

When local planning authorities (LPAs) draw up their Local Plans, they are required to take into account the following national planning policies and laws.

Summary	The actual policy
<p>When drawing up or revising Local Plans, LPAs must -</p> <ul style="list-style-type: none"> <li>• take national planning policy into account</li> <li>• reflect legal requirements</li> </ul>	<p><i>“The National Planning Policy Framework must be taken into account in preparing the development plan, ...” (NPPF<sup>1</sup> 2)</i></p> <p><i>“Planning policies and decisions must also reflect relevant international obligations and statutory requirements”. (NPPF 2)</i></p> <p><i>“Circular 06/2005 provides further guidance in respect of statutory obligations for biodiversity and geological conservation and their impact within the planning system.” (NPPF footnote 61)</i></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><b>Local Plans</b> must provide for assessed housing and other needs in the plan area, unless-</p> <ul style="list-style-type: none"> <li>• areas or assets of particular importance (as defined by NPPF), provide a clear reason for not doing so; or</li> <li>• any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. (NPPF 11)</li> </ul>	<p><i>“Plans and decisions should apply a presumption in favour of sustainable development. For plan-making this means that:</i></p> <p><i>a) plans should positively seek opportunities to meet the development needs of their area, and be sufficiently flexible to adapt to rapid change;</i></p> <p><i>b) strategic policies should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas, unless:</i></p> <p><i>i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in the plan area, or</i></p> <p><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.” (NPPF 11)</i></p> <p><i>“Areas or assets of particular importance’ are – habitats sites, irreplaceable habitats (includes ancient woodland, ancient and veteran trees, lowland fen, blanket bog, sand dunes, salt marsh, limestone pavement), Local</i></p>

<sup>1</sup> NPPF = National Planning Policy Framework

	<p>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><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.” (NPPF 182)</i></p> <p>‘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 (SAC), Special Protection Areas (SPA) and any relevant Marine Sites.</p>
<p>Local Plan policies should enhance the natural and local environment by;</p> <ul style="list-style-type: none"> <li>• protecting and enhancing sites of biodiversity value according to their statutory status or identified quality in the Local Plan</li> <li>• minimising impacts on and provide net gains for biodiversity</li> <li>• establishing coherent and resilient ecological networks</li> </ul>	<p><i>“Planning policies and decisions should contribute to and enhance the natural and local environment by:</i></p> <p><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></p> <p><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;” (NPPF 174)</i></p>
<p>Local Plans should –</p> <ul style="list-style-type: none"> <li>• recognise the different status of international, national and locally designated sites</li> <li>• allocate land with the least environmental value</li> <li>• have a strategy for maintaining and enhancing networks of habitats and green infrastructure</li> <li>• plan for the enhancement of natural capital at a catchment or landscape scale across local authority boundaries</li> </ul>	<p><i>“Plans should: distinguish between the hierarchy of international, national and locally designated sites; allocate land with the least environmental or amenity value, where consistent with other policies in this Framework; take a strategic approach to maintaining and enhancing networks of habitats and green infrastructure; and plan for the enhancement of natural capital at a catchment or landscape scale across local authority boundaries.” (NPPF 175)</i></p>
<p>In National Parks, conservation and enhancement of wildlife should be given great weight. It is an important consideration in AONBs.</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</i></p>

## Local Plans:

### National planning policies and the laws relevant to biodiversity

	<i>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>Local Plans should –</p> <ul style="list-style-type: none"> <li>draw up maps of ecological networks, to include – <ul style="list-style-type: none"> <li>designated biodiversity sites (international, national and local)</li> <li>the habitats that connect the designated sites</li> <li>areas identified by Local Nature Partnership for habitat restoration</li> </ul> </li> <li>safeguard the above components</li> </ul>	<p><i>“To protect and enhance biodiversity and geodiversity, plans should:</i></p> <p><i>a) Identify, map and safeguard components of local wildlife-rich habitats and wider ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity; wildlife corridors and stepping stones that connect them; and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation;”</i> (NPPF 179)</p> <p><i>“Where areas that are part of the Nature Recovery Network are identified in plans, it may be appropriate to specify the types of development that may be suitable within them.”</i> (NPPF footnote 62)</p>
<p>Local Plans should –</p> <ul style="list-style-type: none"> <li>promote the conservation, restoration and enhancement of – <ul style="list-style-type: none"> <li>priority habitats</li> <li>ecological networks</li> </ul> </li> <li>promote the protection and recovery of priority species</li> <li>identify and pursue opportunities for securing measurable net gains for biodiversity.</li> </ul>	<p><i>“To protect and enhance biodiversity and geodiversity, plans should:</i></p> <p><i>b) promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity.”</i> (NPPF 179)</p>

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 and 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 –</p> <p>Part 1: internationally designated sites</p> <p>Part 2: nationally designated sites</p> <p>Part 3: habitats and species outside designated sites</p>

	Part 4: species protected by law
<p>Part 1: internationally designated sites – (SAC and 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 a SAC or SPA should go through a Habitat Regulations Assessment (HRA) process.</p> <p><b><u>Habitat regulations assessments: protecting a European Site 24.2.21 (UK Govt online guidance)</u></b></p> <p>HRAs can comprise 3 stages, depending on the results of the first stage. The stages are –</p> <p><b><u>1. Screening</u></b> 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><b><u>2. Appropriate Assessment</u></b> 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 a SAC/SPA conservation objectives, it must refuse the proposal unless an exemption (stage 3: derogation) is justified.</p> <p><b><u>3. Derogation test</u></b> 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"> <li>There are no feasible alternative solutions that would be less damaging or avoid damage to the site.</li> <li>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).</li> <li>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.</li> </ol> <p>The 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>

	Further details of this process can be found in the government's online guidance, cited above.
Part 2: nationally designated sites (SSSI)	<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>
Part 3: habitats and species outside designated sites	<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"> <li>• arable field margins</li> <li>• traditional orchards</li> <li>• hedgerows</li> <li>• coastal saltmarsh</li> <li>• intertidal mudflats</li> <li>• ponds</li> <li>• rivers</li> <li>• lowland meadows</li> <li>• purple moor grass and rush pasture</li> <li>• lowland heathland</li> <li>• open mosaic habitats on previously developed land</li> <li>• coastal and floodplain grazing marsh</li> <li>• lowland mixed deciduous woodland</li> <li>• wet woodland</li> <li>• wood-pasture and parkland</li> </ul> <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"> <li>• bat (barbastelle)</li> </ul>

	<ul style="list-style-type: none"> <li>• bat (Bechstein's)</li> <li>• bat (brown long eared)</li> <li>• bat (greater horseshoe)</li> <li>• bat (lesser horseshoe)</li> <li>• bat (noctule)</li> <li>• bat (soprano pipistrelle)</li> <li>• hare (brown)</li> <li>• dormouse</li> <li>• hedgehog</li> <li>• otter</li> <li>• water vole</li> </ul> <p><u>amphibians</u></p> <ul style="list-style-type: none"> <li>• toad (common)</li> <li>• newt (great crested)</li> </ul> <p><u>reptiles</u></p> <ul style="list-style-type: none"> <li>• lizard (common)</li> <li>• slow worm</li> <li>• snake (adder)</li> <li>• snake (grass)</li> </ul> <p><u>birds</u></p> <ul style="list-style-type: none"> <li>• bullfinch</li> <li>• ciril bunting</li> <li>• dunnock</li> <li>• herring gull</li> <li>• lesser spotted woodpecker</li> <li>• sky lark</li> <li>• song thrush</li> <li>• sparrow (house)</li> <li>• sparrow (tree)</li> <li>• starling</li> </ul> <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>
Part 4: species protected by law	<ul style="list-style-type: none"> <li>• The presence of a protected species is a material planning consideration if a development proposal would be likely to harm it or its habitat.</li> <li>• The breach of protected species legislation can give rise to a criminal offence.</li> </ul> <p>The main pieces of legislation protecting wild species are –</p>

	<p>1. Conservation of Habitats and Species Regulations 2. Wildlife and Countryside Act 3. animals protected under their own legislation (e.g. badgers)</p> <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"> <li>▪ bats (all species)</li> <li>▪ dormouse</li> <li>▪ great crested newt</li> <li>▪ otter</li> </ul> <p>it is an offence, under the Regulations to –</p> <ul style="list-style-type: none"> <li>• deliberately kill, disturb, capture or take or destroy eggs of a protected animal or damage/destroy its breeding site or resting place.</li> </ul> <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"> <li>1) the actions authorised will not be detrimental to the maintenance of the population of the species at a favourable conservation status</li> <li>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).</li> <li>3) there is no satisfactory alternative</li> </ol> <p><u>2. Species protected under the Wildlife and Countryside Act 1981</u></p> <p>It is an offence under section 1(1) of the W&amp;C Act to -</p> <ul style="list-style-type: none"> <li>• 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</li> </ul> <p>For the following birds (listed in <b>Schedule 1</b> of the W&amp;C Act)</p> <ul style="list-style-type: none"> <li>▪ barn owl</li> <li>▪ curlew</li> <li>▪ heron (purple)</li> <li>▪ kingfisher</li> <li>▪ peregrine</li> </ul>
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	<p>it is, in addition to the offences above, also an offence, under section 1(5), to -</p> <ul style="list-style-type: none"> <li>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</li> </ul> <p>For the <u>animals</u> listed in <b>Schedule 5</b> of the W&amp;C Act</p> <ul style="list-style-type: none"> <li>bats (all species)</li> <li>dormouse</li> <li>great crested newt</li> <li>otter</li> <li>water vole</li> </ul> <p>it is an offence under <b>section 9</b> to -</p> <ul style="list-style-type: none"> <li>intentionally kill, injure or take the animal</li> <li>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</li> </ul> <p>For the <u>reptiles</u> below -</p> <ul style="list-style-type: none"> <li>adder</li> <li>grass snake</li> <li>slow worm</li> <li>common lizard</li> </ul> <p>it is an offence under section 9(1) of the W&amp;C Act to -</p> <ul style="list-style-type: none"> <li>intentionally kill or injure the reptile</li> </ul> <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, a 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 proposals they are not mentioned here.</p> <p>There is no provision for licences to be issued for the purposes of development, under the W&amp;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"> <li>kill (or attempt to kill), injure or take a badger</li> <li>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)</li> </ul>
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	<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 a developer must provide justification and show what mitigation measures will be put in place.</p>
'material considerations'	<p>Material considerations include all the concerns covered by the National Planning Policy Framework, i.e. –</p> <ul style="list-style-type: none"> <li>• a sufficient supply of homes</li> <li>• building a strong, competitive economy</li> <li>• ensuring the vitality of town centres</li> <li>• promoting healthy and safe communities</li> <li>• promoting sustainable transport</li> <li>• supporting high quality communications</li> <li>• making effective use of land</li> <li>• achieving well-designed places</li> <li>• protecting Green Belt land</li> <li>• meeting the challenge of climate change, flooding and coastal change</li> <li>• conserving and enhancing the natural environment</li> <li>• conserving and enhancing the historic environment</li> <li>• facilitating the sustainable use of minerals</li> </ul> <p>Examples of specific material considerations are –</p> <ul style="list-style-type: none"> <li>• Government policy</li> <li>• proposals in the Development Plan</li> <li>• previous planning decisions (including appeal decisions)</li> <li>• nature conservation concerns</li> <li>• overlooking/loss of privacy/loss of light/overshadowing, caused by poor design</li> <li>• parking problems</li> <li>• highway safety concerns</li> <li>• traffic congestion</li> <li>• noise problems</li> <li>• poor layout and inappropriate building density</li> <li>• poor design, appearance and materials</li> <li>• inadequacy of disabled persons' access</li> <li>• effect on a listed building and conservation area</li> </ul> <p>Issues which <b>are not</b> material considerations, include –</p> <ul style="list-style-type: none"> <li>• loss of view</li> <li>• negative effect on the value of properties</li> <li>• rapaciousness of developer</li> <li>• neighbourhood feuds</li> </ul>