

# DIY Planning Guide

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## Why have we produced this Guide?

We have produced this guide to help those who want to know if they have reasonable grounds for objecting to a planning application because of impact on wildlife and, if so, the best way of going about it.

The guide primarily consists of the planning policy and law relating to wildlife, that you can refer to when making an objection. This will help make your objections more focused and relevant. The local authority's planning case officer should therefore be more inclined to take them into account when producing the report recommending approval or refusal of the planning application.

To find details of a planning application, you can either visit the local authority office or use the internet. You can usually search for a planning application by inputting the name of the district council followed by 'planning application search'. The council's internet site will then ask you to input the address of the development, or the planning application reference number. If you have difficulty, contact the local authority planning team for assistance.

Devon Wildlife Trust usually examines the larger proposals with the potential to create major damage to wildlife. (Unfortunately our staff resources mean that we do not usually have the scope to examine the smaller proposals). If we feel that a proposed development has not adequately mitigated any significant harm to important habitats and species, we will make our own independent recommendations or objections to the local planning authority.

## Wildlife, biodiversity and ecological importance

Many people's understanding of wildlife/planning issues is blurred by the terminology used. Most of the enquiries we receive are concerned with 'wildlife'. The planning system, however, is concerned with the wider issue of 'biodiversity'. 'Biodiversity' (biological diversity) is the all-encompassing term for the world of wildlife, ecology, nature conservation, habitats and species, designated sites, wildlife corridors and ecological networks. When decisions on planning applications are being made, it is the proposed development's effects on 'biodiversity' which are considered, not simply 'wildlife'.

Planning applications for larger developments are usually accompanied by Ecology Appraisal Reports written by professional ecologists. These ecologists recognise some aspects of biodiversity as being more important, in ecological terms, than others. For instance, some designated sites, habitats and species are rarer or more threatened and therefore carry more weight (in biodiversity terms) when the local authority deliberates the pros and cons of the development proposal.

By contrast, common species, such as rabbits, foxes and grey squirrels are not regarded as ecologically important. Similarly the fields used for the growing of vegetables and the fields of rye grass used for cattle, sheep and horses or as sports and recreation grounds, may not be ecologically important. They carry little weight (in terms of biodiversity). The hedgerows around these fields, however, may be of ecological importance.

## How does National Planning Policy protect biodiversity?

National planning policy is contained in the National Planning Policy Framework (NPPF) which was drawn up by the Department for Communities and Local Government and published in 2012. It is a material consideration<sup>1</sup> when local authorities make decisions on planning applications.

*"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."* (NPPF paragraph 118)

At first glance, this might seem quite encouraging. However, the NPPF requires planning application decisions to take account of economic and social objectives as well as environmental ones. This means that the environmental case will usually need to be very strong if it is to outweigh the economic and social benefits of a development. Your biodiversity objections might therefore carry more weight if the development proposal affects a feature of ecological importance.

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<sup>1</sup> 'Material considerations' are those of relevance to the planning process and exclude personal matters such as loss of property value, loss of view and boundary disputes.

## What features are regarded as ecologically important?

What, therefore, is regarded as ecologically important and will carry weight in the planning decision process? The following (detailed later in this Guide) are features that a planning case officer should be particularly concerned about.

<b>1.</b>	<b>Designated sites</b> 1.1 Special Area of Conservation (SAC) - (European level importance) 1.2 Special Protection Area (SPA) - (European level importance) 1.3 Site of Special Scientific Interest (SSSI) - (National level importance) 1.4 County Wildlife Site (CWS) - (County level importance)
<b>2.</b>	<b>Habitats</b> 2.1 Habitats of Principal Importance for conservation in England (also known as Priority Habitats)
<b>3.</b>	<b>Species</b> 3.1 European Protected Species 3.2 Species protected by the Wildlife & Countryside Act 3.3 Protection of Badgers Act 3.4 Species of Principal Importance for conservation in England (also known as Priority Species)

The planning applicant should provide information to show that there will be no significant harm to the above.

You may disagree with aspects of this information on the grounds, for example, that -

- the findings of the species survey are incorrect (eg. they have not mentioned various important species that you have seen)
- the findings of the habitat survey are incorrect (eg. the habitat is more important than the ecologist has stated)
- the mitigation measures are inadequate (eg. they will be ineffective and will not reduce harm)
- there is no guarantee that the mitigation measures will be implemented (eg. there is no mention of planning conditions or a legal agreement)

Your objections will be more effective if they are supported by others. You may therefore need to consider the following -

- get widespread support from your local community
- raise awareness of the issue; inform local authority council members and the media of your community's objections
- hire your own ecologist (different ecologists can differ in their professional judgements, even when faced with the same facts)
- where relevant, campaign against the loss of access to nature/ loss of a natural greenspace
- make your case in a robust manner, but challenge the issues rather than the people involved

## 1. Designated sites

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| <b>1.1 Special Areas of Conservation (SAC)</b> |
| <b>1.2 Special Protection Area (SPA)</b>       |

SACs and SPAs are of European level importance.

They are designated under European law (the Habitats Directive and the Birds Directive) with the aim of maintaining or restoring (at a favourable conservation status<sup>2</sup>), the natural habitats and species for which the site is designated. This European law is transcribed into UK law by the Habitat Regulations<sup>3</sup>. This European law is still applicable until the UK officially withdraws from the EU.

You will not find many planning applications which **directly** affect European designated sites, as these are well protected under European law and developers know that they will receive stringent scrutiny, with a low chance of planning permission.

However, you may come across planning applications which have the potential to **indirectly** affect an SAC or an SPA and the species for which it was designated. For example, wading birds associated with the Exe Estuary SPA designation might be indirectly affected by the recreation activities and dog walking activities generated by nearby housing development proposals. In such cases, the effectiveness of the mitigation measures proposed to deal with the disturbance caused by these activities is a possible ground for objection.

Under the Habitat Regulations (reg. 61), any planning proposal likely to have a significant effect on a European site should be subject to an appropriate assessment of its implications for the European site's conservation objectives. The local authority should carry out this assessment and have regard to any consultation response received from Natural England (the government's advisor on the natural environment). As part of this, the local authority and Natural England will have to assess the likely effectiveness of the mitigation measures put forward by the developer to reduce the impact on habitats and species.

The local authority should only give planning permission if it has "*ascertained that the development proposal will not adversely affect the integrity of the European site*" (i.e. that it will not adversely affect the favourable conservation status of the habitats and species for which the site was designated).

Most local authorities, Planning Inspectors and judges give great weight to Natural England's comments on planning applications affecting SACs and SPAs.

### The South Hams SAC and the Greater Horseshoe Bat

The Greater Horseshoe Bat (GHB) is at serious risk of extinction across northern Europe. Approximately one third of the UK's GHB population is found in south Devon and this bat is a designation feature of the South Hams SAC.

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<sup>2</sup> 'Favourable conservation status' means that the habitat or species is maintaining or increasing its extent or population and this is likely to continue for the foreseeable future

<sup>3</sup> The Habitat Regulations are formally known as The Conservation of Habitats and Species Regulations 2010

The South Hams SAC is unusual in that it consists of several sites located in south Devon, which provide GHB breeding and hibernation roosts. Natural England has mapped the feeding zones around these sites and the main flyways (the hedgerows, streams and other linear features) used by the bats to move between them. These feeding zones and flyways are critical to the survival of the GHB population in this part of England.

In these unique circumstances, the Habitat Regulations (reg.61) applies to these mapped flyways and feeding zones, as well as the SAC sites themselves.

Any development likely to significantly affect the GHBs' use of these flyways or feeding zones (by, for instance, removing sections of hedgerow, building on feeding zones or by lighting disturbance) therefore needs to be subject to an appropriate assessment of its implications for the maintenance of the population of the GHB species in South Devon.

You should therefore expect to see a great deal of attention given by the developer, the local planning authority and Natural England, to cases where the South Hams SAC's GHB population is likely to be significantly affected.

### **1.3 Sites of Special Scientific Interest (SSSI)**

Sites of Special Scientific Interest (SSSI) are of national level importance.

National Planning Policy for SSSIs is as follows -

*"Proposed development on land within or outside a Site of Special Scientific Interest likely to have an adverse effect on a Site of Special Scientific Interest (either individually or in combination with other developments) should not normally be permitted. Where an adverse effect on the site's notified special interest features is likely, an exception should only be made where the benefits of the development, at this site, clearly outweigh both the impacts that it is likely to have 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".*  
(NPPF paragraph 118)

Most local authorities, Planning Inspectors and judges give great weight to Natural England's comments on planning applications affecting SSSIs. They should be particularly concerned about the extent of adverse effects and the likely effectiveness of mitigation measures put forward to deal with them.

### **1.4 County Wildlife Sites**

County Wildlife Sites are, as the name implies, of Devon county level importance

There are about 2,000 County Wildlife Sites in Devon. Unlike SACs, SPAs and SSSIs, they have no legal status. They are designated by a panel consisting of local government and wildlife organisation representatives and are only advisory. County Wildlife Site designation does not, in itself, limit the activities that a landowner can carry out on their land.

County Wildlife Sites may, however, be subject to planning policies in Local Plans. The NPPF requires local authorities to map the location of locally designated sites and draw up criteria-based policies against which proposals for any development affecting such sites will be judged (NPPF paragraph 113). Any such criteria are usually rather weak and allow development where the local planning authority considers that mitigation measures are sufficient to prevent significant harm to the County Wildlife Site's habitats and species.

There is, however, scope to object where you consider that these mitigation measures are likely to be ineffective.

## 2. Habitats

### 2.1 Habitats of Principal Importance for conservation in England (also known as a Priority Habitat)

Under section 41 of the Natural Environment and Rural Communities Act 2006, the government is required to publish a list of habitats (and species) which are of principal importance for conserving biodiversity in England. These habitats are more commonly known as Priority Habitats.

There are 56 such habitats in the list that was produced (including 16 marine habitats) but relatively few are likely to be affected by development. They are -

- **arable field margins**
- **traditional orchards**
- **hedgerows**
- **coastal saltmarsh**
- **intertidal mudflats**
- **ponds**
- **rivers**
- **lowland meadows**
- **purple moor grass & rush pasture**
- **lowland heathland**
- **open mosaic habitats on previously developed land**
- **coastal & floodplain grazing marsh**
- **lowland mixed deciduous woodland**
- **wet woodland**
- **wood-pasture and parkland**

National planning policy states that planning policies should -

*"promote the preservation, restoration and re-creation of priority habitats, ecological networks and the protection and recovery of priority species populations..."* (NPPF paragraph 117)

Much of this Priority Habitat lies within designated sites (SACs, SPAs, SSSIs and CWSs) but there is still a large amount outside these designated areas.

Hedgerows and streams are particular examples of extensive habitats which lie outside designated areas. They form part of the ecological networks which cross the landscape and which support

species movement. Most large development proposals on the fringes of towns and villages in Devon have the potential to affect hedgerows, whether directly by destroying them or indirectly by disturbing them, and the species that use them.

The ecology report accompanying the planning application should give information on the extent, condition and ecological value of any priority habitat on site and make recommendations on how any potential harm could be mitigated.

Ancient woodland and veteran trees, whilst not specifically listed as Priority Habitat, are also important ecological features cited in national planning policy -

*"planning permission should 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, unless the need for, and benefits of, the development in that location clearly outweigh the loss". (NPPF paragraph 118)*

### 3. Species

#### Legally protected species

Local authorities are required to take the following into account <sup>4</sup> -

- the presence of a protected species is a material planning consideration if a development proposal would be likely to harm the species or its habitat
- the presence, or otherwise, of protected species and the extent that they may be affected must be established before any decision is made to grant planning permission
- 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
- surveys should be completed and any necessary measures to protect the species should be subject to planning conditions or planning obligations, before planning permission is granted
- the local authority should consult Natural England (or Natural England's online Standing Advice for local authorities on planning applications affecting protected species<sup>5</sup>) before granting planning permission
- the local authority should advise developers that they must comply with any species protection law affecting the proposed development site

Please note that the law relating to wildlife and the way it has been interpreted in case law, is complex and is not a subject that this guide can tackle. We have, however, attempted to highlight parts of it below.

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<sup>4</sup> ODPM Circular 06/2005 Biodiversity and Geological Conservation - Statutory Obligations and their impact within the Planning System, 2005 (paras. 98 and 99)

<sup>5</sup> Natural England's Online Standing Advice can be found at - [www.gov.uk/guidance/surveys-and-mitigation-plans-protected-species](http://www.gov.uk/guidance/surveys-and-mitigation-plans-protected-species)

### 3.1 European Protected Species

The following are listed as European Protected Species<sup>6</sup> by European law<sup>7</sup> (The Habitats Directive (Annex 1Va)). This has been incorporated in UK law by the Habitats Regulations (Schedule 2) -

- **bats (all species)**
- **dormouse**
- **great crested newt**
- **otter**

It is an offence, under Habitat Regulation 41(1) to deliberately -

- kill, injure or capture them
- disturb them<sup>8</sup>
- destroy or take their eggs
- destroy or damage their breeding site or resting place

This 'protection', however, is not absolute. Natural England (the government's statutory adviser for the environment in England) can issue a European Protected Species (EPS) license which would allow these activities, in effect legalising activities which would otherwise be illegal.

Before a local authority makes a decision on a planning application it must consider the extent to which a European Protected Species would be affected, taking into account any proposed mitigation measures which would reduce this effect. The local authority should not give planning permission if, in its opinion, Natural would be unlikely to issue an EPS license for works required to implement the planning permission which cause legal offences against a European Protected Species. The local authority should ensure that it has sufficient evidence upon which to base its opinion.

It is important to note that Natural England can only grant the EPS license when it considers that the applicant has shown that the following 3 tests are satisfied -

1. there are imperative reasons of overriding public interest
2. there is no satisfactory alternative
3. the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status

Large housing projects, for example, have been taken to be in the public interest but whether this overrides other considerations depends on the circumstances of the case.

When cases involving European Protected Species have been taken to Appeal and Judicial Review, planning inspectors and judges have usually given judgments in favour of local authorities who have evidence to show that they have correctly followed adopted planning policies and legal procedures. Great weight has been given to the views, where available, of Natural England.

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<sup>6</sup> There are other European Protected Species but as they are not usually affected by planning proposals in England, they are not mentioned here.

<sup>7</sup> European law is still applicable until the UK officially withdraws from the EU.

<sup>8</sup> 'Disturbance' includes impairing their ability to survive, breed, reproduce, rear their young, hibernate, migrate or significantly affect the local distribution or abundance of the species.



## 3.2 Species protected by the Wildlife & Countryside Act 1981

### All wild birds

It is an offence under section 1(1) of the Wildlife and Countryside Act 1981 to intentionally-

- kill, injure, or take any wild bird
- destroy, damage, or take the nest of any wild bird (while in use or being built)
- destroy or take an egg of any wild bird

### Wild birds listed in Schedule 1 of the W&C Act

For the birds below<sup>9</sup> (listed in Schedule 1 of the W&C Act) it is, in addition to the offences under section 1(1), also an offence under section 1(5) of the W&C Act to intentionally or recklessly -

- disturb a bird while in, on or near a nest containing eggs or young, or while it is building its nest
- disturb the dependent young of the bird
  - **cirl bunting**
  - **harriers (all)**
  - **heron (purple)**
  - **kingfisher**
  - **barn owl**
  - **peregrine**
  - **Dartford warbler**
  - **woodlark**

The clearance of vegetation and site works in the bird breeding season (March to September, inclusive) therefore have the potential to cause the above offences, unless the developer can show that there are no nesting birds.

Further information on wild birds is given in Natural England's Online Standing Advice, referred to in footnote5.

### Animals listed in Schedule 5 of the W&C Act

For the animals listed below<sup>10</sup>, it is an offence under section 9(1) of the W&C Act to intentionally -

- kill, injure or take the animal

It is an offence under section 9(4) of the W&C Act to intentionally or recklessly -

- disturb the animal while it is occupying a structure or place it uses for shelter or protection
- obstruct access to any structure or place it uses for shelter or protection
  - **bats (all species)**
  - **dormouse**
  - **great crested newt**
  - **otter**
  - **water vole**

<sup>9</sup> There are other birds listed in Schedule 1 but since they are not usually affected by planning applications they are not mentioned here.

<sup>10</sup> There are other animals listed in Schedule 5 but since they are not usually affected by planning applications they are not mentioned here.

In the case of the water vole, it is additionally an offence under section 9(4) to intentionally or recklessly -

- destroy or damage any structure or place it uses for shelter or protection

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For the reptiles below, it is an offence under section 9(1) of the W&C Act to intentionally -

- kill or injure the reptile
  - **adder**
  - **grass snake**
  - **slow worm**
  - **common lizard**

Where there is a potential for such offences to arise, the developer should show what measures will be taken to avoid them.

Further information on the animals above is given in Natural England's Online Standing Advice, referred to in footnote 5.

### **3.3 Protection of Badgers Act**

The badger is a commonly occurring species and is not of conservation concern. Animal welfare concerns have resulted in legal protection being given under the Protection of Badgers Act 1992. Under this Act it is an offence to -

- 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)

A badger sett is defined as any structure or place which displays signs indicating current use by a badger.

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.

Further information on badgers is given in Natural England's Online Standing Advice, referred to in footnote 5.

### **3.4 Species of Principal Importance for conservation in England (also known as Priority Species)?**

Under section 40 of the Natural Environment and Rural Communities Act 2006, every public authority, in exercising its functions, must have regard to the purpose of conserving biodiversity.

Under section 41 of this Act, the government is required to publish a list of species (and habitats) which are of principal importance for conserving biodiversity in England. These species are more commonly known as Priority Species.

There are about 940 Priority Species in the list that has been produced (the majority being invertebrates, lower plants and fungi). The ecology reports submitted with planning applications

usually only cover a tiny proportion of these species because of the lack of available specialist expertise required to identify the remainder. The following priority species are those you may come across in association with development proposals -

#### **mammals**

- **bat (barbastelle)**
- **bat (Bechstein's)**
- **bat (brown long eared)**
- **bat (greater horseshoe)**
- **bat (lesser horseshoe)**
- **bat (noctule)**
- **bat (soprano pipistrelle)**
- **brown hare**
- **dormouse**
- **hedgehog**
- **otter**
- **water vole**

#### **amphibians**

- **common toad**
- **great crested newt**

#### **reptiles**

- **adder**
- **common lizard**
- **grass snake**
- **slow worm**

#### **birds**

- **bullfinch**
- **chiffchaff**
- **dunlin**
- **herring gull**
- **house sparrow**
- **lesser spotted woodpecker**
- **nightjar**
- **sky lark**
- **song thrush**
- **starling**
- **tree sparrow**
- **woodlark**

National planning policy states that planning policies should -

*"promote the preservation, restoration and re-creation of priority habitats, ecological networks and the protection and recovery of priority species populations..."* (NPPF paragraph 117)

You should expect the ecology report accompanying the planning application to give information on the presence (or not) of priority species on the planning application site and how they could be affected, with recommendations on how any potential harm could be mitigated. You have scope for objecting if you disagree with the findings and recommendations but, as stated earlier, your objections will carry more weight if they are supported by evidence.

## Other wildlife organisations

For specialist information you might be interested in contacting the following organisations or viewing their internet sites -

Amphibian & Reptile Conservation Trust  
Badger Trust  
Barn Owl Trust  
Bat Conservation Trust  
Buglife (invertebrates)  
Butterfly Conservation  
Campaign to Protect Rural England (CPRE)  
Froglife (amphibians & reptiles)  
Royal Society for the Protection of Birds (RSPB)  
Woodland Trust