
Directorate of Environment and Regeneration • Planning Services

LOCAL PLANNING GUIDANCE NOTE NO.8 NATURE CONSERVATION AND DEVELOPMENT

Background

The United Kingdom Government is committed to the conservation of biological diversity, and has ratified the United Nations Biodiversity Convention of 1992. Biodiversity is the variety of all living things which exist in a particular area or habitat, which means that **the Government has undertaken to protect the variety of our plant and animal species**. Most development will have some implications for nature conservation. Development creates opportunities to enhance biodiversity, prevent losses, or compensate for losses where damage is unavoidable. The key to the conservation of wildlife is protecting the habitat on which it depends. **Within Flintshire many sites have been designated and are protected under the appropriate legislation**, which is summarised in **Appendix 1**. But, as the **Welsh Assembly Government (WAG) explains in “Planning Policy Wales” (PPW) of 2002, the natural heritage is not confined to designated sites but in fact extends across the whole country**. Furthermore, continuous linear areas - corridors for wildlife - are an essential refuge for the migration and dispersal of wildlife, linking one habitat to another. “Attractive and ecologically rich environments are important, both for their own sake and for the health and the social and economic well being of individuals and communities. Biodiversity and landscape are important in the economic life of many communities and the quality of the environment is often a factor in business location decisions....A key role of the planning system is to ensure that society’s land requirements are met in ways which do not impose unnecessary constraints on development whilst ensuring that all reasonable steps are taken to safeguard or enhance the environment. However, **conservation and development can often be fully integrated. With careful planning and design, not only can the potential for conflict be minimised, but new opportunities for sustainable development can also be created**. For example, new development on previously developed land provides opportunities to restore and enhance the natural heritage through land rehabilitation, landscape management and the creation of new or improved habitats.”

It is important that biodiversity considerations are taken into account at an early stage in the control of development, and local planning authorities such as Flintshire County Council must address issues relating to nature conservation and species protection in the planning context. The purposes of this Local Planning Guidance Note (LPG) are: to provide information and advice on nature conservation in the context of development; to minimise the impact on wildlife where development is unavoidable; to offer guidance to landowners, developers and the general public about the weight given to nature conservation in deciding planning applications; and to guide new development with appropriate advice on new habitat creation and management.

The WAG supports the preparation of Local Biodiversity Action Plans as a means of engaging local communities and private sector organisations in the conservation and enhancement of biodiversity at the local level, to help achieve national goals. Flintshire County Council’s **Biodiversity Action Plan (BAP) of 2002, “Creating Space for Wildlife”**, explains the concepts behind biodiversity planning and looks at the broader issues involved, and also examines different types of local habitat and locally significant species. It can be viewed in Planning Services, County Hall, Mold or via the website www.flintshire.gov.uk, following the biodiversity links.

Trees, woodlands and hedgerows are important wildlife habitats; in particular, ancient and semi natural woodlands are irreplaceable habitats of high biodiversity value which should be protected from development that would result in significant damage. Local Planning Authorities (LPAs) like Flintshire County Council have powers to protect existing trees and to require new ones to be provided through planning conditions. In this series, **linked guidance is given in LPG 3 Landscaping, LPG 4 Trees and Development, and LPG 19 Sustainable Drainage Systems**, all of which are accessible at Planning Services in County Hall, Mold.

Policy

The Assembly Government’s PPW contains a key policy objective which aims to protect local and global ecosystems, ensuring that internationally and nationally designated areas, species and habitats are protected from inappropriate development. It states **the importance of land use planning and the various environmental management regimes operating in an integrated way**. In this context, specific references are made to the need to consider carefully the possible impact of wind energy proposals, the potential for pollution affecting the use of land, and the possible effects of noise- generating developments upon wildlife. The Assembly’s requirements are given in greater detail in **Technical Advice Note 5 Nature Conservation and Planning (TAN5)** of 1996, in particular in two flow charts depicting “Consideration of development proposals affecting SPAs and SACs” and “Permitted Development Rights, SPAs and SACs”, which indicate the roles of LPAs and the Countryside Council for Wales (CCW). (SPAs are Special Protection Areas, and SACs are Special Areas of Conservation.)

Accordingly, safeguarding the county's natural environment is one of the strategic aims of **Flintshire's Unitary Development Plan (UDP)**. **Policy STR7 Natural Environment** includes "protecting and enhancing areas, features and corridors of nature conservation, biodiversity and landscape quality both in urban and rural areas including urban greenspace."

Policy GEN1 General Requirements for Development, which sets the scene for the whole planning process in the county, includes the clause that development which requires planning permission must "not have a significant adverse impact on recognised wildlife species and habitats", whilst **GEN3 Development outside Settlement Boundaries** emphasises that proposals which in principle may be acceptable in such locations (e.g. development relating to agriculture, minerals extraction, rural diversification) must have no unacceptable impact on the natural environment.

In addition, a series of more specific policies seek to protect the county's wildlife and biodiversity, namely **WB1 Species Protection**, **WB2 Sites of International Importance**, **WB3 Statutory Sites of National Importance**, **WB4 Local Sites of Wildlife and Geological Importance**, **WB5 Undesignated Wildlife Habitats**, and **WB6 Enhancement of Nature Conservation Interest**. All of these policies are reproduced in **Appendix 2**.

Guidance for planning applicants

The presence of a species protected under European or UK legislation is a **material consideration** when the LPA is considering a development proposal which, if carried out, would be likely to result in disturbance or harm to the species or its habitats.

Habitat protection

A summary of the various **designations** referred to here and relevant to nature conservation is given in **Appendix 3**.

Major sites designated in Flintshire are shown on the **Proposals Map of the UDP**, which can be viewed in Planning Services, County Hall, on the Council's website or in a local library. Briefly, Special Areas of Conservation and Sites of Special Scientific Interest occur near the Dee Estuary, on the fringes of the Clwydian Hills, on Halkyn Mountain, and a variety of smaller sites, some of which adjoin developed areas.

Where the LPA propose to allow development which would adversely affect an SPA or SAC, it must notify the WAG in advance. Applications for proposals likely to have a significant effect on sites of more than local importance will normally be called in by the WAG, for its own determination.

Normal permitted development rights do not apply in SSSIs for the temporary use of land for war games, motor sports and clay pigeon shooting, which means that planning permission is required for such uses so that nature conservation interests can be taken into account.

Consideration should be given to the need for an **Environmental Impact Assessment (EIA)** where certain types of development are likely to have a significant effect upon an SSSI, SPA, SAC or Ramsar site, be they scheduled or proposed. LPAs should consult the CCW if uncertain about the project's likely effect on the environment. **LPG 21 Environmental Impact Assessments** in this series gives more details about the approach.

Species Protection

New developments for which works would contravene the protection afforded to European protected species require **derogations** from the provisions of the **Habitats Directive**. A derogation may only be authorised if there is no satisfactory alternative and if the action authorised will not be detrimental to the maintenance of the population of the species. The works must be for the purposes of "public health or safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment." In Wales, derogations are granted by a **licence** issued by the Assembly. LPAs are under a duty to have regard to the requirements of the Directive, and take into account the above matters so as to avoid developments with planning permission subsequently not being granted a derogation.

Under the Wildlife and Countryside Act 1981 **it is an offence to kill, injure, sell or take protected species or destroy protected species or intentionally to damage, destroy or obstruct their places of shelter or breeding sites, or deliberately to pick, collect, cut, uproot or otherwise destroy listed plant species.** These species, listed by the 1981 Act and the Habitats Regulations, are not confined to protected sites, therefore care **must be exercised by prospective developers not to cause an offence.** **Bats** receive additional protection to the extent that it is an offence to kill, injure or disturb bats found in the non-living parts of a dwelling, such as the loft. Interference with a **badger sett** requires a licence from the Countryside Council for Wales. **All wild birds**, together with their nests and eggs, are protected by law.

It is the responsibility of the applicant to check the site for the presence of protected species and their habitat and to take them into account at the design stage. Advice can be obtained from Planning Services about the presence of any protected species by contacting the County Ecologist.

It may be possible to reduce the impact of the development by **amending the design** to retain an important habitat, or by avoiding sensitive times like the breeding season by retiming operations or phasing the works.

Of particular relevance locally in the context of development are:

- **Barn owls**, especially found in barns and outbuildings.

- **Bats** (several species), which can be found in lofts, roofs and cavity walls.
- **Great crested newts**, including the zone of vegetation surrounding their breeding ponds. Flintshire has a high concentration.
- **Snakes and lizards**, namely common lizards, slow-worms, grass snakes and adders, which are found particularly on grassland or, in the case of the grass snake in wetland areas.
- **Otters and water voles**, in close proximity to rivers and streams.
- **Native black poplars**, important in North East Wales but now rare elsewhere in the UK.

A comprehensive list of locally important species with their habitats and distribution in Flintshire is given in Annex 7 of the BAP, and detailed information is provided regarding key species.

Where the land or an adjoining site contains or supports (or is likely to do so) a protected species, the applicant must **survey** it and supply the LPA with information on:

- The presence of a protected species.
- The location of suitable wildlife habitats.
- An indication of the population level of protected species.
- The extent of nesting/breeding habitat and feeding territory.
- An environmental assessment.
- A conservation management scheme, including measures to safeguard the species and reduce the impact of the development.

Pre-application discussions

Before making a planning application, if there is a possibility of significant nature conservation interests on or near the site, it is advisable that the developer holds discussions with the LPA, the CCW and - where rivers are involved - the Environment Agency.

Consultation procedures

LPAs must work with the CCW and the voluntary sector, and where proposals are close to their boundaries, with neighbouring LPAs.

The Countryside Council for Wales (CCW) must be consulted by the LPA if any development proposed is within or is likely to affect an SSSI and whenever a proposal will affect bats, and they should be consulted where it is known that a protected species will be affected.

Advice should be sought from the County Ecologist or Wildlife Trust where locally important (county) scheduled sites are involved.

Many species occur outside designated areas, and therefore the LPA may need to consult with other appropriate organisations having expert knowledge.

Planning conditions and management agreements

When assessing the merits of a planning application, the presence of a protected species and whether a proposal is likely to harm the species or its habitat, will be taken into account. If the Council is minded to grant permission, it may protect the species or habitats, or seek to minimise the impact on wildlife, by attaching **planning conditions** or by requiring the developer to enter into a **Planning Obligation**.

Sometimes the proposal can be modified to overcome the environmental concerns satisfactorily. If not, **the Council may refuse the application** where the damage to nature conservation interests is considered to be too great.

It should be noted that due consideration may be given not only to protected species and habitats but also to locally rare species.

Unauthorised developments affecting SPAs and SACs

LPAs must act quickly to prevent or remedy any alleged breach of planning control which has, or is likely to have, a significant affect on an SPA or SAC. Where the breach continues it is open to the LPA to serve a **stop notice with the related enforcement notice**. Where a planning condition has been breached, the same combination of powers may be more effective than a breach of condition notice.

Licensing requirements

Any proposed development that will affect or disturb bats, great crested newts or badgers, or their habitats, will require a **licence from the CCW**, whether or not planning permission is required. The licence is given to protect these species. Conditions specified in a planning consent may require a licence to be obtained prior to the commencement of works.

Any concept of moving the species to another habitat would only be considered very much as a last resort and only if a suitable and sustainable habitat is available. Generally this approach should be avoided and on site provision for the species' accommodation needs must be built in to the design.

Advice

The following may be able to offer advice:

- Flintshire County Ecologist, Planning Services, County Hall, Mold, Flintshire.CH7 6NF (telephone 01352 703268), who can advise on the current details of the local groups below.
- Countryside Council for Wales, Victoria House, Grosvenor Street, Mold, Flintshire CH7 1EJ (telephone 01352 754000)
- Environment Agency, where rivers are involved
- North Wales Naturalists' Trust
- Royal Society for the Protection of Birds
- Local badger group
- Local bat group
- Local reptiles group

When seeking advice from the CCW (and others) it would be helpful for developers to provide:

- A short description of the proposed development or works showing the broad purpose, physical extent and any residues likely to be produced and proposals for disposal, also any emissions to air, water, soil and by noise, vibration, heat, light or radiation, and the timetable.
- Maps showing its location in relation to the boundary of the SPA/SAC, including the positions of buildings and access routes.
- A description of the possible direct or indirect effects on wildlife, water quality, hydrology, geological or landform features.
- Information about proposed mitigating measures to prevent, reduce, or offset any land take, residues or emissions.

Appendix 1: The most relevant legislation and designations in the Flintshire context

The most relevant **UK legislation** is as follows:

- **The National Parks and Access to the Countryside Act 1949** introduced the concept of National Nature Reserves (NNRs) and Sites of Special Scientific Interest (SSSIs), and conferred powers on local authorities to create nature reserves.
- **The Countryside Act 1968** strengthened many of the above powers.
- **The Wildlife and Countryside Act 1981** defines the various designations which must be taken into account, including SPAs, SACs, Ramsar sites, NNRs, SSSIs, and LNRs, and with its associated schedules sets out the protection afforded to certain plants and animals, including all wild birds. Endangered species, such as great crested newts, bats and otters, are protected also by the Habitats Regulations 1994. The Badgers Protection Act 1992 is obviously more specific.
- **The Environmental Protection Act 1990** established the Countryside Council for Wales and gave added protection to the SSSIs.
- **The Planning and Compensation Act 1991** strengthened the enforcement and development control powers of local authorities and required conservation policies to be included in development plans.
- **The Countryside and Rights of Way Act 2000** places a duty on the WAG, and through them on to local authorities, to have regard to furthering the conservation of species and habitat types identified as priorities. "Conservation" in this context includes restoration and enhancement.
- **The Natural Environments and Rural Communities (NERC) Act 2006** places a duty on local authorities to "conserve biodiversity".

The main **international requirement** is:

- The **Ramsar Convention on Wetlands of International Importance** requires the conservation of wetlands. In Flintshire the Dee Estuary is a Ramsar site and also a Special Protection Area, as defined in Appendix 3.

Appendix 2: The relevant UDP policies

Policy WB1 Species Protection

Development which would have a significant adverse effect on important species or their habitats will not be permitted unless appropriate measures are taken to secure their long term protection and viability.

Policy WB2 Sites of International Importance

No development will be permitted unless it is established that it is not likely to have a significant effect on any Ramsar Site or Natura 2000 site (including Special Protection Areas, potential Special Protection Areas, Special areas of Conservation, candidate or possible Special Areas of Conservation), or it is ascertained, following appropriate assessment, that it will not adversely affect the integrity of any Ramsar site or Natura 2000 site.

Policy WB3 Statutory Sites of National Importance

Sites of Special Scientific Interest (SSSI) will be protected. There will be a presumption against development either within or in the vicinity of a site which would have a significant adverse effect on the nature conservation interest of the site.

Policy WB4 Local Sites of Wildlife and Geological Importance

Wildlife Sites and Regionally Important Geological Sites will be protected. Planning permission will not be granted for development that is likely have a significant adverse effect on their nature conservation or geological value.

Policy WB5 Undesignated Wildlife Habitats

Development will be permitted only if will not have a significant adverse effect on wildlife and habitats of local importance.

Policy WB6 Enhancement of Nature Conservation Interest

The incorporation within development proposals of measures which improve the nature conservation value of an area will be permitted by the Local Planning Authority.

Appendix 3: Designated sites of nature conservation importance

All these sites are statutory designations unless otherwise stated.

Ramsar sites

Wetland/coastal sites of international importance especially as a wildfowl habitat designated by the WAG under the European Ramsar Convention. In Flintshire this occupies a sizeable area along the Dee estuary. The UDP's Policy WB2 applies to these sites.

Special Protection Areas (SPA)

An SSSI additionally designated under the European Directive on the Conservation of Wild Birds, because of the need to protect threatened birds and their habitats, and its international importance. Again, the Dee estuary. Policy WB2 applies to them and to potential SPAs.

Special Areas of Conservation (SAC)

An SSSI additionally designated under the European Directive on the conservation of Natural Habitats and Wild Fauna and Flora, in order to maintain or restore priority natural habitats and species, which together with SPAs comprise the European Union's 'Nature 2000' network of habitats of pan-European nature conservation importance. Policy WB2 applies to them and to candidate SACs.

Site of Special Scientific Interest (SSSI)

Designated under the Wildlife and Countryside Act, as amended by the Countryside and Rights of Way Act, and identified by the CCW as being of national importance in terms of wildlife, flora, fauna, geological or physiological features. Policy WB3 applies to them.

National Nature Reserves (NNRs)

Designated under the Wildlife and Countryside Act, these are areas of national importance for nature conservation which are managed in accordance with a management agreement with landowners and occupiers.

Local Nature Reserves (LNRs)

Designated under the Wildlife and Countryside Act, these are managed sites declared by the LPA as making a valuable contribution to nature conservation, wildlife or geological interest, providing opportunities for education and enjoyment by the local population. They are of regional/local interest.

Non-statutory nature reserves

These may be designated by public and private bodies such as Wildlife Trusts or the RSPB, and are managed sites.

Sites of Nature Conservation Importance (SNCI)

Again non-statutory, these are local designations by the local authority of local nature conservation importance, the most common of which is a wildlife site. Policy WB4 applies to them.

Areas of Outstanding Natural Beauty (AONBs)

These are statutory landscape designations of national importance, within which PPW makes clear that planning decisions should give great weight to conserving the wildlife heritage. The Clwydian Range AONB covers a large area on the western side of the county.

Environmentally Sensitive Areas (ESAs)

This designation is not for planning purposes, but the features which contributed to its designation may be important in formulating planning policies and decisions. In Flintshire the ESA extends across and some way eastwards of the Clwydian Range.