

TECHNICAL ADVICE NOTE

BIODIVERSITY ASSESSMENTS AND THE PLANNING PROCESS



1. Background

The presence of protected species is a material consideration in planning decisions. The National Planning Policy Framework (NPPF, 2012) sets out the Government's national planning policies on conserving and enhancing the natural environment. It is accompanied by ODPM Circular 06/2005 which explains the statutory obligations of planning authorities towards biodiversity in the planning process.

Paragraph 109 of the NPPF states:

'the planning system should contribute to and enhance the natural and local environment by:

- *recognising the wider benefits of ecosystem services;*
 - *minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.'*
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Paragraph 118 of the NPPF states:

'When determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:

- *if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused; and*
 - *opportunities to incorporate biodiversity in and around developments should be encouraged.'*
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This guidance is consistent with the Conservation of Habitats and Species Regulations 2010 which places a duty on all competent authorities to have regard to the requirements of the Habitats Directive in the exercise of their functions. It is implicit in this statement that the presence or otherwise of protected species is understood and informed by survey before planning decisions can be made. Clearly it would not be reasonable to request a survey for all planning decisions, so further guidance is given in ODPM Circular 06/2005.

Section 99 of ODPM Circular 06/2005 states:

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

2. The legal obligations of Local Authorities

AVDC's statutory duties relating to biodiversity include the following:

- To have regard, in exercising its functions (so far as is consistent with the exercise of its functions) to the purpose of conserving biodiversity (s40 Natural Environment and Rural Communities Act 2006);
- The duty under regulation 9(3) of the Conservation of Habitats and Species Regulations 2010 on competent authorities (including local authorities) 'to have regard (in the exercise of their functions) to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions'; and
- Regulation 9A of the Conservation of Habitats and Species Regulations 2010 requires local authorities 'to take such steps in the exercise of their functions as they consider appropriate to contribute to the preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds'.

3. Biodiversity as a material planning consideration

AVDC has developed a procedure, based upon best practise guidance generated by Natural England (the statutory nature conservation organisation) and ODPM, designed to screen applications for development for potential presence of protected and priority species and habitats. The intention of this procedure is to fulfil the requirements of ODPM Circular 06/2005 so that surveys will only be requested when there is a 'reasonable likelihood' of protected and priority species and habitats being present and negatively affected by the development.

This consists of a checklist/screening criteria, which identifies site features where protected and priority species and habitats are likely to be present, thus filtering out applications worthy of further investigation. Applications falling within the criteria of this checklist are passed to our Ecology Officer, who will assess each application.

If it is deemed there is a 'reasonable likelihood' of protected or priority habitats and species the application will not be validated without supporting ecology surveys and information. This information can be provided by a suitably qualified ecologist. Prior to engaging an ecologist consultant, our Ecology Officer can conduct a site visit to determine if an ecological survey and information is required.

By providing this service it is expected that ecological consultants will be engaged only when absolutely necessary, thereby minimising negative survey results and extra expense/delay for applicants.

4. The Application

We encourage applicants to arrange a visit by our Ecology Officer if the development or site meets any of the screening criteria included in section 7 of this document or they suspect or know protected species and/or priority habitats are present.

Applications meeting any of the screening criteria will not be registered without an accompanying ecological survey unless the Ecology Officer has assessed the site and determined that an ecological survey is not required. This procedure is consistent with the guidance provided by the Communities and Local Government publication 'The Validation of Planning Applications: Guidance for local planning authorities. December 2007'.

Some surveys for protected species and assessment of the implications of development on their populations is frequently seasonally restricted, see section 8.

5. Planning Application Process

It is often impossible to provide the necessary protected species information within the Central Government target timeframe for the determination of planning applications. For example if the application has been submitted at the wrong time of year to conduct a particular type of ecological survey.

If an application has been registered, but requires an ecological survey and the necessary information has not or cannot be submitted due to seasonal constraints, the applicant will be asked to decide whether to withdraw the application and resubmit with the appropriate information or ask for the application to be determined as submitted. If this information is not supplied, the application is likely to be refused because AVDC will be unable to address all material considerations in making a decision.

ODPM Circular 06/2005 is clear that surveys cannot be conditioned except in exceptional circumstances because all relevant material considerations may not have been addressed in making the decision.

6. Assessment of Ecological Survey

Once survey information and, if necessary, mitigation/compensation proposals have been submitted they will be scrutinised by our Ecology Officer and Natural England (where appropriate). It will be assessed whether the information has been gathered to the requisite standard (in accordance with national guidance) and if the mitigation/compensation is sufficient to prevent harm to biodiversity interests.

If the survey and mitigation/compensation proposals are satisfactory they will be conditioned in the planning approval, which is consistent with ODPM Circular 06/2005. Where possible mitigation and compensation measures will be expected to be in place before activities that may disturb protected species are commenced. Conditions will state that the development can only proceed in accordance with the approved mitigation/compensation strategy. Conditions will be considered discharged after consideration by our Ecology Officer and where appropriate a testimony from the ecological consultant affirming that the strategy has been applied appropriately.

7. Screening criteria and their reason for selection

Barn conversion

There is a high incidence of occupation by bats and nesting birds of barns. Studies in Hertfordshire have shown that up to 80% of timber framed barns surveyed had evidence of bat occupation (Briggs, 1995). A study in the North of England (McCausland, 2003) indicated that stone framed barns that exhibit no evidence of bats regularly contain resident populations. In this study up to 10 times more roosts were located using night vision equipment than were revealed by conventional survey methodologies alone.

Barns with the following features are highly likely to require a survey: traditional barns (wooden frame, stone framed, tiled roof), brick barns (2 storey, tiled roof), mortise and tenon joints constructed from green wood, in close proximity to woodland, water or good foraging habitat.

Steel framed barns with asbestos walls and roof, or modern single storey are unlikely to require survey

Change of use with associated works involving alterations to the roof structure

Roof spaces exhibiting certain features and the spaces underneath tiles are favoured roosting habitats for particular bat species. The condition of surrounding habitat may increase or decrease the likelihood that bats are present and can be assessed during site visit by our Ecology Officer.

Loft conversion

Roof spaces exhibiting certain features are favoured roosting habitats for particular bat species.

Applications impacting roofs with loft spaces having a floor to apex height of over 1.5 metres and within 150 metres of good foraging habitat.

Extensions abutting roof or gable ends

If bats are roosting in a loft space or under tiles it is possible that an extension which affects the roosting place or exit point can breach the legislation protecting bats. Re roofing and the use of inappropriate materials such as breathable membranes can also cause death and disturbance to bats and their roosts.

Applications impacting roofs with the following features are likely to require a survey: extensions abutting a gable apex within 150 metres of good foraging habitat, roof stripping of clay or slate tiles with numerous entry points within 150 metres of good foraging habitat, south, south east, south west facing hanging tiles abutting a roof within 150 metres of good foraging habitat.

Extensions abutting a gable end 1 metre below the apex and roof stripping of close fitting concrete tiles are unlikely to require a survey.

Demolition

Demolition represents a serious threat to protected species that may be using both internal and external features of a building. Certain bat species are known to form maternity roosts almost exclusively in buildings (of all ages).

Applications within 150 metres of good foraging habitat with any of the features likely to require survey listed above.

New build on greenfield and brownfield sites

Greenfield sites will be scrutinised for substantial biodiversity interest, including protected species and priority habitats. Planning decisions are expected to preserve this interest or mitigate/compensate for its loss. Brownfield habitats can be important areas for biodiversity, particularly for invertebrates and reptiles/amphibians.

Within 250 metres of a pond

Surveys in North Buckinghamshire show that Great Crested Newts can be present in 50% of ponds in suitable areas. Great Crested Newts spend the majority of their life on land within suitable terrestrial habitats such as woodland, hedgerows, rough grassland and scrub around and between ponds.

Applications are likely to require survey if they exhibit good connectivity to a pond with suitable habitat or in an area with records of Great Crested Newt, so would be likely to result in breaches of the legislation if Great Crested Newt are present on the development site.

Applications are unlikely to require survey if by presuming presence in the surrounding area a safe working strategy can be put forward that would avoid breaching the legislation if they were present e.g. reasonable avoidance measures (RAMs).

Since 2018 an alternative option is provided across the South Midlands, including Aylesbury Vale, where NatureSpaceUK can provide assessments and mitigation for Great Crested Newts. More information can be found here: <http://naturespaceuk.com/>

Within 10 metres of a river or stream

Rivers and streams are important movement corridors for a wide range of fauna and listed as priority habitats in the NERC Act 2006. They are also the favoured habitat of Otters and Water Vole, which are listed on the UK Biodiversity Action Plan.

Works to bridges, underground structures, and tunnels

Bridges, underground structures, and tunnels are favoured roosting and hibernating habitats for certain species of bat. Great Crested Newts also frequent damp areas such as underground structures and tunnels particularly for hibernation purposes.

Applications are likely to require survey for brick built bridges, underground structures, and tunnels within 150 metres of good foraging habitat, structures with a height to highest point of over 1.5 metres.

Applications are unlikely to require survey if steel framed bridge, and culverts below 1.5 metres in height.

Work on a designated site e.g. Local Wildlife Site

Local Wildlife Sites represent the most important sites for wildlife (outside SSSI) and are protected in the planning process.

8 Seasonal survey constraints

Badger

- All year, optimum time of spring or early autumn/winter.

Bat

- Inspection surveys of buildings and structures for roosts – all year (evidence will be greatest during active periods).
- Bat detector surveys for dusk/dawn emergence/re-entry – May to August (optimal where maternity roosts may be present). April and September (sub-optimal).
- Activity Surveys (for larger developments – including Wind Turbine development) - mid March to mid October (with surveys being conducted throughout the active period in accordance with Bat Conservation Trust survey guidance for onshore wind turbines).
- Hibernation surveys – December to February (optimal).

Birds

- Breeding bird survey – March to late June.
- Barn owls - All year round.

Dormouse

- Presence absence surveys – nest tube – April to November (multiple visits with key months being May, August and September).

- Nut search – September to December.

Great Crested Newts

- Presence – absence surveys of ponds – up to four surveys between mid-March and mid June
- for (with at least two surveys between mid-April and mid-May).
- Population estimates of ponds – additional two surveys between mid-March and mid June for adults (with at least one surveys between mid-April and mid-May).
- Pond surveys between June and October may identify 'presence' only as larvae and juveniles can still be found in ponds.

Otter

Presence – absence surveys – all year, optimum survey period mid February to November.

Reptiles

Presence – absence surveys – March to October (optimum periods April to early June and September). Up to seven survey visits in suitable weather conditions.

Water Vole

Presence - absence surveys – optimum survey period April to October.

9 Ecology reports

Reports submitted with planning applications must include the following:

- Evidence of the appointed ecologists credentials as a 'suitably qualified ecologist'.
- Details of survey dates, times and environmental conditions (as appropriate).
- Details of methods used during ecological surveys. If the survey methods deviate from published 'best practice guidance', this must be justified within the report or agreed in discussion with our Ecology Officer.
- Records of target species from the local records office or appropriate recording group e.g. North Bucks Bat Group. Records supplied from NBN are not acceptable and contravene their terms and conditions of use.