and enhanced with particular attention given to:

- *“the protection and enhancement of all Sites of Importance for Nature Conservation. Sites with Metropolitan and Borough Grade 1 importance will be protected from any adverse impacts and loss. Borough Grade 2 and Sites of Local Importance will be protected from loss with harmful impacts mitigated through appropriate compensation”;*
- *“the protection and enhancement of populations of protected species as well as priority species and habitats identified within the UK, London and the Hillingdon Biodiversity Action Plan”;*
- *“appropriate contributions from developers to help enhance Sites of Importance for Nature Conservation in close proximity to development and to deliver/assist in the delivery of actions within the Biodiversity Action Plan”;*
- *“the provision of biodiversity improvements from all development, where feasible”;*
- *“the provision of green roofs and living walls which contribute to biodiversity and help tackle climate change”;*
- *“the use of sustainable drainage systems that promote ecological connectivity and natural habitats”.*

BIODIVERSITY PLANS AND STRATEGIES

The NERC Act 2006 places a duty on local authorities to have due regard to biodiversity when exercising their normal functions, and the NPPF requires planning policies to “promote the preservation, restoration and re-creation of priority habitats, ecological networks and the protection and recovery of priority species populations, linked to national and local targets” (paragraph 117). These targets are set out in a range of biodiversity plans and strategies from the international through to the district level. An overview of the key biodiversity plans and strategies in the UK, and their implications for development, are set out below.

National level

The UK Biodiversity Action Plan 2007 (UK BAP) has been superseded by the *UK Post-2010 Biodiversity Framework*¹³ and individual national biodiversity strategies. The UK framework sets out the overarching vision, strategic goals and priority activities for the UK’s work towards international biodiversity targets (known as the ‘Aichi Targets’), as agreed by 192 parties at the UN Convention on Biological Diversity in 2010. The Framework’s overall vision is that “by 2050, biodiversity is valued, conserved, restored and wisely used, maintaining ecosystem services, sustaining a healthy planet and delivering benefits essential for all people.”

¹³ JNCC and Defra (on behalf of the Four Countries’ Biodiversity Group) (2012). *The UK Post-2010 Biodiversity Framework*. Available from: http://jncc.defra.gov.uk/pdf/UK_Post2010_Bio-Fwork.pdf

In England, *Biodiversity 2020: A strategy for England's wildlife and ecosystem services*¹⁴ is the national biodiversity strategy, which has the stated mission "(...)to halt overall biodiversity loss, support healthy well-functioning ecosystems and establish coherent ecological networks, with more and better places for nature for the benefit of wildlife and people." In order to focus activity and assess performance in achieving this mission, Biodiversity 2020 sets objectives relating to terrestrial and marine habitats and ecosystems, species and people. These include:

- Establishing coherent and resilient ecological networks, described as "a network of high quality sites, protected by buffer zones, and connected by wildlife corridors and smaller, but still wildlife-rich, 'stepping-stone' sites";
- Taking targeted action for the recovery of priority species whose conservation is not delivered through wider habitat-based and ecosystem measures ;
- Establishing Nature Improvement Areas and Marine Protected Areas;
- Bringing more SSSIs into favourable condition;
- Reducing environmental pressures by working with sectors such as agriculture, forestry, planning and development.

A network of 48 Local Nature Partnerships have been set up across England to help deliver these objectives.

Note that as these changes are still relatively new, some local plans and government guidance documents/circulars still refer to the UK BAP and 'UK BAP priority habitats and species'. These habitats and species are listed under Section 41 of the NERC Act, and **remain a material consideration in the planning process**. They are now described as 'Species/Habitats of Principal Importance', though they are also commonly referred to as 'Section 41 Species/Habitats' or simply 'Priority Species/Habitats'. Further guidance is given in the relevant sections below.

Local level

Despite the changes to national level biodiversity policy described above, county and district level BAPs still apply. The **London Biodiversity Action Plan**¹⁵ consists of targets for maintaining, restoring and creating priority habitats and protecting priority species.

Delivering Biodiversity Opportunities

Where practicable, opportunities should also be sought to achieve a **net gain** (i.e. enhancement) of biodiversity. Support for biodiversity enhancement is provided in the Public Authority 'Biodiversity Duty' under the NERC Act 2006 and in the key principles of the NPPF, as described above.

Enhancement projects may not just benefit biodiversity. There are many functional benefits to be won from strategically planned green infrastructure projects such as semi-natural urban green spaces, sustainable urban drainage schemes (SUDS) and green roofs. Planning conditions and

¹⁴ DEFRA (2011). *Biodiversity 2020: A strategy for England's wildlife and ecosystem services*. Available from: <https://www.gov.uk/government/publications/biodiversity-2020-a-strategy-for-england-s-wildlife-and-ecosystem-services>

¹⁵ <http://www.lbp.org.uk/londonap.html>

obligations are increasingly being used to mandate biodiversity enhancement on or off a development site, either through design or through financial support.

Many ideas for incorporating ecological enhancement into planning and development can be found in the biodiversity action plans and/or strategies relevant to the policy or development area, or through initiatives led by the Local Nature Partnership. At the national level, twelve Nature Improvement Areas were set up in 2012 in order to deliver landscape-scale conservation objectives, and many regions and counties have also identified and mapped 'Biodiversity Opportunity Areas', 'Nature Maps' or 'Strategic Nature Areas' where conservation action such as habitat creation and restoration will deliver the greatest benefits for biodiversity.

Other sources of ideas and opportunities include schemes led by conservation NGOs, such as the Wildlife Trusts' 'Living Landscapes' and the RSPB's 'Futurescapes', which are working in partnership with landowners and local communities across the country to restore ecosystems and ecological networks.

SITES DESIGNATED FOR THE CONSERVATION OF NATURE

There is a hierarchy of nature conservation sites which is based on the level of statutory protection and the administrative level of importance. Other features of nature conservation interest outside designated sites may also be a material consideration in the determination of planning applications.

Statutory Sites

Internationally Important Sites

Ramsar Sites, Special Areas of Conservation (SAC) and Special Protection Areas (SPA)

The Conservation of Habitats and Species Regulations 2010 (as amended) provide the primary legal basis for the protection of Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) in Great Britain. Ramsar sites are, as a matter of national planning policy, subject to the same strict protection. Any plan or project considered likely to affect a SAC, SPA or Ramsar site must be subject to an assessment, as set out under Regulation 61, and Regulation 102 in respect of Land Use Plans.

Ramsar sites are wetlands of international importance. The majority of terrestrial Ramsar sites in England are also notified as SPAs and/or Sites of Special Scientific Interest (SSSIs).

SACs are sites which support internationally important habitats and/or species listed as being of Community Importance in the Annexes of the EU Habitats Directive 1992. SPAs are sites which support internationally important numbers of bird species listed as being of Community Importance in the Annexes of the EU Birds Directive 1979. Together, SACs and SPAs make up the Natura 2000 network of Sites of Community Importance throughout Europe.

Development Control

Development proposals or damaging activities which may affect a European or international site will be subject to rigorous examination by local planning authorities (or other 'competent authority'), through a process commonly referred to as 'Habitats Regulations Assessment'. The onus is on the developer to provide the necessary information to inform this process.

Under the Conservation of Habitats and Species Regulations 2010 (as amended), the competent authority must determine in the first instance whether a proposed development is likely to have a significant effect on the European or Ramsar site, either alone or in combination with other plans and projects.

If a likely significant effect cannot be precluded on the basis of objective information, the competent authority must undertake an 'Appropriate Assessment' to fully assess these implications against the site's conservation objectives. A precautionary approach must be taken with respect to determining whether or not there would be an impact, and the appropriate nature conservation body (in most cases Natural England) should be consulted. Except in certain exceptional circumstances prescribed by the Regulations where there are imperative reasons of overriding public interest for allowing a development to proceed, the competent authority may not undertake or authorise the plan or project until they have established (based on the conclusions of the Appropriate Assessment) that the activity will not adversely affect the integrity of the European or Ramsar site. This should be the case where no reasonable scientific doubt remains as to the absence of such effects.

Nationally Important Sites

Sites of Special Scientific Interest (SSSI)

The Wildlife and Countryside Act 1981 (as amended) and the CROW Act 2000 provide the primary legal basis for the protection of SSSI. These sites have been designated to capture the best examples of England's flora, fauna, geological or physiographical diversity.

National Nature Reserve (NNR)

NNRs are declared under the National Parks and Access to the Countryside Act 1949 and the Wildlife and Countryside Act 1981, as amended by Environmental Protection Act 1990. They are managed to conserve their habitats or to provide special opportunities for scientific study of the habitats communities and species represented within them. NNRs represent the very best parts of England's SSSIs. The majority of NNRs also have European nature conservation designations.

Development Control

A development proposal that is likely to affect nationally important sites will be subject to special scrutiny by the local authority and Natural England. Certain operations may be permitted. Any potentially damaging operations that could have an adverse effect directly or indirectly on the special interest of the site will not be permitted unless the reasons for the development clearly outweigh the nature conservation and/or geological value of the site itself and the national policy to safeguard such sites.

Regionally & Locally Important Sites

Local Nature Reserves

Local Nature Reserves are declared by local authorities under the National Parks and Access to the Countryside Act 1949 as living green spaces in towns, cities, villages and countryside. They provide opportunities for research and education, or for simply enjoying and having contact with

nature. LNRs are usually protected from development through local planning documents which may be supplemented by local by-laws.

Non-Statutory Sites

Local Wildlife Sites

Local authorities may designate non-statutory sites for their nature conservation value based on important, distinctive and threatened habitats and species within a national, regional and local context. These sites are not legally protected but are given some protection through the planning system. These sites may be declared as 'County Wildlife Sites', 'Sites of Importance for Nature Conservation' (SINCs), or 'Sites of Nature Conservation Importance' (SNCIs) in local and structure plans. Non-statutory sites are a material consideration when planning applications are being determined. The precise amount of weight to be attached, however, will take into account the position of the site in the hierarchy of sites as set out above. Further information is typically provided in local level planning policy.

Nature Conservation in Areas Outside Designated Sites

Various other features exist outside designated sites that are important for the conservation of nature and which are a material consideration in the planning system.

Habitats of Principal Importance in England

Fifty-six habitat types have been identified as Habitats of Principal Importance in England for the conservation of biodiversity under Section 41 of the NERC Act 2006¹⁶. The NPPF, Government Circular 06/05, good practice guidance and the NERC Act place a clear responsibility on planning authorities to further the conservation of these habitats. They can be a material consideration in planning decisions, and so developers are advised to take reasonable measures to avoid or mitigate impacts to prevent their net loss and to enhance them where possible. Additional guidance to developers is typically provided in local level planning policy.

Networks of Natural Habitats

Networks of natural habitats link sites of biodiversity importance and provide routes or stepping stones for the migration, dispersal and genetic exchange of species in the wider environment. Examples include rivers with their banks, traditional field boundary systems (such as hedgerows), ponds and small woods. Local planning authorities are encouraged through the NPPF to maintain networks by avoiding or repairing the fragmentation and isolation of natural habitats through planning, policies and development control.

¹⁶ The S41 List of Species & Habitats of Principal Importance in England is available from: <http://www.naturalengland.org.uk/ourwork/conservation/biodiversity/protectandmanage/habsandspeciesimportance.aspx>