

# Biodiversity Supplementary Planning Document



March 2024 (Consultation Draft)



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## Executive Summary

Much of our wildlife-rich habitat has been lost over the last century and many species are in long-term decline. The UK is now one of the most nature depleted countries in the world.

The Government's 25 Year Environment Plan (2018)<sup>1</sup> marked a step-change in ambition for wildlife and the natural environment. Its overarching ambition is to 'leave our environment in a better state than we found it and to pass on to the next generation a natural environment protected and enhanced for the future.'

A key principle of the Environment Plan is to support development and the environment by embedding the principle that new development should result in 'net environmental gain – with neglected or degraded land returned to health and habitats for wildlife restored or created.' This has laid the foundation for the Environment Act 2021 to tackle biodiversity loss and recover nature through Biodiversity Net Gain, where development has a positive impact on biodiversity not just a neutral, or at worse, negative impact. The Nature Recovery Network (NRN) supported by Local Nature Recovery Strategies (LNRS) will in turn set out our priorities for the enhancement and creation of habitats, including species-specific projects where necessary.

This Supplementary Planning Document (SPD) expands upon policies within the County Durham Plan (CDP). It provides developers with a clear step by step guide for working with all species and habitats which are likely to be impacted upon by their proposed development. The SPD also details the council's requirements for applicants to build nature and biodiversity into their developments, ensuring that a measurable net gain in biodiversity can be achieved in accordance with the CDP, National Planning Policy Framework and the Environment Act 2021.

As well as this, the SPD is a key action in the council's Ecological Emergency Action Plan, which is a tool against our strengthened biodiversity duty under the Environment Act 2021.

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<sup>1</sup> <https://www.gov.uk/government/publications/25-year-environment-plan>

## Introduction

What is biodiversity and why is it important?

Biodiversity is used to describe the variety of life in a particular area, including animals, insects, plants, bacteria and fungi, and how those different species interact with each other.

Biodiversity is essential for the processes that support all life on Earth, including humans. It provides benefits to us all through the production of air, food, water, timber, medicines, and the regulation of floods. Spending time in nature is also increasingly understood to lead to improvements in people's physical and mental health.

### **The council's commitment to supporting nature recovery**

Durham County Council declared an ecological emergency in April 2022 and is committed to supporting nature recovery. The council's Ecological Emergency Action Plan (EEAP) identifies how it will take action against the emergency across key themes: Land Management; Engagement, Education, and Behaviour Change; and Policies and Strategies. This is in advance of a Local Nature Recovery Strategy (LNRS) which will provide a county wide strategic approach to nature conservation and will highlight the habitats and species of concern.



The purpose of this Supplementary Planning Document  
This Biodiversity Supplementary Planning Document (SPD) is a key action in the EEAP.

The purpose of the SPD is to improve biodiversity delivery within new built development. It will achieve this by setting out:

- County Durham's ecological importance and the existing policy framework.
- What biodiversity net gain and the nature recovery network are in planning terms.
- What the council expects to be included and addressed within any planning application.
- The information that needs to be submitted at each stage of the planning process.
- How to build biodiversity into development.

The SPD supplements policies in the County Durham Plan (CDP), in particular CDP policies 41 (Biodiversity and Geodiversity), 42 (Internationally Designated Sites) and 43 (Protected Species and Nationally and Locally Protected Sites).

It will be subject to consultation in accordance with the council's Statement of Community Involvement. Once adopted it will be a material consideration in determining planning applications.



## The Legislative and Policy framework

### The legislative framework

The overall trend internationally, nationally and locally is one of biodiversity and habitat decline, principally as a result of human activity. In 1992, the UK government signed up to the United National Convention on Biological Diversity; this committed the UK to reverse the loss of biodiversity. The most recent State of Nature report, published in 2023, suggests there has been a 19% decline in the average abundance of wildlife in the UK since the 1970s. This is despite legislation and policy to protect biodiversity and wildlife as summarised below.

- The **Government's 25 Year Environment Plan** sets the aspiration to mainstream biodiversity net gain in the planning system.
- The **Environment Act 2021** strengthens the existing duty on public authorities to conserve and enhance biodiversity through appropriate action. The Act introduces a minimum 10% mandatory Biodiversity Net Gain requirement under Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act) to ensure that developments deliver an increase in biodiversity value post development. The Act also introduces a statutory requirement for LNRS to be produced by a responsible authority appointed by the Government. LNRS will support the Nature Recovery Network as a spatial plan to protect and restore wildlife. It also makes provision for strengthening the Biodiversity Duty for Local Authorities.
- The **Wildlife and Countryside Act 1981 (as amended)** is the primary mechanism for the protection of all wildlife in the UK and includes schedules that set out those species with additional levels of protection.
- The **Natural Environment and Rural Communities Act (NERC) 2006** places a duty on public bodies in England to conserve biodiversity. It requires the Secretary of State to publish and maintain lists of species and habitats which are regarded by Natural England to be of 'principal importance' for the purposes of conserving biodiversity in England, and these are known as Priority Species and Priority Habitats. The Environment Act amends Section 40 of the NERC to conserve and enhance biodiversity.
- **The Conservation of Habitats and Species Regulations 2017 (as amended)**, often referred to as the Habitats Regulations, were the mechanism through which the European Commission Habitats and Wild Birds Directives were incorporated into UK law. The Habitats Regulations have been amended to reflect the consequences of Brexit, but their substance has been retained to provide protection for sites, habitats and species considered to be of international importance, including the designation of Habitats Sites. Local Planning Authorities have a duty to ensure that planning application decisions comply with the Habitats Regulations. If the requirements of the Habitats Regulations are not met and impacts on Habitats Sites are not mitigated, then development must not be permitted.
- **The Countryside and Rights of Way (CROW) Act 2000** strengthens the protection afforded to Sites of Special Scientific Interest, including greater powers for Natural England to be able to secure their appropriate management and a requirement for local authorities to further their conservation and enhancement.
- **The Protections of Badgers Act 1992** provides protection for badgers and their setts.
- **The Hedgerows Regulations 1997** protects all hedgerows meeting the criteria for 'importance' from removal with certain exemptions.
- **National Parks and Access to the Countryside Act 1949** is the legislation by which Local Nature Reserves are declared.

- **The Town and Country Planning (Tree Preservation) (England) Regulations 2012** set out the procedures for making Tree Preservation Orders and the activities that are prohibited in relation to trees protected by these orders.
- **The Water Framework Directive 2000** applies to all surface freshwater bodies (including lakes, rivers and streams), groundwater, groundwater dependent ecosystems, estuaries and coastal waters and aims to improve the ecological health of inland and coastal waters and prevent further deterioration.

#### The policy context

The **National Planning Policy Framework (NPPF)** (paragraph 180) states planning decisions should enhance the local environment by minimising impacts on and providing net gains for biodiversity and protecting and enhancing sites of biodiversity or geological value. It also states that biodiversity enhancement should include the establishment of coherent ecological networks to provide greater resilience against current and future pressures.

Paragraph 186 sets out how planning authorities should deal with biodiversity when considering planning applications. This includes application of the 'Mitigation Hierarchy'; development in relation to Sites of Special Scientific Interest (SSSI), irreplaceable habitats; and support for development that conserves or enhances biodiversity, and which can secure measurable net gains for biodiversity.

It states if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused (paragraph 186).

**National Planning Practice Guidance (NPPG)** on the Natural Environment (Para's 10-35) details the responsibilities regarding Protected and Priority Species and Habitats; and the 'proportionate' information and assessment required on biodiversity impacts at all stages of development. It also advises on: the restoration or enhancement of local ecological networks including those that contribute to the wider Nature Recovery Network, the application of the mitigation hierarchy, net gain metrics, and promotion of woodlands.

**Biodiversity and Geodiversity Conservation: Circular 06/2005** complements the NPPF and NPPG and provides guidance on the application of the law relating to planning and nature conservation. It covers internationally and nationally designated sites; the conservation of habitats and species outside those sites; the species protected by law; and other duties such as Environment Impact Assessment (EIA).

The **County Durham Plan (CDP)** (2020) is the Development Plan for Durham, alongside Neighbourhood Plans and the emerging Minerals and Waste Plan. The key development plan policies in relation to biodiversity are:

- **CDP Policy 40 (Trees, Woodlands and Hedges)** requires development in the first instance to retain existing trees, woodland and hedges and integrate them into the design, having regard to stand-off distances, management requirements and growth potential. Development will not be permitted that would result in the loss or damage to woodland, or the loss of hedges or trees of high landscape, heritage, amenity or biodiversity value unless the benefits of the proposal clearly outweigh the harm. In the case of woodland it would also need to be demonstrated suitable replacement woodland planting, either within or beyond the site boundary, could be undertaken. Proposals resulting in the loss or deterioration of ancient woodlands, will be refused unless there are wholly exceptional reasons and a suitable compensation strategy exists. Where hedges or trees are lost, suitable replacement planting will be required within the site or the locality.



- **CDP Policy 41 (Biodiversity and Geodiversity)** states proposals will be expected to minimise impacts on biodiversity by retaining and enhancing existing biodiversity assets and features and providing net gains for biodiversity including by establishing coherent ecological networks. New development will not be permitted if significant harm to biodiversity or geodiversity cannot be avoided, or appropriately mitigated, or, as a last resort, compensated for. The loss or deterioration of irreplaceable habitat (such as peatlands or lowland fen) will not be permitted unless there are wholly exceptional reasons and a suitable compensation strategy exists. Geological features are to be protected and regard should be had to Geodiversity Action Plans and the Durham Geodiversity Audit and where appropriate public access, appreciation and interpretation.
- **CDP Policy 42 (Internationally Designated Sites)** states development that has the potential to have an effect on internationally designated sites, (including all development within 0.4 kilometres of the sites), either individually or in combination with other plans or projects, will be refused where it cannot be ascertained, following Appropriate Assessment, that there would be no adverse effects on the integrity of the site, unless the proposal is able to pass the further statutory tests of ‘no alternatives’ and ‘imperative reasons of overriding public interest’ as set out in Regulation 64 of the Conservation of Habitats and Species Regulations 2017. In which case, appropriate compensation will be required in accordance with Regulation 68. Where development proposals would be likely to lead to an increase in recreational pressure upon internationally designated sites, a Habitats Regulations screening assessment and, where necessary, a full Appropriate Assessment will need to be undertaken to demonstrate that a proposal will not adversely affect the integrity of the site.
- **CDP Policy 43 (Protected Species and Nationally and Locally Protected Sites)** states all development proposals in, or which are likely to adversely impact upon (either individually or in combination with other developments), Sites of Special Scientific Interest, National Nature Reserves, Local Sites (Geology and Wildlife) or Local Nature Reserves (LNRs) will only be permitted where the benefits of development in that location clearly outweigh the impacts on the interest features on the site and any wider impacts on the network of sites. Where development impacts adversely on a designated site, mitigation, or as a last resort compensation, must be provided, be appropriate to the designations assigned to the site and deliver clear net gains for the habitats and/or species assemblages the site is designated for. Development which, alone or in combination, has a likely adverse impact on the ability of protected species to survive, reproduce and maintain or expand their current distribution will not be permitted unless appropriate mitigation, or as a last resort compensation, can be provided, which maintains a viable population and where possible provides opportunities for the population to expand. Where the species is a European protected species, the proposal must also meet the 3 legal tests of overriding public interest, no satisfactory alternative and favourable conservation status.

The council is also producing additional SPDs to provide guidance on policies in the CDP. Of particular relevance is the Trees, Woodland and Hedges SPD which provides guidance on integrating trees, woodlands and hedges into development and their protection. In addition, the Developer Contributions SPD includes guidance on requirements relating to Habitats Regulations Assessment, BNG and Nutrient Neutrality.

There are a wide range of neighbourhood forums across the county with neighbourhood plans at varying stages. The council’s [neighbourhood planning webpage](#) provides the latest position. Neighbourhood Plans are a material consideration in determining planning applications. They may include specific policies on biodiversity or other policies of relevance including designating local

green spaces. Applicants should identify if there is a neighbourhood plan covering the proposed site and the policies of relevance. Early engagement with the neighbourhood forum is also encouraged.

#### Permitted development

Some forms of development are 'permitted development' with no need to apply for planning permission. These are set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Whilst the NPPF and CDP do not apply to permitted development, relevant wildlife legislation and regulations must still be complied with. As such, any potential negative impacts, will still have to be addressed in all cases. It is advisable to engage the services of a consultant ecologist to determine if there is a risk of protected species being present.

Permitted development is granted subject to the requirements of regulations 75-78 of the Conservation of Habitats and Species Regulations 2017 (The Habitat Regulations), which seeks to ensure that it will not adversely affect European designated sites and European Protected Species. Furthermore when exercising any functions relating to permitted development, such as the grant of prior approval, the council must have regard to the requirements of the Habitats Directive (per Regulation 9(3) of the Habitats Regulations).

It should be noted that BNG doesn't apply to Development granted planning permission by a development order under the section 59. This includes permitted development rights.<sup>2</sup>

#### Listed buildings consent

As above, under Regulation 9 of 'The Habitat Regulations', when exercising any of its functions, the council must 'have regard' to the requirements of the Habitats Directive and accordingly, the impact on Protected Species must be fully assessed prior to permission being granted. Chapter 5 Section 5.2 (Protected Species and Development) and Chapter 7 explains what the council will need to consider when determining Listed Building Consent.

#### British standards

**The British Standard on Biodiversity (BS 42020:2013) – A Code of Practice for Planning and Development** relates to how biodiversity and Protected Species and Habitats are considered in a planning context. It provides clear guidance and recommendations to ecological consultants, planning applicants and local planning authorities, which ensure that ecological considerations are given the appropriate weight at each stage of the planning process and are sufficiently informed by high quality ecological survey and assessments.

**The British Standard on Biodiversity Net Gain (BS 8683) – A process for designing and implementing biodiversity net gain** is a new British Standard in development and provides linear, progressive, good practise requirements, from design to 'spade in the ground' delivery. The standard is applicable for large or small development projects, e.g. from major highways schemes through to small residential builds. The standard is also applicable for landowners or estate managers aiming to manage land to achieve BNG themselves or on behalf of 3<sup>rd</sup> parties.

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<sup>2</sup> <https://www.gov.uk/guidance/biodiversity-net-gain>

#### Other relevant strategies and plans

Durham County Council currently has a **Green Infrastructure Framework**<sup>3</sup>, which sets the overarching vision and principles for the delivery of Green Infrastructure (GI) as part of policy planning, and development in the County, and will be developing a more detailed Green Infrastructure Strategy based on these principles, in the near future.

The Environment Act 2021 lays the foundation for the Nature Recovery Network (NRN). This is a strategic spatial planning framework to deliver nature's recovery. The Network will be delivered through a mandatory system of spatial strategies called **Local Nature Recovery Strategies** (LNRS). These will identify opportunities and priorities for enhancing biodiversity and supporting wider objectives such as mitigating or adapting to climate change and also support strategic planning for housing and infrastructure. There are 48 strategy areas which cover the whole of England with no gaps or overlaps. Durham has been identified as one of the responsible authorities<sup>4</sup> who will be producing a strategy for the county. This will sit alongside the North of Tyne, South of Tyne and Wear, Tees Valley, and Cumbria LNRS areas.



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<sup>3</sup> <https://www.durhaminsight.info/durhams-green-infrastructure-framework/#:~:text=The%20National%20Planning%20Policy%20Framework,life%20benefits%20for%20local%20communities.>

<sup>4</sup> <https://www.gov.uk/government/publications/local-nature-recovery-strategies-areas-and-responsible-authorities>

## County Durham's Biodiversity Resource

### Protected sites and development

Any development has the potential to impact (both negatively and positively, directly and indirectly) on local biodiversity through its effects on nature conservation features<sup>5</sup>. Developments have the potential to impact upon nature conservation features both within the boundaries of the development as well as sites adjacent and in certain circumstances a significant distance away. As part of the development process these impacts need to be assessed and (if found to be negative) avoided, mitigated or as a last resort compensated for.

Developments should seek to minimise fragmentation and degradation of existing habitats, incorporate beneficial biodiverse features, and must deliver a minimum 10% net gain for biodiversity as measured by the statutory biodiversity metric. **The council encourages applicants to exceed this where possible.**

This section provides a summary of the sites designated for their nature conservation value across County Durham, and of the legally protected and priority species present.



**European sites/National Site Network (NSN)** comprise a network of protected sites of international importance for wildlife and consist of Special Areas of Conservation (SACs),

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<sup>5</sup> In this document, Nature Conservation features refers to species (both plant and animal) and their habitats (including feeding, resting and breeding areas); natural and historic landscapes; natural, and semi-natural elements of the landscape; and features that provide links or steppingstones from one habitat to another.

Special Protection Areas (SPAs) and Ramsar Sites for wetland habitats. In County Durham we have six SACs, three SPAs and two Ramsar sites.

Development activities which are likely to have a significant effect on an SAC, SPA or Ramsar site (i.e. the qualifying features for which it is designated), both directly and/or indirectly, on its own or cumulatively with other 'plans or projects', must be fully assessed as part of the planning process, otherwise known as a Habitat Regulations Assessment or HRA. Please see page 46 below for further details as well as the council's [Developer Guidance Document](#).

**Sites of Special Scientific Interest (SSSI)** are sites of national importance for nature conservation and are notified and protected under the Wildlife and Countryside Act 1981 (as amended). Local planning authorities have a statutory duty to protect such sites and enhance their conservation. There are 88 SSSI's within the county, designated for either their botanical or geological interest. Where development is likely to affect a SSSI directly, or within identified 'Impact Zones ([as shown on the Defra magic map](#)), the council is obliged to consult Natural England. Planning permission is unlikely to be granted for developments that damage SSSIs.

**Ancient woodland** sites are any area that has been wooded continuously since at least 1600AD. It includes ancient semi-natural woodland mainly made up of trees and shrubs native to the site, usually arising from natural regeneration and plantations of ancient woodland sites (PAWs) – replanted with conifer or broadleaved trees that retain ancient woodland features, such as undisturbed soil, ground flora and fungi.

Where development may have an effect on Ancient woodland, standing advice [published by Natural England](#) and the Forestry Commission should be consulted.

CDP Policy 40 (Trees, Woodlands and Hedges) and the council's Trees, Woodlands and Hedges SPD (2024) provide further detail.

**Local Sites – Including Local Wildlife Sites (LWS) and Local Geological Sites (LGS)** contain some of the best examples of wildlife habitats (including priority habitats), rare species, or geological features in County Durham, outside of the network of SSSI's and European sites. There are currently 308 LWS and 86 LGS which are protected through CDP Policy 41 (Biodiversity and Geodiversity) and CDP Policy 43 (Protected Species and Nationally and Locally Protected Sites).

**Local Nature Reserves (LNRs)** are a statutory designation made under Section 21 of the National Parks and Access to the Countryside Act 1949 by the council. They are places with wildlife or geological features that are of special interest locally for both people and wildlife and are protected from damage and from development. There are 50 LNR's designated in County Durham, and these are protected through CDP Policy 43.

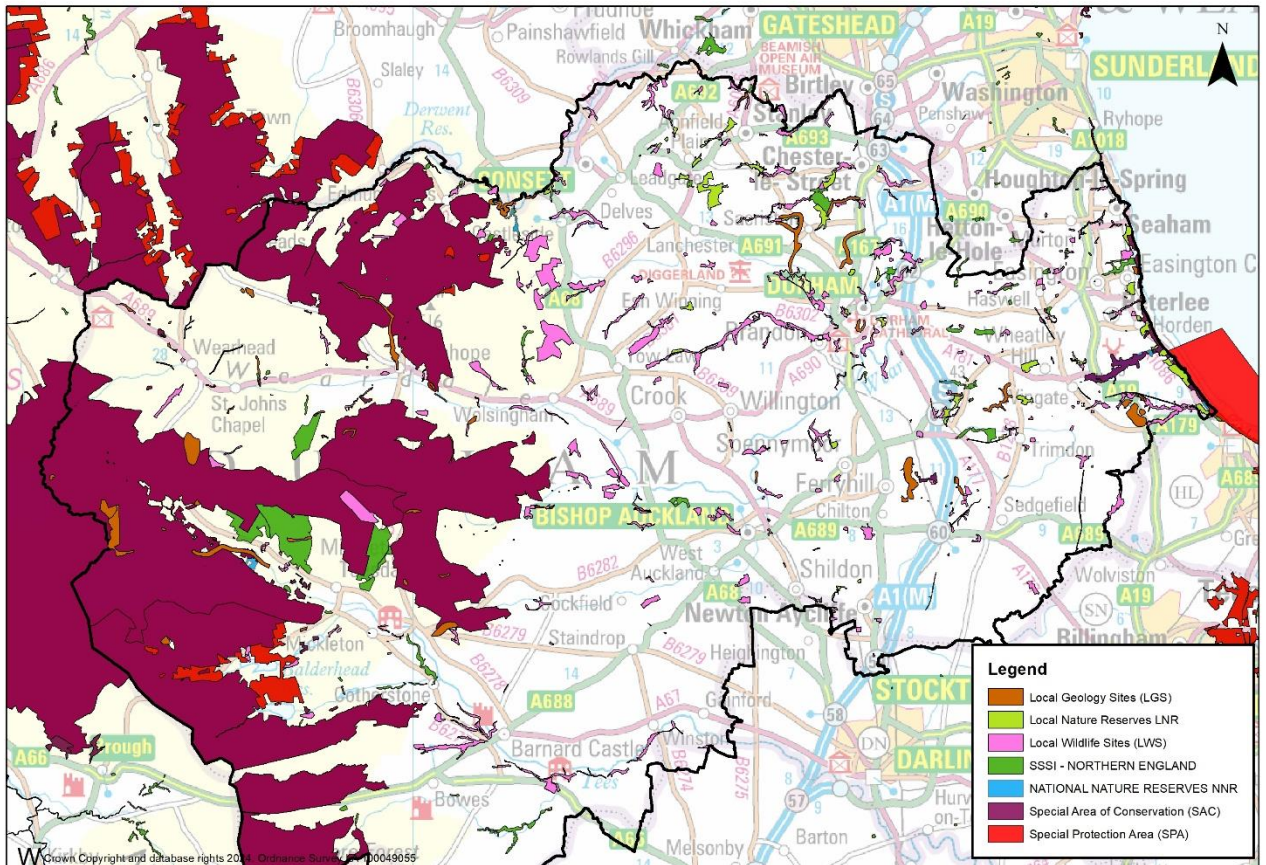


Table 1. Map showing designated sites in County Durham

### Protected species and development

A range of species are protected in law nationally. Some of these are also referred to as European Protected Species (EPS) as they are also subject to stringent protection under the Habitats Directive (implemented through the Habitats Regulations). Others are referred to as Nationally Protected Species, being protected through domestic legislation (even though this may also originate from European conventions).

Protected Species are a material consideration in the planning process and so the effect of development on protected species is considered by the council when determining planning applications.

**European Protected Species (EPS)** are species listed in Annex IV of the Habitats Directive. Those most likely to be encountered within County Durham are bats (11 species recorded in the county), otters and great crested newts. In determining planning applications, the council will need to consider whether a proposed development is likely to trigger one or more of the offences against EPS as directed by the Habitats Regulations:

- Deliberately capture, injure, or kill an EPS;
- Intentionally or recklessly disturb an EPS in its place of rest/breeding site;
- Intentionally or recklessly damage, destroy or obstruct access to an EPS place of rest/breeding site (even if the EPS is not occupying the resting/breeding place at the time);

And/or

- Possess or sell or exchange an EPS (dead or alive) or part of an EPS.

Where development will impact upon an EPS, a license or derogation is required to be lawful. In considering the application, the council will need to be satisfied that the scheme will meet the three licensing 'test' under Regulations 53 and 56.

The three tests are:

- For the purposes of preserving public health or public safety or other imperative reasons of overriding public interest including those of social or economic nature and beneficial consequences of primary importance for the environment;
- There is no satisfactory alternative to the work specification;
- The action authorised will not be detrimental to the maintenance of the population of the species at a favourable status in their natural range.

For most Protected Species, the key piece of domestic legislation is the **Wildlife & Countryside Act 1981 (as amended)**. The following are protected under the Act:

**Plants** – nationally rare, species of plant are listed on Schedule 8 of the Act, and are protected from picking, uprooting, destruction, or sale.

**Birds** – It is an offence to take, damage or destroy the nest of any wild bird while that nest is being built or in use or take or destroy an egg of any wild bird (with exceptions to birds on Schedule 2). Offence relating to birds listed on Schedule 1, such as the barn owl, hen harrier, red kite and kingfisher, carry special penalties.

**Animals** – species of fauna listed in Schedule 5 of the Act have full or partial protection. Those species fully protected include water vole, lesser silver water beetle, marsh fritillary and Southern damselfly and it is an offence to:

- Intentionally kill, injure, or take such a species;
- Possess or control any live or dead specimen, or anything derived from such a species;
- Intentionally or recklessly damage, destroy or obstruct access to any structure or place used for shelter or protection;
- Intentionally or recklessly disturb such a species while it is occupying any structure or place used for shelter or protection;
- Trade in such a species.

Whilst some species only have partial protection from intentional killing or injury or from selling, many of these require material consideration over and above their legal protection,

**Badgers** and their setts are protected under the Protection of Badgers Act (1992), which makes it an offence to disturb a badger while it is within a sett or to damage or destroy a sett.

#### *Protected species licensing*

Natural England administer licenses to permit certain activities that would otherwise be illegal for most Protected Species, including European Protected Species and Badgers. Further information on wildlife licenses is available from Natural England.<sup>6</sup>

#### *Great Crested Newts: District Level Licensing Scheme*

District Level Licensing (DLL) is a strategic or landscape-scale approach to the conservation of great crested newts (GCN) and was launched by Natural England in County Durham in 2021 as an alternative to site-based mitigation and licensing for the species.

Under DLL, Natural England collects data on GCN occurrence and uses modelling to predict the distribution of GCN across the County to produce a GCN Licensing Strategy. The modelled distribution is used to map risk zones, assess the likely impact of proposed development and to predict suitable habitat in which compensation can be targeted (Strategic Opportunity Areas). It therefore removes the requirement for applicants to carry out pre-development surveys for GCN (although developers may still choose to survey and survey results will inform the impact assessment).

Instead of carrying out site-specific mitigation and compensation, developers choosing DLL will make a 'Conservation Payment' which will be used to fund a net increase in habitat (ponds) for GCN across the landscape.

The level of payment required will depend on:

- The number of ponds impacted;
- The GCN risk zone in which the site is located;
- Whether GCN presence has already been determined through site specific survey.

The tariff also includes sums for the future monitoring and management, at set intervals over 25 years, as well as various administrative fees. This means that on-site mitigation and compensation for GCN is not required for developments authorised under DLL.

The applicant will need to provide a countersigned impact assessment and conservation payment certificate at planning application stage.

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<sup>6</sup> <https://www.gov.uk/guidance/wildlife-licences#:~:text=You'll%20need%20a%20licence,a%20brownfield%20site%20to%20housing>





#### Habitats and Species of Principle Importance (Priority Habitats and Species)

The England Biodiversity List has been developed to meet the requirements of Section 41 (S41) of the NERC Act (2006). This legislation requires the Secretary of State to publish a list of species of flora and fauna and habitats considered to be of 'principle' importance for the purpose of conserving biodiversity'.

57 habitats and 943 species are included on the S41 list.

Through the Biodiversity Duty, the council will take into account any Priority Habitats and Species that could be potentially affected during the development process. These habitats and species are a material consideration in the planning process. Policy 41 of the CDP states that proposals for new development will not be permitted if significant harm to biodiversity or geodiversity resulting from the development cannot be avoided, or appropriately mitigated, or as a last resort, compensated for.

The policy makes special reference to the importance of species-rich brownfield habitats (Open Mosaic Habitats) and notes that where such sites have significant biodiversity or geological interest of recognised local importance, this interest should be retained and incorporated into any development.

#### Irreplaceable Habitats

The NPPF identifies that where development would result in the loss or deterioration of irreplaceable habitats such as ancient woodland, ancient semi-natural woodland and ancient and veteran trees, planning permission should be refused.

The NPPF describes irreplaceable habitats as 'Habitats which would be technically very difficult (or take a very significant time) to restore, recreate, or replace once destroyed,

taking into account their age, uniqueness, species diversity or rarity.’ These are currently listed as:

- Ancient woodland
- Ancient and veteran trees
- Blanket bog
- Limestone pavements
- Coastal sand dunes
- Spartina saltmarsh swards
- Mediterranean saltmarsh scrub
- Lowland fens

The list is confirmed as being exemplary (i.e., containing examples only) and is therefore not inclusive/definitive.

At the time of writing Natural England is intending to go out to consultation on the list of habitats considered to fall within this category in the second half of 2024. The consultation will seek views related to BNG, but also the impact of any new definition or list on wider planning policy.

#### Non-native invasive species

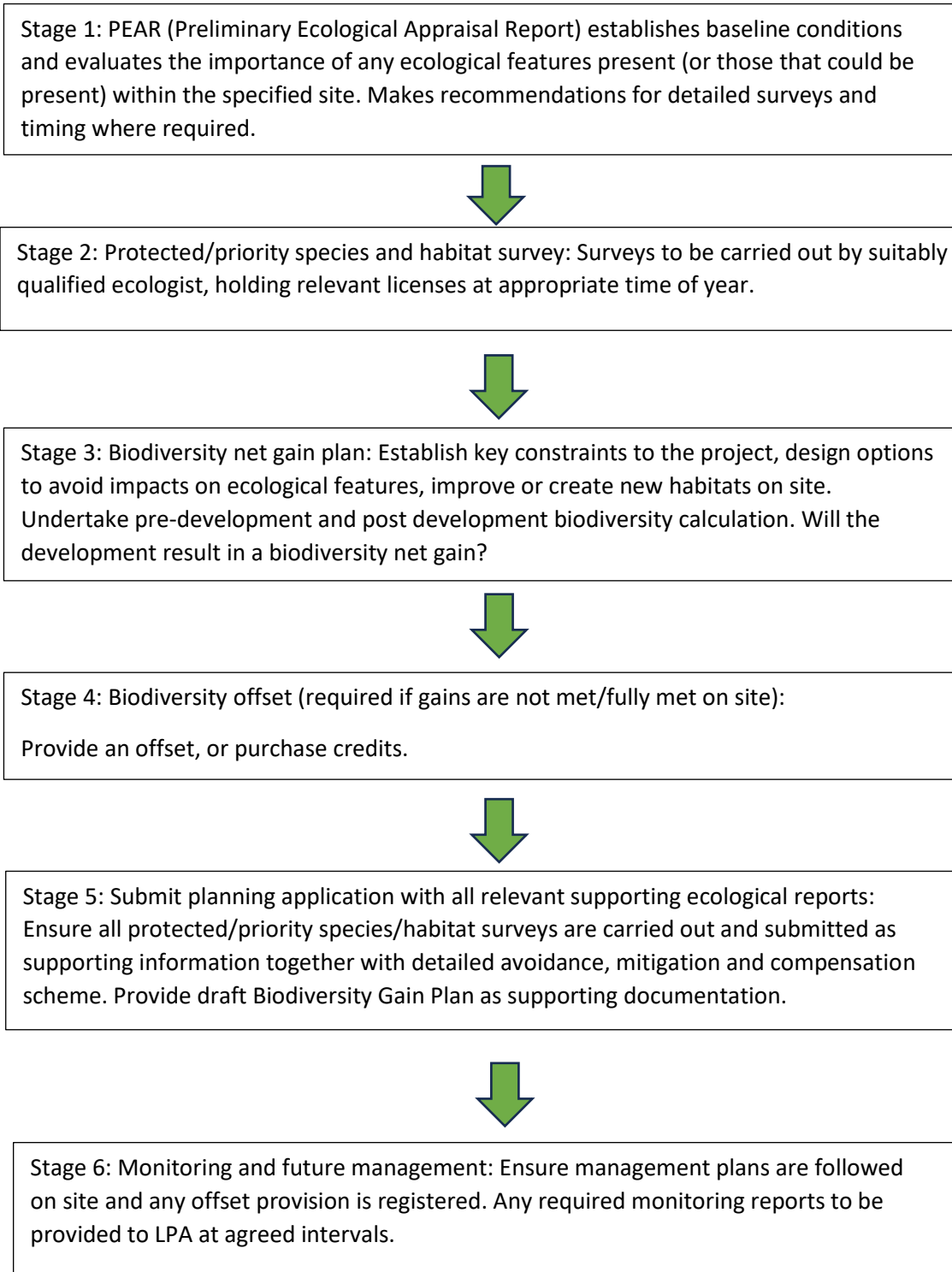
Invasive, non-native species can impact negatively upon biodiversity by out-competing native flora and fauna. It is an offence to spread, or cause to grow, certain plant species listed on Schedule 9 of the Wildlife & Countryside Act 1981 (as amended). Where proposals at development sites are likely to result in the spread of non-native invasive plant species, the development may not be permitted until suitable measures have been agreed and/or undertaken to control the invasive species.

Further information is available here: <https://www.gov.uk/guidance/invasive-non-native-alien-plant-species-rules-in-england-and-wales>



## Biodiversity and the Development Management Process

### Biodiversity and the planning process flowchart



### Feasibility & scoping/validation requirements

It is essential that the potential impacts on biodiversity are considered at the earliest stage of any proposal and before a planning application is submitted. Ecological information should be used to inform the design of proposals from the outset to ensure that the mitigation hierarchy is adhered to. Validation requirements<sup>7</sup> should also be followed, as these will help to identify what supporting information will be required, including the need for any ecology surveys/reports.

The optimum survey season varies for different species. Appendix A below provides general guidance on appropriate survey seasons. This should be seen only as a guide for commissioning surveys and advice should be sought to ensure that surveys take place at the optimum time. Developers should also be aware that to gain adequate survey information, often more than one survey will be required for a particular species or group, and that results can only be interpreted with reference to the timing of the work, the method employed, the conditions at the time of the survey, and the time spent in any investigation.

Assessing the likely ecological impacts of a development is often complicated, requiring specialist skills and experience, and it is therefore recommended that professional ecological expertise is commissioned. This will ensure that all the necessary surveys and assessments have been carried out, and suitable mitigation, compensation, net gain and enhancement has been designed into your scheme before an application is submitted. Employing a suitably experienced and qualified ecological consultant will help to avoid potentially costly delays at a later date and allow the application to be determined more efficiently. The Chartered Institute of Ecology and Environmental Management (CIEEM) provides a professional directory of qualified, regulated ecologists which can be found at <https://cieem.net/i-need/finding-a-consultant/>

### Pre-application process

Consideration of biodiversity at site selection and pre-development design can be critical to delivering successful on-site plans.

The council encourages applicants to use its pre-application advice service to help find out whether proposals are likely to be acceptable and identify key issues. More information on the service can be found on the council's website.

<https://www.durham.gov.uk/article/8280/Planning-advice-and-enquiries>

The regional records centre (Environmental Records Information Centre North East<sup>8</sup>) holds biodiversity information for the county, and should be used to assist in determining the requirement and scope of any required ecological surveys and assessment.

**Natural England's standing advice** explains how the council should deal with applications that involve protected species. Further information can be found here:

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<sup>7</sup> <https://www.durham.gov.uk/media/3760/Planning-Application-Validation-Checklist/pdf/PlanningApplicationValidationChecklist.pdf>

<sup>8</sup> <https://ericnortheast.org.uk/eric-data-information/>

<https://www.gov.uk/guidance/protected-species-how-to-review-planning-applications#standing-advice-for-protected-species>

#### Impact assessments

Where potential has been identified for a proposed development to cause harm to internationally, nationally, or locally designated sites, Protected or Priority Species or Habitat/s, the applicant’s ecological consultant will need to undertake appropriate ecological surveys and impact assessments, alongside a BNG assessment, following best practise guidance, and prior to any design work or submission of the planning application. If appropriate, this should include details of measures that need to be implemented to mitigate or compensate for any adverse impacts.

The council expects all proposals to adhere to the biodiversity mitigation hierarchy, as set out below:

Avoid	Aim to avoid impacts on biodiversity through site selection layout and/or restricting timing of proposed works
Mitigate	Reduce the impacts as much as possible by for example, careful site design, using precautionary or sensitive working methods etc.
Compensate	For any loss of habitat or biodiversity feature, ensure there is ‘no net loss’ of biodiversity through replacement planting (grassland, woodland, hedgerow) and new biodiversity features such as bat roosts, bird nesting opportunities etc.
Enhance	Provide a net gain in biodiversity aiming to connect, enhance, restore and create in line with the Lawton principles.

This ensures that the council has sufficient information to make an informed decision as to whether there will be an adverse effect on biodiversity during development and whether it can be suitably retained and enhanced through overall site design.

The level of assessment required will vary from a simple biodiversity survey to a complex ecological assessment as part of an Ecological Impact Assessment Report (EclA).

A **Preliminary Ecological Appraisal Report (PEAR)** is required for most applications, particularly if there are features of biodiversity importance on or adjacent to the site. Bat and Barn Owl surveys may be the only requirement for a household application or barn conversions if the development has a small footprint. It is also important to recognise that there are seasonal constraints to surveying some types of species and habitats and that they can only be surveyed at certain times and months of the year in suitable weather conditions and using nationally recognised standards and methodology. Seasonal constraints therefore need to be factored in when commissioning surveys/ecological assessments and the timeline for developers presenting a planning application. Please see Appendix A for the ecological survey calendar.

All relevant ecological survey(s) must be undertaken by a suitably experienced and qualified ecologist in accordance with BS42020. Where surveys involve disturbance, capture or handling of a Protected Species, they should only be undertaken by a suitably licensed and experienced person (as administered by Natural England). Information supporting any application identifying the location of badger setts should be marked as 'sensitive' when submitted.

In line with case law the applicant is required to provide a sufficient level of information to enable the council to determine whether a development is likely to meet the 'three tests' under the Habitat Regulations 2017. Where the council is satisfied that these tests can be met it may grant planning permission and the applicant can then apply to Natural England for a relevant EPS licence. If EPS is present, but it is considered that an offence in law as a result of the proposed development is unlikely or can be avoided, and an EPS is deemed not to be required, the applicant must ensure that a non-licence method statement or mitigation strategy (Reasonable Avoidance Measures or RAMs) is included within the submission, detailing any measures to ensure development is undertaken in a lawful manner.

#### Mitigation and Measures of Avoidance

Mitigation consists of measures taken to avoid or reduce negative impacts on species or habitats. Measures may include: locating a development and its working areas and access routes away from areas of high ecological interest, fencing off sensitive areas during a construction period, or timing works to avoid sensitive periods.

The findings of ecological surveys should be taken into careful consideration at the earliest design stage of a development. Possible conflicts can be addressed by having the information available at the right stage and by taking an imaginative approach to site design to avoid harm, informed by advice from an ecologist as part of the design team. The objective should be to firstly avoid, then if this is not possible, mitigate potentially negative impacts and integrate existing biodiversity into the scheme.

In assessing the potential impacts of a proposal on biodiversity, applicants should ensure that all stages of the development are considered. Frequently the disturbance area of a development site during construction is greater than normally shown on application drawings. Impacts may also extend beyond the site boundary long after construction has completed, for example due to shading, increased light pollution, predation by pets, or dumping of garden waste. Damaging impacts on the integrity of habitat networks through fragmentation should also be considered.

Applicants should ensure that they take account of the potential effects of a development on all the life stages of protected/priority species, taking account of the following essential requirements:

- Food
- Water
- Shelter
- Reproduction

- Dispersal

The potential habitat fragmentation and isolation effects of a development on the wider environment should be considered. For example, removing a hedgerow or line of trees could sever a bat feeding or commuting route with consequential effects on a breeding colony, even if the colony itself is preserved. Consideration of the inclusion of buffer zones, stepping stones<sup>9</sup> and wildlife corridors into overall site design, is recommended, to ensure that the development is integrated into the wider environment.

#### *Buffer zones*

Ecological buffers are protected zones established around sensitive or critical areas, such as wildlife breeding or hibernation areas, streams and wetlands, or habitats sensitive to disturbance, and serve to lessen the impacts of human activity and disturbance on habitats and species.

Properly designed buffers can perform multiple functions. These can be broken down into seven types:

1. Enhancing/protecting biodiversity;
2. Aesthetic functions e.g. noise reduction, improving visual quality;
3. Improving/protecting water and air quality;
4. Protection of soils;
5. Provide recreation opportunities (if not in conflict with either of the other required functions); and
6. Hazard reduction

#### *Riparian buffers*

Riparian buffers are the natural vegetation from the edge of the watercourse bank top outwards through the riparian zone. They directly affect and are directly impacted by the aquatic environment. They have a high level of moisture, experience frequent flooding and are typically populated by plants and animal communities that are adapted to life along the water.

Riparian buffers are important for a number of reasons:

- They protect the quality of the water;
- They intercept non-point source pollutants carried by surface water run off and remove excess nitrogen, phosphorus and other substances that can pollute water bodies;
- They stabilise stream banks and minimise erosion;
- They prevent sedimentation of waterways;
- Through shading they reduce rapid changes in stream temperatures and prevent elevated temperatures which are harmful to aquatic life;
- They provide food and habitat for wildlife, as well as allowing wildlife movement within natural corridors; and

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<sup>9</sup> Ecological stepping stones can be considered as a series of small habitat areas that can act as corridors for the movement of species, even though they may be separated by relatively small gaps.



- They replenish groundwater and protected associated wetlands.

#### *Width*

The width needed for a riparian buffer to be effective depends on a number of factors, but in general, the wider the buffer the greater the benefits delivered.



We recommend a **minimum of a 10m buffer on all watercourses**<sup>10</sup>. Garden space, hardstanding and fence lines should remain out-with this buffer. It should be left to naturally regenerate or planted up with complimentary native scrub and/or trees.

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<sup>10</sup> <https://www.gov.uk/government/publications/3d-buffer-strips-designed-to-deliver-more-for-the-environment>

Where there are specific protected species needs, for example the presence of otter, this buffer should be relevant to the species and best practise guidance.

*Priority habitat buffers*

*Ancient woodland buffer zones*

The NPPF states that ‘Development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists.’

Natural England Standing Advice:

For ancient woodlands, **you should have a buffer zone of at least 15m to avoid root damage.** Where assessment shows other impacts are likely to extend beyond this distance, you are likely to need a larger buffer zone. For example, the effect of air pollution from a development that results in a significant increase in traffic.

Guidance goes on to state that the buffer should consist of semi-natural habitats such as woodland, mix of scrub, grassland, heathland and wetland planting, avoiding gardens and SUDs.

**The council’s Trees, Woodland, and Hedges SPD (2024) provides further detail on avoidance of impact and determining an appropriate buffer size for this habitat as well as veteran trees.**



**Ecological networks** have become widely recognised as an effective response to conserve wildlife in environments that have become fragmented by human activities. An ecological network comprises a suite of high quality sites which collectively contain the diversity and area of habitat that is needed to support species and which have ecological connections between them that enables species, or at least their genes, to move.<sup>11</sup>

### More, Bigger, Better and Joined-up.

There are 5 key approaches which encompass the aims of the Lawton report. We need to:

- Improve the quality of current sites by **better habitat management**;
- **Increase the size** of current wildlife sites;
- **Enhance the connections** between, or join up, sites either through physical corridors, or through 'stepping stones';
- **Create** new sites;
- **Reduce pressures** on wildlife by improving the wider environment, including through **buffering wildlife sites**.

New developments should be designed to retain and fit in with existing habitat features such as species-rich meadows, wetlands, hedges and woodland/trees. They should enhance this network and establish additional corridors that contribute to the wide ecological networks.

Watercourses, drainage and flooding are natural systems which naturally establish an equilibrium. Human interference often causes problems:

- Increasing run-off = flooding
- Straightening rivers = erosion
- Building on floodplains = increased flooding downstream

Wherever possible natural river systems should remain untouched; if it is deemed necessary to interfere, every effort should be made to maintain the natural balance.

#### Submission

By the time a planning application is ready for submission the applicant must be able to provide to the authority:

1. All protected/priority species/habitat surveys highlighted as required by Natural England's standing advice, and/or the council's validation requirements;
2. A detailed mitigation and/or compensation scheme guided by the results of the previously undertaken surveys (where applicable);

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<sup>11</sup> Lawton, John (2010) Making Space for Nature: A review of England's Wildlife Sites and Ecological Network.

3. Be able to demonstrate at least a 10% net gain in biodiversity will be delivered by the application (together with all required supporting documents needed to demonstrate this).

The council will assess the information submitted and if information is insufficient or unclear, there may be a requirement to provide further information prior to determination.

If planning permission is granted, this will be subject to condition(s) and/or a planning obligation such as a Section 106, Unilateral Undertaking or even Section 39 agreement, which secure all necessary ecological requirements including any mitigation, compensation and BNG requirements.

#### Implementation, Monitoring and Enforcement

The required ecological mitigation, compensation and BNG measures will need to be implemented. To ensure that the mitigation, or compensation, including any BNG requirements are as intended and/or support the relevant species, a scheme of monitoring is undertaken as required. This monitoring scheme should be proportionate to the scale of the development. The monitoring scheme could include but is not restricted to the agreed BNG requirements but can also include the use of bat and bird boxes, success of planting measures, and success of any translocations undertaken.

If an EPS licence is required for development to be lawful, monitoring will form a key component and condition of the licence and will require the employment of an ecological consultant to take this forward.

Compliance and condition monitoring reports are provided to the council as required. Non-compliance may result in enforcement or other legal action.



Photo by: T. Cadwallender

## Biodiversity Design Guide


This section provides technical guidance on how you can design and build biodiversity into your scheme, whether that be for a householder, minor site or major site application.

Increasingly, it is recognised that integrating biodiversity into developments can deliver multiple benefits for our towns, cities, regions and communities, helping to create desirable places to live, work and play whilst supporting climate resilience.

Good design for development should be based on the results of the ecological surveys and impact assessments which support a planning application, including the BNG assessment.

During the outline design stage, the nature conservation opportunities and constraints should be identified at the earliest opportunity and implemented into the masterplan for the development. Even where little biodiversity interest has been identified on a site, developers should aim to create features that will provide wildlife with opportunities to colonise. Biodiversity objectives should be included in a way which is relevant and achievable within the development framework.

These should be included within both full and outline planning applications, along with the baseline ecological information collected for the site, and the subsequent impact assessment.

Landscaping	
<p>Landscaping schemes should retain, enhance and increase the most valuable existing semi-natural and Priority Habitats on site, in line with the <i>mitigation hierarchy</i> as detailed within the biodiversity net gain section of this document (Page 39).</p> <p>Hedgerow breakage should be avoided where appropriate and practicable to do so. However, where breakage cannot be avoided, it should be minimised to maintain connectivity, including boundary hedges. These features should be designed to link up both habitats within the site boundary, and the wider landscape.</p> <p>For woodland a tree buffers, please see The Trees, Woodlands and Hedges SPD.</p> <p>An appropriate buffer should be applied to all Priority habitats where these are present and will be retained and/or enhanced within or adjacent to the site boundary. The size of the buffer will depend on the likely direct and indirect impacts likely to be caused by a development proposal.</p>	

New housing estates should maintain open access for hedgehogs by incorporating regular appropriate gaps in fences and boundary features.

<https://www.hedgehogstreet.org/development/#:~:text=By%20cutting%20a%20small%2013cm,help%20protect%20this%20endangered%20species.>



New semi-natural and priority habitats should be created within the overall site design, where possible, and should aim to create areas which are adequate in size to ensure ecological functionality. This may include native woodland, hedges, scrub, ponds and wildflower meadows. Bespoke species habitats may include creating deadwood habitats and hibernaculum.



The existing vegetation, environment, soil and landscape should be considered. Wherever possible, the starting point should be the existing vegetation and habitats on site.

Where additional seed mixes or planting is required, an appropriate native palette of ideally local provenance, should be used. In the special situation where the new habitat is to supplement an existing native habitat (such as species-rich grassland or broadleaved woodland), any landscaping should include appropriate stock correct to the region.



With appropriate management and monitoring - interventions later down the line might be needed if target habitat not been achieved.

For further details please see:

<https://freshwaterhabitats.org.uk/advice-resources/pond-creation-hub/pond-creation-toolkit/>

<https://hedgelink.org.uk/guidance/>

<https://www.durham.gov.uk/haw>  
<https://meadows.plantlife.org.uk/making-meadows/>  
<https://www.woodlandtrust.org.uk/plant-trees/woodland-creation-guide/>

Ensure a minimum 10m ecological riparian buffer zone is maintained for existing streams and rivers.

Ensure that existing green infrastructure, such as semi-natural and Priority Habitat(s), wildlife corridors such as hedgerows, within and adjacent to the scheme have adequate buffers and are managed for their associated wildlife.



Development will need to incorporate at least a 15m protective buffer to all Local Wildlife Sites (LWS) and Local Nature Reserves (LNR's). Buffers should lie out with garden space/hardstanding areas and comprise appropriate semi-natural habitats which compliment and enhance the designated site.



Wherever appropriate, development should include the restoration and enhancement of any watercourses on and adjacent to the development site, including the naturalisation of any culverted lengths. These measures could include the removal of any invasive species, removing barriers for fish, protecting rivers via stock fencing or vegetative buffers or more substantial measures such as the creation of wetlands.



Sustainable Drainage Systems (SUDs) should be designed to benefit biodiversity, including permanent standing water, reedbeds and marginal and emergent vegetation, to provide additional wildlife habitat whilst also contributing to the flood attenuation capacity for the development. SUDs maintenance buffers should be managed sensitively for wildlife.

For further detail please see:

<https://www.susdrain.org/delivering-suds/using-suds/suds-performance-and-monitoring/biodiversity-benefits>



## Buildings

Nesting and roosting opportunities for species such as bats, swallows, house martins, swifts, house sparrows, starlings, and barn owls, should be incorporated into structures buildings or roof spaces. The move to Low and Zero carbon buildings has reduced traditional nesting and roosting opportunities for many species.

Where this is not feasible the attachment of nest boxes and bat roost boxes to the external walls of new buildings should be considered. The design should be applicable to the species.

Note swift boxes can accommodate a range of species including sparrows.

For minor developments the minimum number of swift bricks (or boxes) needed is:

- residential developments - three bricks, or two per dwelling, whichever is the greater.
- commercial developments - three bricks, or one per 50 square metres of floorspace, whichever is the greater.





## Major developments

We class a major development as:

- 10+ residential units or
- 1,000sqm+ commercial floorspace or where the site area is over 1 hectare.

Note that the appointed consultant ecologist should inform location/aspect/links to landscape features etc

For further details please see:

<https://www.bats.org.uk/our-work/buildings-planning-and-development/bat-boxes>

<https://www.swift-conservation.org/Nestboxes%26Attraction.htm>

<https://www.barnowltrust.org.uk/barn-owl-nestbox/barn-owl-nestboxes/>

Incorporate bee bricks into developments.

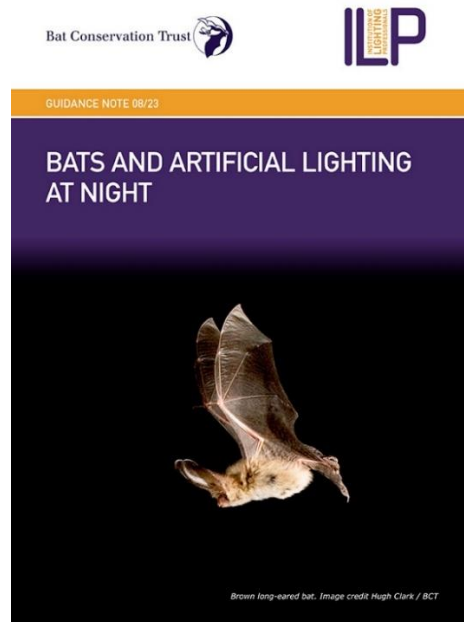
<https://www.greenandblue.co.uk/blogs/news/where-to-put-your-bee-brick>



Artificial lighting, including flood lighting, should avoid spill on to 'dark corridors' such as hedgerow networks, railway embankments, waterways, parkland, woodland edge habitats or trees and buildings supporting bats or owls. A lighting design plan will need to be submitted and should include the specification, number, orientation, dimming and control (timing, sensing) arrangement for each luminaire, together with a lux contour plan.

For more information on appropriate lux levels and mitigation please see:

<https://www.bats.org.uk/news/2018/09/new-guidance-on-bats-and-lighting>



### *Green roofs and living walls*

Green roofs can provide significant benefits for wildlife, as well as reducing water runoff and insulating buildings. By providing low nutrient, well drained habitats, green roofs can benefit a range of invertebrates and species of bird.

Living walls protect buildings from weathering and temperature fluctuations and can also benefit wildlife, such as, invertebrates and birds. They are most useful in an urban setting where they provide well needed green infrastructure provision.

For further information please see:

<https://livingroofs.org/introduction-types-green-roof/>



### **Roads and Streets**

Create underpasses and green bridges to enable wildlife to cross roads and other barriers. This will allow a range of species to utilise larger areas of suitable habitat freely.

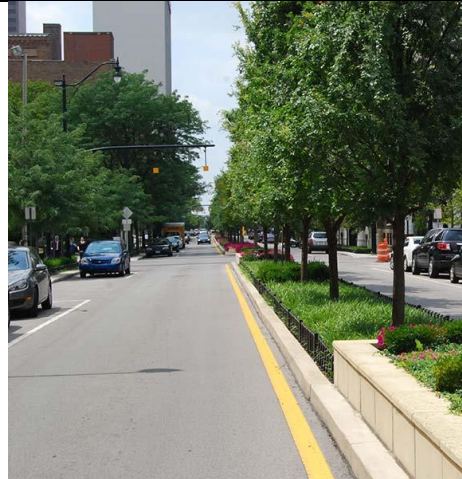
Further information:

<https://handbookwildlifetraffic.info/ch-7-fauna-passages-and-other-solutions/7-3-reducing-the-barrier-effect-underpasses/>

<https://www.gov.uk/government/news/green-bridges-safer-travel-for-wildlife>



Use street trees as natural traffic management measures to help improve air quality, enhance ecological connectivity and help reduce urban heat effect.



Use SUDs/reedbeds for the treatment of surface water runoff from roads and footways and wildlife-friendly kerb stones to avoid amphibian mortalities caused by gully pots.

For further information:

<https://www.arc-trust.org/Handlers/Download.ashx?IDMF=2590c9bf-f39c-4180-8b9f-f32ca13c15ef>

<https://www.conservationevidence.com/actions/782>



Create species-rich road verges

See below for Durham's recommended seed mix specifications.



Note – the location and type of bat, bird and bee boxes to be installed should be marked on the Landscape Plans, and/or Proposed Site Plans and/or Proposed Elevation Plans submitted as supporting information alongside your planning application.

Bat and bird boxes are best located on existing mature trees or on bespoke posts/structures rather than new tree stock.

Hedgehog or small mammal access points should also be clearly shown on proposed site plans/Landscaping plans, and should ensure connectivity through gardens, and routes should direct passage away from roads.

#### Recommended Seed Mix Specifications

The following seed mixes or similar should be considered when creating new and/or enhancing habitats. All seed mixes should comprise native species that are appropriate to the soil type and location.

Emorsgate (<https://wildseed.co.uk>)

##### *Grass only mixes*

- EG1 General Purpose Meadow Grass Mixture
- EG4 Grass Mixture for Clay Soils
- EG5 Grass Mixture for Loamy Soils
- EG6 Grass Mixture Chalk and Limestone Soils
- EG7 Grass Mixture for Sandy Soils
- EG8 Grass Mixture for Wet Soils
- E10 Tussock Grass Mixture
- EG22 Strong Lawn Grass Mixture

##### *Wildflower only mixes*

- EH1F Wild Flowers for Hedgerows
- EM2F Standard General Purpose Wild Flowers (Compliant with Environmental Stewardships SFI ( AHL1 Pollen and nectar flower mix) and CSS (Nectar flower mix)).
- EM3F Special General Purpose Wild Flowers
- EM4F Wild Flowers for Clay Soils
- EM5F Wild Flowers for Loamy Soils
- EM6F Wild Flowers for Chalk & Limestone soils (alternative green roof mix)
- EM7F Wildflowers for Sandy soils
- EM8F Wildflowers for Wetlands
- EM10F Tussock Wild flowers
- EP1F Wild Flowers for Pond Edges
- EW1F Wild Flowers for Woodland

### *Complete mixes*

- EH1 Hedgerow Mixture
- EM2 Standard General Purpose Meadow Mixture
- EM3 Special General Purpose Meadow Mixture
- EM4 Meadow Mixture for Clay Soils
- EM5 Meadow Mixture for Loamy Soils
- EM6 Meadow Mixture for Chalk and Limestone Soils
- EM7 Meadow Mixture Sandy Soils
- EM8 Meadow Mixture for Wetlands
- EM10 Tussock Meadow Mixture
- EM33 Upland Meadow Mixture (upland hay meadow)
- EM34 Diverse Meadow Mixture
- EP1 Pond Edge Mixture
- EW1 Woodland Mixture

### British Wildflower Seeds (<https://britishwildflowermeadowseeds.co.uk>)

- Northumberland Meadow Seed Mix

### British Wildflower Plants (<https://www.wildflowers.uk/shop/wildflower-mixes>)

- Green Roof Mix
- Bee Attracting
- Bird Attracting

### British Flora (<https://grassandflower.co.uk/phoenix-amenity-supplies/store/products/category/phoenix-amenity/wildflower-seeds/native-wildflower-meadow-seed-mix/>)

- BFS 1 Traditional Hay Meadow Wildflower Mix
- BFS 2 Acid Grassland Wildflower Seed Mix for Sandy or Peaty Soils.
- BFS 12 Green Roof Wildflower Seed Mix
- BFS 14 Brownfield Site Wildflower Mix (Open Mosaic Habitat on Previously Developed Land)
- Horse and Livestock Friendly Hedge Mix

Information on how to prepare and care for the above mixtures can be found on supplier websites.

**Hedgerow species** appropriate to Durham

<https://durhamlandscape.info/durham-landscape/field-boundaries/>

It should be noted that the above seed mixes are recommendations and not endorsements of the above suppliers. Other suppliers are available which may provide suitable native species mixes.



## Achieving Biodiversity Net Gain

This section contains information to help ecological consultants with Major Site applications understand and meet the council's BNG requirements. It outlines the BNG process, provides the information required to use the Biodiversity Metric in a County Durham context and details what the council requires for an application to be determined.

The impact assessment for BNG should be carried out in conjunction with any other ecological assessment. However, BNG is a distinct process, and separate from considering the development on protected sites or irreplaceable habitats. **It should be noted that the required condition assessments should be undertaken by an ecologist who is sufficiently skilled and experienced to identify and assess the condition of the habitat types.**

The Statutory Metric, Tools and Guides can be found at:

[www.gov.uk/government/publications/statutory-biodiversity-metric-tools-and-guides](http://www.gov.uk/government/publications/statutory-biodiversity-metric-tools-and-guides)

**Stage 1: Survey.** Collect data/information on the baseline habitat type, condition, and extent for the site. This can be done in tandem with the previously described assessments (e.g. PEA, EclA etc.), but the habitats should be classified using the UK Habitat Classification System (UKHab).

**Stage 2: Identify irreplaceable habitat and nationally and internationally designated sites.** If irreplaceable habitats and nationally designated sites are impacted by the development, they should be excluded from the calculations. This is because they are protected by separate legislation.

**Stage 3: Run a BNG calculation for the development.** This should be done using the statutory Biodiversity Metric. The spreadsheet should show the assessment of the existing/pre-development habitat translated into biodiversity units, contrasted with the proposed/post-development biodiversity units (reflecting any proposed on or off-site habitat creation and restoration).

**Additionality** – for the benefits from BNG to be additional (+10% extra) it is necessary to have an understanding of the type and extent of habitat mitigation required without the inclusion of BNG. Delivery of these non-BNG outcomes via habitat creation and/or enhancement can be used to contribute up to no net loss of BNG but not beyond. This includes on-site measures delivered to comply with a statutory obligation or policy. Mitigation and compensation measures for Protected Species may be counted towards a biodiversity net gain calculation but again should not make up all of a development's biodiversity net gain (this includes off-site compensation too).

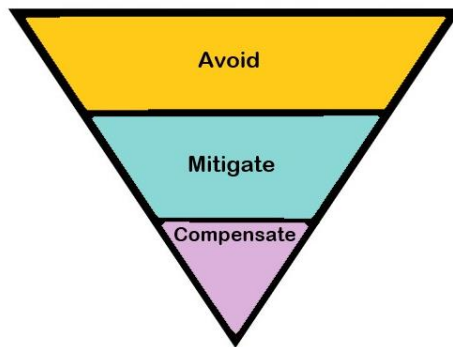
**Indirect impacts** – the assessment should also include any land outside the development boundary where there is an indirect impact on biodiversity (where possible), and additionally any offset sites which the developers are proposing to compensate for impacts on biodiversity.

**Stage 4: Apply the biodiversity mitigation hierarchy.** Wherever possible impacts on biodiversity need to be avoided or minimised through the sensitive design of the development. Applicants should ensure that on-site or off-site compensatory and BNG habitat secure the restoration and/or re-creation of Priority Habitats, local sites, ecological networks and the protection and recovery of legally Protected and Priority Species populations. The 'like for like or better' principle should be applied: successful compensation and BNG should be at least ecologically equivalent in type and condition to any habitats lost. Any loss should therefore be replaced with the same habitat type or one of higher ecological value, which will nonetheless still support the species/community affected, for example, replacing semi-improved grassland with unimproved grassland or enhancing a species-poor hedgerow.

#### What is Biodiversity Net Gain?

Biodiversity net gain is an approach to development which aims to leave habitats and associated wildlife in a better state than it was before development. Where a development has an impact on biodiversity, it mandates developers to provide an increase in appropriate natural habitat and ecological features over and above that being affected. In such a way it is hoped that the current loss of biodiversity through development will be halted, and ecological networks can be restored.





The process itself follows the *mitigation hierarchy*, as detailed in the National Planning Policy Framework paragraph 186a, which sets out that everything possible must be done to:

Applying BNG is not an alternative approach to applying the mitigation hierarchy. Applicants are still expected to avoid or mitigate harm to wildlife and habitats before seeking to compensate.

Avoidance and on-site mitigation and compensation must be carried out before any off-site compensation (biodiversity offsetting) is planned, i.e. the mitigation hierarchy must be followed first. Biodiversity offsetting is a last resort option for ensuring BNG. BNG supplements rather than replaces or undermines the existing range of protections in planning policy and legislation.

Paragraph 180d of the NPPF and CDP Policy 41 already sets out the principle of biodiversity net gain in policy terms. This SPD aims to support existing local and national policy, as well as the recently ratified Environment Act 2021.

The Government's statutory Biodiversity Metric accounting toolkit should be used to evidence the *measurable* BNG for development proposals. The Biodiversity Metric is a habitat-based approach, using habitat as a proxy for biodiversity. Species-based features such as bird and bat boxes are not included within the metric, however the provision of such features within developments is still encouraged as additional enhancements and is promoted in this SPD.

In addition, a requirement of the Environment Act, is the submission by the applicants of a Biodiversity Gain Plan prior to commencement of a development. This forms part of the 'general biodiversity gain condition'.

The Environment Act sets out that the Biodiversity Gain Plan<sup>12</sup> should cover:

- How adverse impacts on habitats have been avoided and minimised;
- The pre-development and post-development biodiversity value of the on-site habitats;
- The biodiversity value of any offsite habitat provided in relation to the development;

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<sup>12</sup> <https://defralanduse.blog.gov.uk/2023/10/26/the-biodiversity-gain-plan-draft-template-and-guidance/>

- Any statutory biodiversity credits purchased.

The Environment Act also states that biodiversity gain sites must be appropriately maintained for at least 30 years after the completion of the works to create or enhance the habitat.

There are exemptions<sup>13</sup> and transitional arrangements which disapply the condition from certain planning permissions, as well as special modifications for planning permissions for phased development and the treatment of irreplaceable habitats.

The conservation, restoration and enhancement of ecological networks is outlined in the NPPF, and Durham's Nature Recovery Network mapping helps the council to comply with the NPPF.

NPPF Paragraph 185(a) To protect and enhance biodiversity and geodiversity, plans should: 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.

#### BNG and multi-functional open spaces

CDP Policy 26 (Green Infrastructure) highlights the need to protect, enhance and create new habitats and wildlife linkages within the context of a Strategic Green Infrastructure Network.

Policy 26 also recognises that not all uses of green space are compatible, and some sites which have a significant biodiversity value may be adversely affected by recreational use. It is stated that where such sites exist, it may be desirable to ensure that suitable alternative green spaces exist in the vicinity, which can absorb any increases in recreational use from new development.

The provision of Green Infrastructure (GI) sits alongside the requirement for provision of BNG. BNG is designed to encourage habitat protection, enhancement and creation on-site and in the local area where possible, helping to support GI which may in some cases, be accessible to local communities. In certain circumstances provision of GI may provide multifunctional greenspace which can be considered as part of the BNG requirement of a development, however it may not always be appropriate to enable access over certain habitat types, and the predicted habitat condition that is to be achieved by a development will need to be carefully balanced against whether recreational access is required as part of a proposal.

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<sup>13</sup> <https://www.gov.uk/guidance/biodiversity-net-gain-exempt-developments>



What the council requires from the BNG calculation

The council will need to review and verify the baseline BNG calculation (the completed calculator spreadsheet document, macros enabled, not a 'snapshot' or summary) as this forms part of the core biodiversity gain information that needs to be submitted prior to determination of an application.

For applications falling under the requirements of mandatory BNG, the supporting Defra Metric must show a minimum 10% increase in biodiversity units across all unit types (area-based, and where relevant, linear, and riverine habitats), meet the trading rules in the Metric and have regard to policy on matters such as additionality.

These calculations should be accompanied with a GIS based habitat/landscape mapping that separately shows the existing/pre-development and proposed/post-development biodiversity units.

**Anti-trash rule**

**If it is found that the habitat on site has been degraded since the 30<sup>th</sup> January 2020 so that the habitat is lost prior to the baseline survey, then the site will need to be reassessed using data available (aerial imagery and other habitat data) to the council from prior to the loss of the habitat.**

## Biodiversity Offsetting (offsite compensation)

The Biodiversity gain hierarchy and the council's preference is for on-site habitat enhancement and creation when adverse impacts cannot be avoided or mitigated for.

In such cases when on-site habitat enhancement and creation cannot deliver a 10% net gain then an off-site option can be used. The council's preference is that local off-site options are explored in the first instance. If there are no viable local options, then the off-site delivery for BNG measures should ideally be delivered in County Durham.

Where the council ecologist(s) agree that the Biodiversity Gain Plan demonstrates that the Mitigation Hierarchy has been followed, and that valid attempts to avoid, minimise or reduce harm have been made within the site boundary or there is a clear argument for providing supporting habitat for species sensitive to disturbance which might be better located away from the development, then off-site (biodiversity offsetting) compensation should be progressed.

### Biodiversity offsite offset options

Applicant delivers BNG on land under their control	Applicant purchases BU from third party
<ul style="list-style-type: none"><li>The applicant can deliver the required number of BU (creation and/or restoration) on land under their control;</li><li>Management may be passed to a third party.</li></ul>	<ul style="list-style-type: none"><li>The applicant does not own or control the land for offsetting.</li><li>The third party, with control over the land, is responsible for the delivery of the required, appropriate BU's, as well as future management and monitoring.</li></ul>
Statutory biodiversity credits	A combination of the above
<ul style="list-style-type: none"><li>The applicant can buy, as a last resort, credits from the UK Government when there is no local market.</li></ul>	

The priority for offset site compensation in County Durham is the delivery habitat enhancement/creation in areas identified within the Local Nature Recovery Strategy and associated mapping. Off-site compensation and net gain should apply the Lawton principles of creation **more, bigger, and joined** areas for biodiversity and should be designed in such a way to optimise the ecosystem services that meet local needs. It is also important to consider the key characteristics of the landscape within which the offset site habitats are proposed so that the ecological and landscape character of an area is not eroded or lost.

### Biodiversity Net Gain Plan requirements to support an application

All new developments (unless exempt), whether outline or a full planning application, will be encouraged to submit a draft Biodiversity Net Gain Plan as supporting information. The following core biodiversity gain information that will need to be submitted with a planning application prior to determination is:

- The pre-development biodiversity value;
- Steps taken to minimise adverse biodiversity impacts;
- The proposed approach to enhancing biodiversity on-site;
- Any proposed off-site biodiversity enhancements (including the use of credits) that have been planned or arranged for the development (please see offsite compensation information above).

For outline planning permission and phased developments any application documentation will need to explain the strategy to achieve the biodiversity gain objective across the whole site and demonstrate how this could be delivered on a phase-by-phase basis through subsequent detailed design. It will also be necessary to demonstrate how biodiversity net gain delivery will be tracked on a phase-to-phase basis, including the target percentage gains to be delivered at each stage. The applicant will be required to submit a Biodiversity Gain Plan with updated Metric as needed, for approval prior to the commencement of individual phases of development.

#### BNG Monitoring, management, and enforcement

The management of all semi-natural habitat, including BNG requirements, as well as its monitoring, will also form part of a Landscape and Environmental Management Plan (LEMP) and/or Habitat Management and Monitoring Plan (HMMP), and will similarly form part of a planning condition (usually secured through a section 106 agreement or other appropriate planning agreement). In County Durham a draft management and monitoring plan is a local validation requirement to be submitted prior to determination of the planning application. If post-construction habitat differ from the original BNG calculation and agreement, then a revised LEMP/HMMP will need to be submitted.

It will be the landowners or developer's responsibility to ensure monitoring and reporting obligations are fulfilled for any habitat creation or enhancement as required to achieve BNG and within the redline boundary of the site. If the applicant is purchasing credits or Biodiversity units from a third party, the responsibility falls to the provider of the units.

The number of monitoring assessments will depend on the habitat type and extent, but a typical schedule for medium sized habitat creation project might result in reports required in years 2, 5, 10, 20 and 30.

Monitoring outcomes at a site level will help to inform adaptive habitat management, and ongoing maintenance activities to ensure that biodiversity gains as agreed, can be delivered in the time required.

Monitoring reports will need to be submitted to the council, and this will form part of the legal agreement.

Failure to deliver, or attempt to deliver, biodiversity net gain outcomes which are secured through conditions or other legal agreements, can result in enforcement action. Revisions which may be required to the original management plan accompanying the planning application, should be accompanied by adequate evidence and justification for the proposed changes.



Photo by: T. Cadwallender

## The Habitat Regulations and Appropriate Assessment

In accordance with the Habitat Regulations, all competent authorities, including Durham County Council, must undertake a formal assessment of the implications of any new plans or projects that may be capable of affecting the designated interest features of a European/Natura 2000/National Site Network Site (SAC/SPA/Ramsar), before deciding whether to undertake, permit or authorise such a plan or project.

This assessment comprises several distinct stages which are conveniently and collectively described as a 'Habitat Regulations Assessment' (or HRA). For all plans and projects which are not directly connected with or necessary to the conservation management of the site's qualifying features, this will include formal *screening* for any Likely Significant Effects (either alone or in combination with other plans or projects). Where these effects cannot be excluded, assessing them in more detail through an *appropriate assessment* (AA) is required to ascertain that an adverse effect on the site cannot be ruled out, and no *alternative solutions* can be identified, then the project can only then proceed if there are *imperative reasons or over-riding public interest* and if necessary *compensatory measures* can be secured.

A site does not have to be located within a Natura 2000 site to have the potential to impact upon it.



Photo by: T. Cadwallender

There is no threshold for the size of the development: even a single house might require Screening for AA if there was a potentially significant effect on a European Site.

Where such an effect is identified the applicant will be expected to provide the council with all of the necessary information to support the assessment. This could be in the form of a supporting document entitled 'Evidence to inform an HRA'. This document should identify the effects and their significance and the proposed avoidance and/or mitigation measures incorporated in the proposal to ensure that it will not adversely affect the integrity of the European Site.

### **Precautionary Principle**

**Where there is uncertainty about the risk of environmental harm, the precautionary principle allows or requires protective measures to be taken without having to wait until the harm materialises.**

**Hence development can only be consented where the decision-maker is sure, meaning there is no reasonable scientific doubt, that it will not affect the integrity of the site.**



## Appendix A: Ecological Survey Seasons

	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
BADGERS												
BATS (hibernation roosts)												
BATS (Summer roosts)												
BATS (Foraging/Commuting)												
BIRDS (Breeding)												
BIRDS (Overwintering)												
GREAT CRESTED NEWTS (Breeding)												
GREAT CRESTED NEWTS (Terrestrial)												
INVERTEBRATES												
OTTERS												
REPTILES												
WATER VOLES												
WHITE CLAWED CRAYFISH												
HABITATS/VEGETATION												

Key: Optimal survey time 