

When local authority planners draw up their recommendations on whether to permit or refuse a planning applications, they are required to take into account the following national planning policies and laws.

| Summary | The actual policy |
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| <p>Planning application decisions must be determined in accordance with –</p> <ul style="list-style-type: none"> • the Local Plan (unless there are serious planning policy issues which indicate the plan should not be followed) <p>and must reflect -</p> <ul style="list-style-type: none"> • legal requirements | <p><i>“Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.” (NPPF¹ 2 and NPPF 47)</i></p> <p><i>“The National Planning Policy Frameworkis a material consideration* in planning decisions.” (NPPF 2)</i></p> <p><i>“Planning policies and decisions must also reflect relevant international obligations and statutory requirements”.</i> (NPPF 2)</p> <p>Circular 06/2005 provides further guidance in respect of statutory obligations for biodiversity conservation (NPPF footnote 61)</p> <p>Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that the determination of applications for permission under the planning Acts must be made in accordance with the Development Plan unless material considerations indicate otherwise.</p> <p>(*for more on ‘material considerations’ see notes below)</p> |
| <p>Planning applications that accord with an up-to-date Local Plan should be approved without delay</p> | <p><i>“Plans and decisions should apply a presumption in favour of sustainable development. For decision-taking this means: c) approving development proposals that accord with an up-to-date development plan without delay” (NPPF 11)</i></p> |
| <p>Planning applications that conflict with an up-to-date Local Plan should not usually be granted</p> | <p><i>“Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.” (NPPF 12)</i></p> |
| <p>Planning applications should be granted in cases where the Local Plan policies, against which they</p> | <p><i>“Plans and decisions should apply a presumption in favour of sustainable development. For decision-taking this means:</i></p> |

¹ NPPF = National Planning Policy Framework

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| <p>need to be tested, are out-of-date, unless –</p> <ul style="list-style-type: none"> • NPPF policies on ‘areas or assets of particular importance’ provide a clear reason for refusal • adverse impacts would significantly and demonstrably outweigh the benefits, taking the NPPF policies as a whole | <p><i>d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:</i></p> <ul style="list-style-type: none"> <i>i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposal, or</i> <i>ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”</i> (NPPF 11) <p>‘Out-of-date’ would mean, for housing applications, situations where the local planning authority (LPA) cannot demonstrate a 5 year supply of deliverable housing sites. (NPPF footnote 8)</p> <p>‘Areas or assets of particular importance’ are – habitats sites (i.e. SAC, SPA, SSSI), irreplaceable habitats (includes ancient woodland, ancient and veteran trees, lowland fen, blanket bog, sand dunes, salt marsh, limestone pavement), Local Green Space, Green Belt, AONB, National Park, Heritage Coast, designated heritage assets, areas at risk of flooding or coastal change. (NPPF footnote 7)</p> |
| <p>Where an out-of-date Local Plan is in the process of being revised, its policies will carry no weight at the early stage of preparation. Weight, however, will increase as the Local Plan progresses towards Adoption, with objections resolved and policies consistent with the NPPF</p> | <p><i>“Local planning authorities may give weight to relevant policies in emerging plans according to:</i></p> <ul style="list-style-type: none"> <i>a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given); and</i> <i>b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and</i> <i>c) the degree of consistency of the relevant policies in the emerging plan to this Framework the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given.”</i> (NPPF 48) |
| <p>Planning decisions should -</p> <ul style="list-style-type: none"> • protect and enhance sites of biodiversity value according to their statutory status or identified quality in the Local Plan • minimise impacts on and provide net gains for biodiversity • establish coherent and resilient ecological networks | <p><i>“Planning policies and decisions should contribute to and enhance the natural and local environment by:</i></p> <ul style="list-style-type: none"> <i>a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);</i> <i>d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;”</i> (NPPF 174) <p>Sites of biodiversity value (with statutory status) are –</p> <ul style="list-style-type: none"> • Special Areas of Conservation (SAC) |

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| | <ul style="list-style-type: none"> • Special Protection Areas (SPA) • Sites of Special Scientific Interest (SSSI) <p>Sites of biodiversity value (with identified quality) are -</p> <ul style="list-style-type: none"> • County Wildlife Sites (CWS) <p><i>Ecological Networks</i> include –</p> <ul style="list-style-type: none"> • sites of biodiversity value (above) • other habitat (including hedgerows, streams, woodland) • sites identified for habitat restoration |
| <p>In National Parks, conservation and enhancement of wildlife is an important consideration and should be given great weight. In AONBs, it's an important consideration.</p> | <p><i>“Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Parks and the Broads.” (NPPF 176)</i></p> |
| <p>Local authorities should apply the following principles when determining planning applications –</p> <ul style="list-style-type: none"> • development which could cause significant harm to biodiversity should be relocated, or if this is not possible, then the harm should be minimised so that it is no longer significant. If this can't be achieved, as a last resort the significant harm must be compensated for. Failing that, planning permission should be refused (subject to the policies of the NPPF being taken as a whole). • development which would adversely affect an SSSI should normally not be permitted • development which would cause loss or deterioration of irreplaceable habitats should usually be refused • encouragement should be given to incorporate biodiversity improvements in and around developments to secure measurable net gains for biodiversity | <p><i>“When determining planning applications, local planning authorities should apply the following principles:</i></p> <p><i>a) if significant harm to biodiversity 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;</i></p> <p><i>b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest.</i></p> <p><i>c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists</i></p> <p><i>d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for</i></p> |

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| | <p><i>biodiversity or enhance public access to nature where this is appropriate.”</i> (NPPF 180)</p> <p><i>‘Wholly exceptional reasons’ in c) above, would include – “infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills), where the public benefit would clearly outweigh the loss of deterioration of habitat.”</i> (NPPF footnote 63)</p> |
| Planning decisions should limit the impact of light pollution on nature conservation | <p><i>“Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:</i></p> <p><i>c) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.”</i> NPPF 185</p> |
| The presumption in favour of development that accords with an up-to-date Local Plan does not apply where the planning application is likely to have a significant effect on an SAC or SPA. | <p><i>“The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.”</i> (NPPF 182)</p> <p><i>‘A habitats site’ is any site which would be included within the definition at regulation 8 of the Conservation of Habitats and Species Regulations 2017, including candidate Special Areas of Conservation, Special Protection Areas and any relevant Marine Sites.</i></p> |

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| Legal requirements | |
| Government Circular 06/2005 Biodiversity and Geological Conservation – Statutory Obligations and their impact within the Planning System | <p>Circular 06/2005 provides administrative guidance on the application of the law relating to planning and nature conservation. However, Circular 06/2005 is now out-of-date. Furthermore, legal requirements are entangled in case law.</p> <p>The brief description below is therefore only an attempt to simplify a complicated picture.</p> <p>The Circular gives guidance under 4 sections – Part 1: internationally designated sites Part 2: nationally designated sites Part 3: habitats and species outside designated sites Part 4: species protected by law</p> |

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| <p>Part 1: internationally designated sites: Special Areas of Conservation (SAC) and Special Protection Areas (SPA)</p> <p>SACs and SPAs were originally designated and protected under the EU’s Habitats Directive. Their protection is being maintained by their incorporation into UK law under the Conservation of Habitats and Species Regulations 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.</p> <p>These are known, for short, as the Habitat Regulations.</p> | <p>The UK government has issued the following online guidance on how plans and projects (including planning applications) affecting an SAC or SPA should go through a Habitat Regulations Assessment (HRA) process.</p> <p><u>Habitat regulations assessments: protecting a European Site 24.2.21 (UK Govt online guidance)</u></p> <p>HRAs can comprise 3 stages, depending on the results of the first stage. The stages are –</p> <p><u>1. Screening</u> The local authority should check whether the proposal is likely to have a significant effect on the SAC or SPA’s conservation objectives. Mitigation and compensation measures should not be taken into account at this stage. If it is not likely to have a significant effect, stages 2 and 3 are not required.</p> <p><u>2. Appropriate Assessment</u> The local authority should assess the likely significant effects of the proposal in more detail and identify ways to avoid or minimise any effects. The local authority will request relevant information from a planning applicant. The local authority must take a precautionary approach when reaching its decision, and if it cannot rule out the possibility of an adverse effect on an SAC/SPA conservation objectives, it must refuse the proposal unless an exemption (stage 3: derogation) is justified.</p> <p><u>3. Derogation test</u> Derogation allows a plan or project which has failed stage 2, to go ahead. But 3 legal tests need to be satisfied, in the following order -</p> <ol style="list-style-type: none"> i. There are no feasible alternative solutions that would be less damaging or avoid damage to the site. ii. The proposal needs to be carried out for imperative reasons of overriding public interest. Private interests are not relevant, here. (National strategic plans, policy statements and major projects are more likely to be in the public interest and be able to show they are essential and override the conservation objectives of SACs and SPAs. Plans or projects that only provide short-term or very localised benefits are less likely to be able to show imperative reasons of overriding public interest). iii. The necessary compensatory measures can be secured. These measures will need to fully offset the damage which will or could be caused to the site. <p>The local planning authority (LPA) should consult Natural England (the government’s statutory natural environment adviser). Whilst Natural England may advise, it is for the LPA to decide.</p> |
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| | <p>Further details of this process can be found in the government's online guidance, cited above.</p> |
| <p>Part 2: nationally designated sites – Sites of Special Scientific Interest (SSSI)</p> | <p>Section 28G of the Wildlife and Countryside Act imposes a general duty on LPAs to take reasonable steps to further the conservation and enhancement of the special interest features of SSSI when drawing up Local Plans and making decisions on planning applications.</p> <p>LPAs are expected to give very careful consideration as to whether a proposal is likely to damage the special interest features of an SSSI and must ensure that they avoid or at least minimise adverse effects. They should consult Natural England and take its advice into account.</p> |
| <p>Part 3: Habitats and Species outside designated sites</p> | <p><u>Habitats and Species of Principal Importance for Conserving Biodiversity</u></p> <p>The potential effects of a development on habitats and species listed as being of principal importance for conserving biodiversity in England (under section 41 of the Natural Environment and Rural Communities Act 2006) are a material consideration in the making of planning decisions.</p> <p><u>Habitats of Principal Importance</u></p> <p>There are over 50 such habitats but only a relatively small number are likely to be encountered in planning proposals They are -</p> <ul style="list-style-type: none"> • arable field margins • traditional orchards • hedgerows • coastal saltmarsh • intertidal mudflats • ponds • rivers • lowland meadows • purple moor grass and rush pasture • lowland heathland • open mosaic habitats on previously developed land • coastal and floodplain grazing marsh • lowland mixed deciduous woodland • wet woodland • wood-pasture and parkland <p><u>Species of Principal Importance</u></p> <p>There are over 900 such species but only a relatively small number are likely to be encountered in planning proposals. They are -</p> <p><u>mammals</u></p> <ul style="list-style-type: none"> • bat (barbastelle) • bat (Bechstein's) |

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| | <ul style="list-style-type: none">• bat (brown long eared)• bat (greater horseshoe)• bat (lesser horseshoe)• bat (noctule)• bat (soprano pipistrelle)• hare (brown)• dormouse• hedgehog• otter• water vole <p><u>amphibians</u></p> <ul style="list-style-type: none">• toad (common)• newt (great crested) <p><u>reptiles</u></p> <ul style="list-style-type: none">• lizard (common)• slow worm• snake (adder)• snake (grass) <p><u>birds</u></p> <ul style="list-style-type: none">• bullfinch• ciril bunting• dunnock• herring gull• lesser spotted woodpecker• sky lark• song thrush• sparrow (house)• sparrow (tree)• starling <p><u>Local Sites</u></p> <p>Circular 06/2005 states that Defra will be issuing guidance on a system to identify local wildlife sites and on their management and protection. This guidance was issued in 2006, entitled Local Sites: Guidance on their identification, selection and management. However, it provides no planning guidance. Local Sites in Devon are known as County Wildlife Sites. Most local planning authorities in Devon have inserted policies regarding development in County Wildlife Sites, in their Local Plans.</p> <p><u>Hedgerows</u></p> <p>The Hedgerows Regulations 1997 set out the criteria to be used by LPAs in determining whether a hedgerow is important. The aim is to protect important hedgerows in the countryside by controlling their removal through a system of notification to LPAs, which administer the Hedgerows Regulations.</p> <p><u>Trees and woodlands</u></p> |
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| | <p>When granting planning permission for any development, LPAs are under a duty, where appropriate, to impose planning conditions to ensure adequate provision is made for the protection or planting of trees, and to make Tree Preservation Orders (TPOs) as appear necessary in the circumstances.</p> <p><u>Local Sites</u> Circular 06/2005 states that Defra will be issuing guidance on a system to identify local wildlife sites and on their management and protection. This guidance was issued in 2006, entitled Local Sites: Guidance on their identification, selection and management. However, it provides no planning guidance. Local Sites in Devon are known as County Wildlife Sites. Most local planning authorities in Devon have inserted policies regarding development in County Wildlife Sites, in their Local Plans.</p> |
| <p>Part 4: species protected by law</p> | <ul style="list-style-type: none"> • The presence of a protected species is a material planning consideration if a development proposal would be likely to harm it or its habitat. • The breach of protected species legislation can give rise to a criminal offence. <p>Whether a protected species is present, how it will be affected, and any necessary measures to protect the species, should be established, through conditions and/or planning obligations, before the permission is granted.</p> <p>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.</p> <p>LPAs should –</p> <ul style="list-style-type: none"> • consult Natural England • consider attaching planning conditions or entering into planning obligations under which the developer would take steps to secure the long term protection of the species • advise developers that they must comply with any statutory species protection provisions affecting the site <p>The main pieces of legislation protecting wild species are –</p> <ol style="list-style-type: none"> 1. Conservation of Habitats and Species Regulations 2. Wildlife and Countryside Act 3. animals protected under their own legislation (eg. badgers) <p><u>1. Species protected under the Conservation of Habitats and Species Regulations</u></p> <p>For the following species –</p> <ul style="list-style-type: none"> ▪ bats (all species) |

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| | <ul style="list-style-type: none"> ▪ dormouse ▪ great crested newt ▪ otter <p>it is an offence, under the Regulations to –</p> <ul style="list-style-type: none"> • deliberately kill, disturb, capture or take or destroy eggs of a protected animal or damage/destroy its breeding site or resting place. <p>This protection, however, is not absolute, because it is sometimes possible to obtain a License from Natural England which would permit these damaging activities (in effect legalising activities which would otherwise be illegal). However, Natural England can only grant the License when it considers that the applicant has shown that the following 3 tests are satisfied -</p> <ol style="list-style-type: none"> 1) the actions authorised will not be detrimental to the maintenance of the population of the species at a favourable conservation status 2) there are imperative reasons of overriding public importance. (These are reasons with such weight that they would override nature conservation interests. They have been taken to include large housing developments incorporating affordable properties, on allocated sites in a Local Plan. (Whether they override nature conservation considerations depends on the circumstances of the case). 3) there is no satisfactory alternative <p>Applications for licences (to Natural England) are distinct from planning applications (to LPAs). However, the LPA should not give planning permission if, in its opinion, Natural England would be unlikely to issue a License.</p> <p><u>2. Species protected under the Wildlife and Countryside Act 1981 (W&C Act)</u></p> <p>It is an offence under section 1(1) of the W&C Act to -</p> <ul style="list-style-type: none"> • intentionally kill, injure, or take any wild <u>bird</u> or destroy, damage, or take its nest (while in use or being built) or destroy or take its eggs <p>For the following birds (listed in Schedule 1 of the W&C Act)</p> <ul style="list-style-type: none"> ▪ barn owl ▪ circl bunting ▪ heron (purple) ▪ kingfisher ▪ peregrine <p>it is, in addition to the offences above, also an offence, under section 1(5), to -</p> <ul style="list-style-type: none"> • intentionally or recklessly disturb a bird while in, on or near a nest containing eggs or young, or while it is building its nest, or disturb their dependent young |
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| | <p>For the <u>animals</u> listed in Schedule 5 of the W&C Act</p> <ul style="list-style-type: none">▪ bats (all species)▪ dormouse▪ great crested newt▪ otter▪ water vole <p>it is an offence under section 9 to -</p> <ul style="list-style-type: none">• intentionally kill, injure or take the animal• intentionally or recklessly disturb the animal while it is occupying a structure or place it uses for shelter or protection or obstruct access to it <p>For the <u>reptiles</u> below -</p> <ul style="list-style-type: none">▪ adder▪ grass snake▪ slow worm▪ common lizard <p>it is an offence under section 9(1) of the W&C Act to -</p> <ul style="list-style-type: none">• intentionally kill or injure the reptile <p>It is not an offence to disturb the reptile or to damage its place of shelter, but where there is potential for killing and injuring offences to arise, the developer should show what measures will be taken to avoid them.</p> <p>There are other birds listed in Schedule 1 and other animals listed in Schedule 5 but since they are not usually affected by planning applications they are not mentioned here.</p> <p>There is no provision for licences to be issued for the purposes of development, under the W&C Act.</p> <p><u>3. animals protected under their own legislation</u></p> <p><u>Protection of Badgers Act 1992</u></p> <p>The badger is a commonly occurring species and is not of conservation concern. Animal welfare concerns, however, have resulted in legal protection being given under the Protection of Badgers Act, under which it is an offence to -</p> <ul style="list-style-type: none">• kill (or attempt to kill), injure or take a badger• interfere with a badger sett (including intentionally or recklessly destroying, damaging or obstructing access to, a badger sett, or disturbing a badger while it is occupying a sett) <p>A badger sett is defined as any structure or place which displays signs indicating current use by a badger.</p> <p>A licence from Natural England is required to undertake development works which would otherwise result in an offence listed above, but the developer must provide justification and show what mitigation measures will be put in place</p> |
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| <p>material considerations</p> | <p>Material considerations include all the concerns covered by the National Planning Policy Framework, i.e. -</p> <ul style="list-style-type: none"> • a sufficient supply of homes • building a strong, competitive economy • ensuring the vitality of town centres • promoting healthy and safe communities • promoting sustainable transport • supporting high quality communications • making effective use of land • achieving well-designed places • protecting Green Belt land • meeting the challenge of climate change, flooding and coastal change • conserving and enhancing the natural environment • conserving and enhancing the historic environment • facilitating the sustainable use of minerals <p>Examples of specific material considerations are –</p> <ul style="list-style-type: none"> • Government policy • proposals in the Development Plan • previous planning decisions (including appeal decisions) • nature conservation concerns • overlooking/loss of privacy/loss of light/overshadowing, caused by poor design • parking problems • highway safety concerns • traffic congestion • noise problems • poor layout and inappropriate building density • poor design, appearance and materials • inadequacy of disabled persons' access • effect on a listed building and conservation area <p>Issues which are not material considerations, include –</p> <ul style="list-style-type: none"> • loss of view • negative effect on the value of properties • rapaciousness of developer • neighbourhood feuds |