

# STANDING ADVICE



## PROTECTED SPECIES

<b>1</b>	<b>Issue Date:</b>	2 September 2008
<b>2</b>	<b>Next Review Date:</b>	2 September 2010 then every two years after that
<b>3</b>	<b>Local Planning Authorities to which this standing advice applies:</b>	Lewes District Council, East Sussex, Wealden District Council, East Sussex Ashford Borough Council, Kent Tunbridge Wells Borough Council, Kent Wokingham Borough Council
<b>4</b>	<b>Advice Reference:</b>	StAdv/PrSp/SE01_09_08

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This advice is issued in accordance with;

- Article 10(1) of the Town and Country Planning (General Development Procedure) Order 1995 SI 1995/419 as amended by Article 4 of the Town and Country Planning (General Development Procedure) (England) (Amendment) Order 2003 SI 2003/2047.
- Section 281 of the Wildlife and Countryside Act, 1981 (as amended by the Countryside and Rights of Way Act 2000).
- ODPM Circular 06/2005: Biodiversity and Geological Conservation – Statutory Obligations and their impact within the Planning System.
- Planning Policy Statement 9: Biodiversity and Geological Conservation.

## USE OF STANDING ADVICE

When any of the Local Planning Authorities (“LPAs”) named in Box 3 receive a planning application which requires consultation with Natural England they should first check whether any up-to-date Standing Advice exists which is relevant to the development.

The Standing Advice is up-to-date if the next review date (Box 2 above) is later than the date of the initial planning application on which the Authority wish to consult Natural England. If unsure the LPA should check with Natural England.

For planning applications affecting:

- other wildlife and landscape designations not covered by Standing Advice; or
- requiring an Environmental Impact Assessment, or
- likely to damage features of a Site of Special Scientific Interest (SSSI); or
- likely to have a significant effect upon Special Area of Conservation (SAC), Special Protection Area (SPA) or Wetland of International Importance under the Ramsar Convention (Ramsar Sites).

LPAs should still consult Natural England as usual (or as agreed if local consultation arrangements are in place).

### **STATUS OF STANDING ADVICE**

When determining an application for development that is covered by Standing Advice, in accordance with Government guidance in Circular 06/2005, LPAs must take into account the Standing Advice.

For the avoidance of doubt Standing Advice is a material consideration in the determination of applications in the same way as a letter received from Natural England following consultation.

When this and other Standing Advice is revised or withdrawn, the LPAs named in box 3 will be informed directly by e-mail or letter and any new Standing Advice will be published on Natural England's website and the replaced Standing Advice removed.

## Purpose and scope of this guidance

The purpose of this guidance is to assist you, as Local Authority planners or ecological consultants, in deciding when to request/carry out protected species surveys to accompany a planning application. Survey requirements are based upon habitats present on an application site and the likelihood of a species being present. By following this guidance, it is hoped that the resultant planning applications submitted will be of higher quality resulting in fewer objections from Natural England (and subsequent associated delays to your decision timetables) due to lack of survey information. In addition, Natural England will then be able to engage more actively with higher risk or larger developments.

In the areas to which this advice applies:

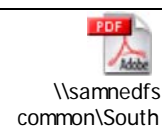
- **Natural England will not comment on applications that are submitted without the relevant protected species surveys (see flowchart) if there are no other issues (i.e. in relation to SSSIs or landscape).**
- **Natural England will not comment on scoping surveys that recommend further surveys where these have not been undertaken and submitted with the scoping reports.**
- **Natural England will continue to comment on Environmental Impact Assessments in accordance with the current applicable legislation.**
- **Natural England will continue to comment on applications which affect designated landscapes and SSSIs unless we have issued other Standing Advice covering those subjects in which case that Standing Advice should be referred to.**

## What is a protected species?

A Protected Species is a species which receives protection under domestic or European Legislation – the protection could be partial (prohibiting sale, for example) or full, in which case the disturbance, killing or injuring of just one of the species could constitute an offence. The list of protected species under domestic legislation is subject to a five-yearly review whereby species can be added to, or removed from the schedules of protected species. Details of the species afforded protection under the various pieces of legislation can be found in Annex 2 of this document

## When should we request a protected species survey?

We have produced a flow chart which provides guidance on when a protected species survey is likely to be required. Survey requirements are based upon habitats and features which could be recorded during any site visit undertaken by you during the validation process. If, based on the information contained in the attached flow chart, it is reasonably likely that a protected species will be affected by the development; the application should **not be validated** until species surveys have been received.



In most cases where a survey has not been submitted with the planning application, Natural England will **not comment** on these

consultations since it is the responsibility of the Local Planning Authority to request surveys appropriate to the application site. **We will however comment on survey reports and the detail of any mitigation proposed where a development affects a significant population of protected species.**

By not validating the application until all relevant information is received, delays to the determination of a planning application will be minimised and the maximum gain for the natural environment can be secured.

### Is an initial scoping survey enough?

Scoping surveys (which are often referred to as extended Phase 1 surveys) are useful documents to define whether further survey effort for a particular species is required. Where a scoping report recommends further surveys need to be conducted, Natural England recommends that the application should **not be validated** until the detailed surveys have been conducted, and the results provided. For example where a scoping survey reveals there are ponds on the application site and a great crested newt survey is recommended, the application should not be validated until the amphibian surveys are submitted. All surveys should be carried out at an appropriate time of year<sup>1</sup> and employ methods that are suited to the local circumstances. It is important that this work is undertaken by a reputable, experienced, qualified and, where appropriate, suitably licensed person.

### What should the ecological survey report include?

If any protected species are found the ecological survey report should include details of:

- Details of the species concerned;
- The methodology employed (including personnel, timing, weather conditions, procedures);
- The relative population level at the site to be affected by the proposal;
- The direct and indirect effects of the development upon that species;
- Full details of any mitigation or compensation that might be required;
- Whether the impact is acceptable and/or licensable.
- Details of the long-term monitoring strategy and management of any habitats used by the effected protected species .
- The location and details of receptor sites if one is required.

Excellent guidance on survey reporting can be found in Box 3.2 of [Bat Surveys- Good Practice Guidelines](#). Whilst this is specifically in relation to bats, the principles can be more widely applied to all protected species surveys. It is vital

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<sup>1</sup> For details of optimal survey periods, please refer to Box 3.1 of the Kent Design Guide Biodiversity Technical Appendix available at <http://www.kent.gov.uk/NR/rdonlyres/559D0301-726C-440E-A77E-0F989AD8368C/0/Biodiversity.pdf>

that any survey report includes details of the proposed mitigation for any protected species present on the site.

### Where can I find someone to carry out a protected species survey?

It is often difficult to find someone who will be able to conduct the work. The Institute of Ecology and Environmental Management (IEEM) maintain a list of members who offer commercial consultancy services and this information is available on their website at [www.ieem.org.uk](http://www.ieem.org.uk) (from the main page, select 'About IEEM' and then 'Directory'). In addition, the Environmental Consultants Directory website: [www.endsdirectory.com](http://www.endsdirectory.com) offers a similar search. Another useful source to try is the Yellow Pages.

Before appointing an ecological consultant, it would be prudent to make enquiries about their abilities and experience. Please note Natural England cannot get involved in providing details of consultant success. However, you may wish to ask about the following:

- Possession of a Natural England survey licence for the specific species concerned (where applicable).
- Previous experience. Consultants should be asked for examples of recent work which they have undertaken. You may wish to check whether previous clients were satisfied with the standard of work and value for money.
- History of licence applications. You may wish to enquire about the consultant's success rate in applying for licences of the type required, particularly the proportion of applications that have been successful without amendment.
- Costs. These vary widely between consultancies, so you may wish to seek more than one quotation. As with any sort of professional service, it is helpful to be as clear as possible about what is required and what will be included in the quoted price.

### When do surveys need to be conducted?

Some surveys, such as scoping surveys or looking for evidence of bats in buildings, can be carried out all year round but may be more productive at certain times of year. For more specific surveys, there are often relatively narrow times of year when surveys can occur. For details of optimal survey periods, please refer to Box 3.1 of the Kent Design Guide Biodiversity Technical Appendix available at <http://www.kent.gov.uk/NR/rdonlyres/559D0301-726C-440E-A77E-0F989AD8368C/0/Biodiversity.pdf>

### Can a survey be conditioned?

Natural England recommends that, where there is a reasonable likelihood of a protected species being affected by a development, surveys are provided **prior to determination of the application**. This is in accordance with Paragraphs 98 and 99 of ODPM [Circular 06/2005](#).

Further survey work may be required to inform the detailed mitigation, or there may be a time lag between granting of permission and the development commencing. In these cases, it may be appropriate in these cases to use a condition to secure additional surveys. Further information on when it is acceptable to condition a survey can be found within the attached FAQs

document.

## Why do we need to do a Survey? –

### Responsibilities of Local Planning Authorities in respect of protected species

Many species receive legal protection under various Acts of Parliament and Regulations. The presence of a protected species is a **material consideration** (Paragraph 98 [Circular 06/2005](#)) when a planning authority is considering a development proposal and as such, where impacts upon a protected species are likely to result from a development, surveys must be provided to support a planning application. Paragraph 99 of the same circular states that *'It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted.'* However, it is acknowledged that the delays and costs incurred in undertaking such surveys mean that they should only be requested where there is a *reasonable* likelihood of protected species being affected. The guidance provided in this advice aims to help you make a judgement as to when it is reasonable to expect a protected species survey to accompany an application.

In addition to the guidance within Planning Policy Statement 9 and the accompanying circular and good practice guide, Section 40 of the Natural Environment and Rural Communities Act (2006) states that *'Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity'*. Section 40(3) also states that *'conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat'*.

Similarly, for major developments where an environmental impact assessment is required, the LPA may wish to note the implications of the case of *Regina v Cornwall County Council ex parte Jill Hardy*<sup>2</sup> with respect to protected species as a planning consideration.

### Other species of conservation concern

In addition to those species which receive legal protection, Government Policy and guidance states that *'Other species have been identified as requiring conservation action as species of principal importance for the conservation of biodiversity in England. Local authorities should take measures to protect the habitats of these species from further decline through policies in local development documents. Planning authorities should ensure that these species are protected from the adverse effects of development, where appropriate, by using planning conditions or obligations. Planning authorities should refuse permission where harm to the*

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<http://www.communities.gov.uk/planningandbuilding/planning/sustainabilityenvironmental/environmentalimpactassessment/noteenvironmental/>

*species or their habitats would result unless the need for, and benefits of, the development clearly outweigh that harm’ – Paragraph 16*

[Planning Policy Statement 9: Biodiversity & Geological Conservation](#)

As such, where a planning application affects species listed under S74 of the Countryside and Rights of Way Act ([S74 Species & Habitats](#)), Natural England recommends that surveys and mitigation for any impacts are secured from the applicant for developments where impacts are likely to result. Such measures could help in fulfilling the Local Authorities duty under Section 40 of the Natural Environment and Rural Communities Act (2006) as referred to above.

### **Biodiversity Enhancements**

The Government guidance contained within [Planning Policy Statement 9: Biodiversity & Geological Conservation](#) also makes it clear that developments should build in features beneficial to wildlife or geological features as part of the overall design. Natural England recommends that LPA’s maximise the opportunities for enhancements associated with all developments. The enhancements should be proportionate to the scale of the development proposed and could range from the installation of nest boxes or bat bricks in a small scale development through to the creation of areas of semi-natural habitat for larger scale applications. Further guidance can be found within [Planning for Biodiversity and Geological Conservation: A Guide to Good Practice](#).

# Annex 1

## Natural England's remit and our role in the planning system in respect of protected species

Natural England works for people, places and nature, to enhance biodiversity, landscapes and wildlife in rural, urban, coastal and marine areas; promote access, recreation and public well-being; and contribute to the way natural resources are managed so that they can be enjoyed now and in the future.

Further information on Natural England can be found on our website at [www.naturalengland.org.uk](http://www.naturalengland.org.uk).

Natural England is a statutory consultee in the development control process, under a variety of legislation particularly in relation to statutory nature conservation sites, nationally important landscapes and development requiring an environmental impact assessment.

With regard to protected species, Paragraph 98 of ODPM Circular 06/2005<sup>3</sup> states that:

*'The presence of a protected species is a material consideration when a planning authority is considering a development proposal that, if carried out, would be likely to result in harm to the species or its habitat. Local authorities should consult English Nature [now Natural England] before granting planning permission'.*

By consulting and implementing this advice the LPA has met the requirement to consult Natural England.

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<sup>3</sup> Circular 06/05: Biodiversity and Geographical Conservation - Statutory Obligations and Their Impact Within the Planning System <http://www.communities.gov.uk/documents/planningandbuilding/pdf/147570.pdf>

## Annex 2

### Legislative and Policy guidance relating to protected species and the planning system

#### Legislation

Several pieces of legislation, both domestic and European, offer protection to species which may be affected by a development.

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The attached document offers a summary of the protection afforded to species and is offered by way of guidance only. However, this is only a summary document and should not be relied on as the definitive position on the protection afforded to species in the UK. For that, recourse must be made to the relevant legislation.

#### Commonly encountered protected species

Many species of plants, invertebrates and animals receive protection under the legislation detailed above. However, of these, the following are the most likely to be affected by development in the southeast:

Species	Legislation
Bats (all species) Dormice Great crested newts Otters Sand lizards and smooth snakes	The Wildlife and Countryside Act 1981 (as amended) The Conservation (Natural Habitats &c.) Regulations 1994 (as amended)
Breeding birds (in particular Barn Owls)	The Wildlife and Countryside Act 1981 (as amended)
Adders, grass snakes, common lizards and slow worms	The Wildlife and Countryside Act 1981 (as amended) (intentional killing and injuring only)
Water voles	The Wildlife and Countryside Act 1981 (as amended)
White clawed crayfish	The Wildlife and Countryside Act 1981 (as amended)
Badgers	The Protection of Badgers Act 1992

A complete list of species protected under the Wildlife and Countryside Act 1981 (as amended) ('WCA') can be found at:

- Birds: **all birds** (and their eggs and nests) in Britain **are protected**; Species listed on Schedule 1 WCA are specially protected i.e. offences committed in relation to them attract special penalties, and there is an additional offence of disturbing them whilst they are on or near a nest that doesn't apply to other species. [http://www.jncc.gov.uk/PDF/waca1981\\_schedule1.pdf](http://www.jncc.gov.uk/PDF/waca1981_schedule1.pdf)
- Animals <http://www.jncc.gov.uk/page-1815>
- Plants <http://www.jncc.gov.uk/page-1816>

Full details of the species protected under The Conservation (Natural Habitats &c.) Regulations 1994 (as amended) can be found in Tables 2 and 3 of Annex 2 of ODPM ([Circular 06/2005](#))