

Nature Conservation and Species Protection

1 INTRODUCTION

- 1.1 This Note is one of a series of Supplementary Planning Guidance Notes (SPGs), amplifying the development plan policies and other issues in a clear and concise format with the aim of improving the design and quality of new development. The Notes are intended to offer broad guidance which will assist members of the public and officers in discussions prior to the submission of planning applications and assist officers in handling and members in determining planning applications.

2 STATUS AND STAGES IN PREPARATION

- 2.1 The Council's SPG Notes are not part of the adopted plan. However, they have been the subject of both a formal Council resolution and public consultation. The Welsh Assembly Government (The Assembly) has confirmed that following public consultation and subsequent Local Planning Authority (LPAs) approval, SPG can be treated as a material planning consideration when LPAs, Planning Inspectors and the Assembly determine planning applications and appeals. This Note was approved by Full Council on June 3rd 2003 for use in development control. A statement of the consultation undertaken, the representations received and the Council's response to these representations is available on request.
- 2.2 These Notes have been prepared in accordance with guidance contained in Planning Policy Wales; Unitary Development Plans (Wales); Technical Advice Notes.

3 BACKGROUND

- 3.1 Nature conservation and species protection is a material consideration in the determination of planning applications, which are likely to result in harm to wildlife habitats or protected species. The majority of wildlife legislation is contained in the Wildlife and Countryside Act 1981, The Badgers Protection Act 1992 and The Conservation (Natural Habitats etc.) Regulations 1994, the provisions of which must be taken into consideration by the planning authority in determining planning applications. The Government is also committed to the conservation of 'biodiversity', the variety of plant and animal species.

4 PLANNING POLICY

- 4.1 The authority is also required to identify areas of wildlife value and wildlife corridors in their area and to identify these in the Development Plan.
- 4.2 The Unitary Development Plan for Denbighshire contains specific policies relating to the protection and safeguard of statutory and non-statutory designated sites (Sites of Special Scientific Interest and County Wildlife Sites), and protected species.
- 4.3 The purpose of this note is to give broad guidance on the nature conservation requirements of the Development Plan and also that of wildlife conservation legislation as it relates to the impact of development.

5. WILDLIFE CONSERVATION LEGISLATION (Refer to Acts including current schedules for more details):

- 5.1 The Wildlife and Countryside Act, 1981, defines the various statutory designations which must be taken into account, including Special Protection Areas, Special Areas of Conservation, Ramsar Sites, National Nature Reserves, Sites of Special Scientific Interest and Local Nature Reserves.
- 5.2 Certain plants and animals, including all wild birds, are also given protection under the Wildlife and Countryside Act 1981.



- 5.3 Schedules 5 and 8 of the 1981 Act give details of protected animal and plant species respectively. These lists are subject to a review every 5 years and current lists should be referred to.
- 5.4 Currently and in the context of species relevant to Denbighshire, Schedule 5 gives full protection to all bat species, great crested newt, otter, water vole, red squirrel, pine marten and dormouse. The first 4 species are most likely to be encountered on a proposed development site. Although not receiving full protection under the Act certain species are still protected against intentional killing and injury and include grass snake, adder, slow worm (a lizard), and common lizard. In Denbighshire Schedule 8 gives full protection to the plant species Spiked Speedwell and Limestone Woundwort. Some of the rarer and declining species of birds are given additional protection under the Act e.g. barn owls, a species that would be vulnerable if they were to occur in an old building or barn that is proposed for a conversion
- 5.5 The Badgers Protection Act 1992 gives specific protection to badgers.
- 5.6 Under the 1981 Act, it is an offence to kill, injure, sell or take protected species or to intentionally damage, destroy or obstruct their places of shelter. Bat species receive additional protection and it is an offence to kill, injure or disturb bats found in the non-living areas of a dwelling or any other place (without first notifying CCW).
- 5.7 The Habitats Regulations 1994 strengthens the law protecting bat species, great crested newts and otters, making it an offence to kill, injure, take or disturb any listed animal species or to destroy their nesting place or breeding sites; or to deliberately pick, collect, cut, uproot or otherwise destroy a listed plant species. These species are listed in the European Habitats Directive, but only those relevant to Denbighshire are referred to.
- 5.8 It should be emphasised that many protected species occur outside statutory and non-statutory designated sites.
- 5.9 Owners have legal obligations in relation to wildlife, and applicants/developers must take account of protected species on their land when planning development proposals. Even if planning consent is given the law requires that reasonable precautions are taken to safeguard protected species and their habitats. Ignorance is no defence in the law. In certain cases a licence is required (see licensing requirements).



6. GUIDANCE FOR APPLICANTS

APPLICANTS ARE ADVISED TO CONSULT THE COUNCIL'S PLANNING OFFICERS AND COUNTY ECOLOGIST BEFORE SUBMITTING AN APPLICATION.

- 6.1 **Planning Application Details:**
- 6.2 **It is the responsibility of the applicant to check land/buildings for the presence of protected species and their habitat and to take them into account at the design stage of a development and before planning permission will be considered.**
- 6.3 Where land subject to a development proposal or planning application is known or likely to contain or support a protected species, or where the development is likely to have an impact on a protected species in adjacent areas the applicant should provide the following information, to enable the local planning authority to fully consider the effect of the proposed development on that species and how it will be safeguarded.
- 6.4 Undertake the following:-
 - Survey for the presence or absence of a protected species of plant or animal.
 - Survey the land for suitable wildlife habitats (e.g. woodland, scrub, wetland, rough grassland, ditches).
 - Determine population level of protected species.
 - Determine extent of nesting/breeding habitat/critical feeding territory.
 - Undertake an environmental assessment.
 - Prepare a conservation management scheme.

6.5 Mitigation

The applicant should consider ways in which to safeguard the protected species and reduce the impact of the development on the protected species. This may involve a re-design of the development to retain important habitat, the re-timing of operations to avoid sensitive times of the year e.g. breeding season, or the phasing of works.

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7. SPECIFIC SPECIES GUIDANCE

7.1 More specific guidance is given for those protected species that are known to occur in Denbighshire and which are most likely to be encountered when submitting planning applications.

7.2 Bird Species

(Refer to Schedule 5)

7.2.1 All wild birds, their nests and eggs are protected by law. Some rare species also have additional protection and should not be disturbed while nesting or rearing young, nor should the dependent young be disturbed.

7.2.2 Of particular relevance to planning is the possible presence of BARN OWLS that may be affected by development works that affects outbuildings, including barn conversions. (See also SPG 16 on Conversion of Rural Buildings).

7.2.3 Where barn owls (or any other specially protected species) is known or likely to occur or be disturbed, in addition to providing planning application details already referred to, consider incorporating design details into the restoration or conversion that will enable the species to continue to use building, so that it is able to continue using adjacent feeding areas in surrounding countryside.

7.2.4 The timing of works to avoid sensitive nesting times will also be critical.

7.2.5 Undertake the following:

- Check for the presence of a protected species on the land.
- Check for the presence of barn owls in all buildings.
- Survey the land for the presence of appropriate nesting habitat e.g. hedgerows, woodland, scrub, wetland, rough grassland.
- Locate important feeding areas for barn owls.
- Ensure that works/proposals avoid sensitive nesting periods.

7.3 Reptiles

7.3.1 All lizards and snakes are given protection under the Act. In Denbighshire relevant species are grass snake and adder (snakes) and common lizard and slow-worm (lizards). It is very possible that these species are present and land should be checked for their presence. If any of these species are found to occur on a proposed development site, their removal to an alternative suitable site may need to be considered under animal welfare legislation.

7.4 Bat Species

7.4.1 All bat species including bat roosts are protected from deliberate killing, capture or disturbance. Any structure or place that bats use for shelter or protection is also protected against deliberate damage, destruction or obstruction of access. It is an offence to damage or destroy a bat breeding site or resting place and an offence can be committed even if the actions were unintentional.

7.4.2 The applicant must check all buildings first and as early as possible for the presence of bats and bat roosts.

7.4.3 The types of development or works that are likely to affect or disturb bats include:-

- Loft conversions.
- Roofing work.
- Extension works involving disturbance to roof space.
- Timber treatment.

7.4.4 Any development which affects buildings, roof spaces, loft spaces, cavity walls, mineshafts/adits, caves, tunnels, bridges and old trees potentially could affect or disturb bats and bat roosts. These various structures should be checked for their presence.

7.4.5 If present, consult with CCW immediately.

7.4.6 Information required:

7.4.7 Where bats and bat roosts (including for breeding and hibernation) are known or likely to occur or be disturbed, information should be provided as detailed under planning application details. Mitigation proposals may include re-timing of works, re-design, and the incorporation of audits to enable continued use of structure. (Also see section on licensing requirements).

N.B. Where roofing or timber treatment works are to be undertaken, it is the legal responsibility of the contractor to check for bats at in the inspection stage, to allow CCW a reasonable time to respond should the presence of bats be indicated.

7.4.8 If bats are found during the course of work, the works should stop immediately and CCW be notified and advice sought.

7.5 Great Crested Newts

7.5.1 Great crested newts (including all stages of life cycle i.e. eggs, tadpoles, juveniles, and adults) are protected by national and international law from deliberate killing, injury, capture or disturbance. This protection also extends to the species' habitat or place of shelter or protection, which includes the breeding pond and the surrounding vegetation required for territory, feeding, shelter and hibernation. Water bodies are required by newts for breeding purposes, but they also spend much of their time on the surrounding land. Adult newts return to these breeding ponds from late January onwards, but are mostly found between April and June. Hatched tadpoles will still be present until late autumn, before pond migrating onto surrounding land, possibly up to 500 metres away from the pond.

7.5.2 If great crested newts are found to occur or to be affected by a development proposal then the details of the development may have to be amended in order to provide for their protection.

7.5.3 Information required:

7.5.4 Where great crested newts are known or likely to be present or the development is likely to have an impact on this species, information as specified under planning application details should be provided.

7.5.5 Undertake the following:-

- Check for the presence of eggs, larvae, adults on the land.
- Survey the land for the presence of suitable habitat, including breeding ponds and water features, and adjacent or nearby scrub, woodland, rough grassland, builders rubble etc., that may support newts (up to 500m).
- Determine the extent of required territory used by newts.
- Undertake an environmental assessment.
- Prepare conservation measures to safeguard the species and habitat.

(See section on licence requirements).

7.6 Otters and Water Voles

7.6.1 Otters and water voles are fully protected by law. Development proposals/planning applications affecting or in close proximity to rivers and streams are likely to affect otters and/or water voles. If water voles or otters including otter holts or resting places are present or affected by a proposed development, it will be necessary to consider the impact of the development on this species and put forward appropriate measures for its conservation.

7.6.2 Information required:

7.6.3 Where the species is known or likely to be present or affected. provide information as under planning applications details, including the presence of the otter's shelter or holt, and otter movements.

7.7 Badgers

7.7.1 Under the 1992 Act, badgers are protected from killing, injury, capture and ill-treatment. It is also an offence to interfere with a badger sett, to damage or destroy a sett or any part of it, to obstruct the access or entrance of a badger sett, and to disturb badgers while occupying a sett.

7.7.2 Information required:

7.7.3 In addition to information specified under planning application details, the following details should also be provided where badgers and setts are known or likely to be present or affected.

7.7.4 Undertake the following:

- Check for the presence of badgers and badger signs.
- Survey land for the presence of appropriate habitats such as woodland, scrub, rough grassland.
- Locate all badger setts and determine social groups.
- Locate badger paths.
- Determine the extent of foraging territory and water sources.
- Undertake an environmental assessment.
- Prepare a conservation management scheme.

(See section on licensing requirements).

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8. PLANNING CONDITIONS AND MANAGEMENT AGREEMENTS

8.1 If permission is given, planning conditions will be attached to planning consents in order to safeguard species and habitats and to minimise the impact on wildlife. If a licence is required from CCW, a condition will be attached requiring the applicant to contact CCW in order to obtain a licence before commencing any works that will cause damage or disturbance. Conditions will be attached for protected habitats and species, but also for locally rare species, particularly important in a biodiversity context.

8.2 Where appropriate, a Section 106 management agreement will be requested as a means of achieving management and enhancement of habitats and species.

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9. CONSULTATION PROCEDURES

9.1 CCW must be consulted if any development proposed is within or adjacent to a Site of Special Scientific Interest. Where a protected species is known to be affected, the views of CCW should be sought. In certain cases, it will be necessary to apply to CCW for a licence.

9.2 CCW must be notified of any proposed action affecting bat species immediately and allowed a reasonable time to advise on the effects of this action and the methods to be used to avoid or minimise damage to bats and their roosts.

9.3 Where county wildlife sites are involved, advice should be sought from the Wildlife Trust and/or County Ecologist. Many protected species occur outside SSSI's and Wildlife Sites.

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10. LICENSING REQUIREMENTS

10.1 Any development proposals that affect or disturb bat species, great crested newts or badgers (including place of shelter and habitat) will require a licence from CCW, regardless of whether or not planning consent is given. A licence is only given to carry out work to protect these species.

10.2 If planning consent is given the applicant would still be required to comply with the provisions of the Acts and take reasonable precautions to avoid unnecessary harm or disturbance to these protected species and their habitats. Such action will still require a licence from CCW.

- 10.3 Translocation of species may be a considered option, but should only be considered as a last resort and if a suitable and sustainable habitat is available. If a licence is given to remove the species, then an alternative suitable site must be identified and prepared well in advance.
- 10.4 Conditions specified in a planning consent may also require a licence from CCW.

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11. SOURCES OF ADVICE

- 11.1 Always seek the advice of a qualified ecologist for the survey of protected species and conservation advice. The following will also give advice:-
- CCW
 - NWWT
 - County Ecologist
 - Local Badger Group
 - Local Herpetological Group
 - Local Bat Group

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12. Other sources of information

- 12.1 Refer to the following leaflets for further information/advice:-
- Great crested newts - Guidelines for developers - English Nature 1996
- Badgers - Guidelines for developers - English Nature 1995
- Barn Owls on Site - A Guide for Developers and Planners - Barn Owl Trust 1995
- Wildlife and Buildings - Guidelines for Property Owners - Gwynedd Bat Group and NWWT
- Focus on Bats - English Nature 1992
- Bats - Countryside Council for Wales
- Wildlife on Site - A Guide for Developers and Planners - Babbie 1996
- Technical Advice Note 5 - Nature Conservation and Planning (Welsh Office, 1996)



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