

PINS NOTE 34/2011

To: All Inspectors

Date of Issue: 17 October 2011

Currency: review at 6 months after issue

Protected Species Advice - Natural England's revised approach

Background

1. All wild birds, many plants and animals, insects, fish and amphibians are protected under the Wildlife and Countryside Act 1981 (W&CA). Particular species of animals and plants are protected under the Conservation of Habitats and Species Regulations 2010¹. Some animals are protected under legislation specific to them (e.g. badgers, deer and seals). The presence of protected species is a material consideration when considering a proposal that would be likely to harm a species or its habitat. Circular 06/2005² and the PPS9 Guide to Good Practice³ advise that in such circumstances LPAs should seek advice from Natural England (NE) before determining a planning application. Where the presence of protected species has been raised at application stage, LPAs will consult NE (along with any local wildlife bodies) and NE will provide an individual response.
2. NE has recently adopted [standing advice for protected species](#). The standing advice replaces some of the individual comments that NE would have provided when consulted by LPAs. The standing advice is a material consideration in the determination of applications as is any individual response received from NE following consultation⁴. The standing advice replaces individual responses from NE in the following circumstances:
 - Applications submitted without the relevant protected species surveys; where scoping surveys or risk assessments have been recommended but further surveys have not been undertaken and submitted with scoping reports;

¹ The Habitats Regulations implement the European Habitats Directive (EC Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Flora and Fauna) into British legislation.

² Biodiversity and Geological conservation – Statutory obligations and their impact within the planning system

³ Planning for Biodiversity and Geological Conservation: A Guide to Good Practice

⁴ See paragraphs 78-82 of Circular 06/2005: Biodiversity and Geological Conservation – statutory obligations and their impact within the planning system

- Applications containing mitigation proposals for certain species covered by the Wildlife and Countryside Act 1981 (water vole, white clawed crayfish, common reptiles, barn owls, other breeding birds not protected by schedule 1);
 - Advice on mitigation proposals for badgers.
3. NE will continue to provide advice in the form of individual responses when consulted in the following circumstances:
- Where surveys or reports have been submitted which indicate that an application is likely to affect species protected under the Habitats Regulations 2010 (European Protected Species), or other protected species where detailed advice is not provided in the standing advice; or
 - Where an application requires an Environmental Impact Assessment; or
 - Where an application affects nationally important landscape(s) including an Area of Outstanding Natural Beauty or National Park; or
 - Where an application is likely to damage a Site of Special Scientific Interest (SSSI); or
 - Where an application is likely to have a significant effect upon a Special Area of Conservation (SAC), Special Protection Area (SPA) or Wetland of International Importance under the Ramsar Convention (Ramsar Sites); or
 - Where minerals applications would lead to the loss of the best and most versatile agricultural land.
4. Consequently LPAs must now decide on a case by case basis whether the protected species standing advice applies or if NE needs to be consulted.

Action

5. As in all cases where the presence of protected species has been raised, an Inspector must consider the reasonable likelihood of the species being present, and the extent to which it may be affected, on the basis of the evidence before him/her.
6. Where the development is covered by up to date NE standing advice, Inspectors must take that advice into account when determining the appeal. If an Inspector considers that, having regard to paragraph 3 above, the standing advice does not cover the proposed development and NE should have been consulted, consultation must be undertaken before a decision is reached. Any comments from NE must be copied to the appeal parties and those parties must be given an opportunity to respond before the appeal is determined.
7. PINS Note 1084 is now cancelled.
8. Please contact XXXX if you have any queries on this Note. Inspectors may wish to discuss individual cases with their SGL, the AD (Planning) or Planning Strategy Unit.

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Director of Quality, Strategy and Plans