

Biodiversity Guidance



Introduction

Biodiversity is a key aspect of sustainable development. Every local authority has a statutory duty to have regard, so far as is consistent with the proper exercise of its functions, to the purpose of conserving biodiversity.

This includes the assessment and determination of planning applications.

What is biodiversity?

Biodiversity refers to the number, variety and variability of living organisms. It is often defined in terms of genes, species and ecosystems.

Biodiversity features include:

- Species and their habitats (incl. feeding/resting/breeding areas). This may include features such as trees and buildings that could hold protected species (e.g. owls, bats);
- Statutory and non-statutory nature conservation sites;
- UK and Staffordshire Biodiversity Action Plan¹ habitats and species;
- Habitats and Species of Principal Importance for England (under Section 41 of the Natural Environment and Rural Communities Act 20062);
- Features which provide links/corridors or stepping stones from one habitat to another

What are biodiversity impacts?

Biodiversity impacts include but are not limited to:

- Loss of, or damage to, all or part of an important site for biodiversity;
- Habitat fragmentation, isolation and removal or severance of wildlife corridors;
- Introduction or spread of invasive non-native species;
- Soil, air or water contamination, or light pollution;
- Disturbance and/or displacement of species;
- Predation and/or harassment by domestic pets;
- Reduction/loss of species resources (e.g. food, water, shelter);
- Interruption to an established management regime, habitat neglect.

Biodiversity impacts can be:

- Permanent or temporary,
- Short or long-term;
- Direct or indirect
- Cumulative (i.e. significant when the impacts of multiple small developments are taken into account)

¹ <http://www.sbap.org.uk/>

Biodiversity in East Staffordshire

The biodiversity in East Staffordshire is varied with a range of habitats including rivers, canals and streams, heathland, woodlands, parkland, species rich farmland, valley woodlands and urban areas with high biodiversity value.

Important habitat types are grazing Marsh, pasture, lowland Meadows, Reedbeds, Eutrophic Standing Waters, Wet Woodland, Ponds, Arable Field Margins, Hedgerows, Lowland Dry Acid Grassland, Lowland Heathland, Lowland Meadow, Deciduous Woodland, Parkland, Rivers and Streams

Within these habitats there is variety of species including many priority species such as Atlantic Salmon, Brown Trout, Depressed River Mussel, Eel, Freshwater White-clawed Crayfish, Grass Snake, Lapwing, Otter, Snipe, Water Vole, Owls, bats, hares, lapwing, skylark, harvest mouse, dead wood beetles and lesser spotted woodpecker.

There are also everyday species including birds in urban areas which are enjoyed by residents in East Staffordshire. There are many designated sites in East Staffordshire including local wildlife sites, some of which are on the doorstep for many residents. Local Wildlife Sites are areas of land that are especially important for their wildlife. They are some of our most valuable wildlife areas as they are corridors for wildlife, forming a key components of ecological networks.

What is the purpose of this guidance?

Any biodiversity features which might be affected by a development proposal will require survey, assessment and mitigation as necessary to meet both legislative and policy requirements. It is important that prospective applicants identify any biodiversity impacts as early as possible. This guide aims to provide the basic tools to do this. **This guidance has been prepared to assist applicants in ensuring they submit valid applications.**

This guide aims to provide the basic advice to help ensure that a planning application:

- is valid;
- meets the three legal tests² for European protected species licencing (as applicable);
- can demonstrate that it will result in a biodiversity net gain.

Stage 1: Preparing to submit a planning application

Biodiversity impacts are most easily avoided when identified in the earliest stages of development, therefore it is essential that applicants ensure they have all necessary ecological information. Doing this as at the outset reduces the risk of delays or objections caused by lack of information.

² (the purpose test – such as ‘imperative reasons for overriding public interest’, the ‘no satisfactory alternative’ test and the ‘favourable conservation status’ test)

Collecting ecological information is a two-step process:

1. Initial Biodiversity Checklist: A list is provided in Appendix 1 which will help identify features in and around the application site which may be of biodiversity value.
2. Ecological Survey: if the Biodiversity Checklist identifies features of potential value, a more thorough assessment of those features should be carried out. Appendix 2 provides detail on the likely protected species surveys that will be required.

It is commonly thought that habitat and species surveys can be postponed until after determination of a planning application and addressed by planning condition however this is not the case.

Stage 1: Initial impressions survey/Biodiversity Checklist

The Biodiversity Checklist (Appendix 1) is a survey that should be used to detect features that could be at risk and identify any surveys required. The Checklist can be completed by the applicant, although seeking ecological expertise at this stage is advised, and submitted with the planning application.

Where it is not anticipated there will be any biodiversity impacts the application can be submitted.

Where the Biodiversity Checklist detects that an application could affect a European Designated site, or a SSSI applicants should contact Natural England as early as possible.

Where the Biodiversity Checklist detects that an application could affect a Local Wildlife Site applicants should contact Staffordshire Wildlife Trust as early as possible.

The Biodiversity Checklist has been designed to detect the majority of biodiversity features which could be affected by development. It is important to note however that protected species can occur in very unlikely places.

Stage 2 Ecological surveys

All ecological surveys must be carried out by a qualified ecologist³, at an appropriate time of the year and should comply with published guidance and best practice.

Where reports are not carried out by a qualified ecologist the planning application **will not** be validated.

All surveys should included the following:

- a preliminary ecological appraisal (PEA) (including desk study and field survey as necessary) of the development site and any other areas likely to be affected by the proposals;

³ CIEEM (2017) *Guidelines for Preliminary Ecological Appraisal, 2nd edition*. Chartered Institute of Ecology and Environmental Management, Winchester

- evaluation of features (including geological and geomorphological features) and assessment of the likely impacts of the proposal;
- discussion of mitigation, compensation and enhancement measures – the mitigation strategy should be proportionate to the perceived impacts and should include clear, site-specific prescriptions rather than vague, general or indicative possibilities and should be feasible and deliverable.
- Surveys should be completed at an appropriate time of the year by suitably qualified.

The survey work may identify the need for further surveys that were not apparent from the outset (e.g. past use of the site by protected species). As long as there is a **reasonable likelihood** of a species being present and affected by the development specific surveys must be conducted to confirm its presence or absence.

The methods, results and conclusions of any survey must be compiled and submitted in writing as part of the planning application. Where Ecological Appraisals conclude the need for further assessments these are to be carried out and submitted prior to validation. The production of further studies cannot be conditioned.

Stage 3 Avoidance and mitigation

Ecological survey findings should be used to avoid harm, mitigate potentially negative impacts and integrate existing biodiversity into the scheme. This involves following the 'Mitigation Hierarchy'. Steps must first be taken to avoid likely significant impacts to biodiversity, for example by:

- Designing the site in such a way as to retain any important biodiversity features without harm;
- Scheduling works when key species are not active or breeding.

Avoidance is often the cheapest and most effective way of reducing potential impacts but it requires biodiversity to be considered at the very earliest stages of the planning process.

Unavoidable impacts should be mitigated. Mitigation means taking steps on the site itself to minimise the duration, intensity and/or extent of impacts that cannot be avoided entirely.

Stage 4: Compensation

On-site mitigation options should be exhausted before compensation is considered.

Compensation schemes are rarely successful in replacing what is lost, it is far better not to cause damage in the first place than to try to compensate for it later. Unlike mitigation, compensation is usually carried out off-site, often involving major habitat restoration/creation.

Compensation will be acceptable only where independent expert advice indicates that there will be a high probability of success.

Stage 5: Enhancement: delivering 'net gain' in biodiversity

Even in cases where mitigation or compensation is deemed unnecessary, planning policy requires new development to provide a net gain in biodiversity where possible. This should be appropriate to the scale, type and location of the development.

Biodiversity net gain (BNG) is an approach to development, and/or land management, that aims to leave the natural environment in a measurably better state than it was beforehand

Environment Bill

The Environment Bill received Royal Assent on 9 November 2021, meaning it is now an Act of Parliament⁴.

A key part of the Environment Bill is the introduction of mandatory biodiversity net gain, with the following key components:

- Minimum 10% gain required calculated using a Biodiversity Metric & approval of net gain plan
- Habitat secured for at least 30 years via obligations/ conservation covenant
- Habitat can be delivered on-site, off-site or via statutory biodiversity credits
- There will be a national register for net gain delivery sites
- The mitigation hierarchy still applies of avoidance, mitigation and compensation for biodiversity loss
- Does not change existing legal environmental and wildlife protections

Timelines for implementing the Bill

The timelines for introduction of mandatory BNG are dependent on a number of factors. The below is the current understanding of the likely timetable towards mandatory BNG⁵.

- Early 2022 - Current Defra consultation on BNG statutory instruments and regulations
- Spring 2022 - Government response to consultation
- Spring 2023 - BNG site register and statutory credits sales platform go live
- Winter 2023 - Biodiversity net gain expected to become mandatory for all developments

Biodiversity Net Gain now

National policy sets out that planning should provide biodiversity net gains where possible. The National Planning Policy Framework (NPPF) refers to this policy requirement and the Natural Environment Planning Practice Guidance (PPG) provides further explanation on how this should be done. Delivering net gain is also referred to in the National design guide. The Local Plan does not contain a target for

⁴ <https://www.gov.uk/government/news/world-leading-environment-act-becomes-law>

⁵ <https://www.local.gov.uk/pas/topics/environment/biodiversity-net-gain#pas-events>

biodiversity net gain however it is expected that all applicable applications demonstrate net gain, prior to the implementation of the Environment Bill.

A new Biodiversity Metric 3⁶ was launched in July 2021. The Biodiversity Metric is designed to provide ecologists, developers, planners and other interested parties with a means of assessing changes in biodiversity value (losses or gains) brought about by development or changes in land management. The metric is a habitat based approach to determining a proxy biodiversity value. A Small Sites Metric⁷, designed to simplify the process of calculating biodiversity net gain on smaller development sites, is also available. Applicants are encouraged to use these metrics to demonstrate biodiversity net gain.

CIEEM, IEMA and CIRIA have set out Good Practice Principles for Development⁸ and an associated Practical Guide and Case Studies for biodiversity net gain.

There is now also British Standard on biodiversity net gain and development projects⁹.

Stage 6: Submitting a Planning Application

Planning applications should be accompanied by all surveys and information required for the previous steps.

Applicants are advised to check the findings of any ecology reports before submission. Where further surveys are recommended these must be submitted with the planning application.

Planning Permission Granted: the Construction Phase

Following the granting of planning permission any mitigation and enhancement strategies outlined in ecological reports (accompanying an application for planning permission and/or required to be adhered to by planning conditions) must be put into practice. A Construction Environmental Management Plan (CEMP) is best practice and helps manage the environmental effects of construction. A CEMP includes a risk assessment identifying aspects of construction that could have an environmental impact and outlines management measures designed to eliminate and/or minimise the identified impacts.

Long term management

Where habitat creation, translocation and management forms an important part of proposals those habitats should be maintained and managed and where necessary planning conditions will be applied as appropriate. For longer management the landowner or operator should be prepared to secure ongoing management via a Section 106 agreement.

⁶ <http://nepubprod.appspot.com/publication/6049804846366720>

⁷ <http://nepubprod.appspot.com/publication/6047259574927360>

⁸ <https://cieem.net/resource/biodiversity-net-gain-good-practice-principles-for-development/>

⁹ <https://shop.bsigroup.com/products/process-for-designing-and-implementing-biodiversity-net-gain-specification/standard>

Planning Conditions

Where appropriate planning conditions will be applied to secure biodiversity protection, mitigation and enhancement and some example conditions are set out below:

- Protection of all species on the site – this could range from specific fencing around trees and hedges, specific methods to protect species during construction and for the life of the development
- Replacing any specific features to be removed, for example trees and setting out when they should be replaced and what with
- It may be that enhancement measures have been included within the planning application however if they haven't a regular condition will be to ensure no development takes place until details of ecological enhancement measures (which could include bird nesting and bat roosting facilities) to be installed on the site have been submitted to and approved in writing by the Local Planning Authority.
- Where ecological enhancement measures are approved, a planning condition will clearly set out that these are to be installed prior to the first occupation/use of any of part of the development and thereafter made available at all times for their designated purposes.
- Some planning conditions may specify a Precautionary Method of Working, to ensure that specific legally protected species potentially present in/near to the site will not be adversely affected by development activities.
- In some circumstances pre-commencement surveys may be required, this is to check that there has been no change of activity between the initial survey being carried out and development commencement. This is required because some species can move onto a site in a relatively short time.

Great Crested Newts

Great crested newts are a protected species in the UK but often come with a reputation for causing significant delays to development as following any granting of planning permission a license if required. NatureSpace runs a 'district licensing' scheme, legally authorised by Natural England, which removes risk and uncertainty for planners and developers and speeds up the licensing process.

The district license, as of 2022 now includes Staffordshire Authorities and NatureSpace is now offering developers across Staffordshire the opportunity to join an established scheme providing a quick, simple, and certain solutions for meeting their legal obligations to great crested newts – whilst delivering real conservation benefits at the same time. Further detail on the scheme will be published online shortly.

Sources of advice

<https://www.staffs-wildlife.org.uk/what-we-do/planning-advice>

<https://naturespaceuk.com/district-licensing-scheme/>

<https://www.staffordshire.gov.uk/environment/Environment-and-countryside/biodiversity/Biodiversity-survey-and-assessment.aspx>

<https://www.wildlifetrusts.org/local-wildlife-sites>

Appendix 1 – Checklist for applicants

		Yes	No
Q1	Are there any known protected species on the site?		
	<p>Does the proposed development which includes the modification conversion, demolition or removal of buildings and structures (especially roof voids) involving the any of the following:</p> <ul style="list-style-type: none"> • all agricultural buildings (e.g. farmhouses and barns) particularly of traditional brick or stone • construction and/or with exposed wooden beams greater than 20cm thick; • all buildings with weather boarding and/or hanging tiles that are within 200m of woodland and/or water; • pre-1960 detached buildings and structures within 200m of woodland and/or water; • pre-1914 buildings within 400m of woodland and/or water • pre-1914 buildings with gable ends or slate roofs, regardless of location; • all tunnels, mines, kilns, ice-houses, adits, military fortifications, air raid shelters, cellars and similar underground ducts, structures and caves; • all bridge structures, aqueducts and viaducts (especially over water and wet ground). 		
Q2	Does the Proposal involve lighting of churches and listed buildings or flood lighting of green space within 50m of woodland, water, field hedgerows or lines of trees with obvious connectivity to woodland or water.		
Q3	Does the proposal affect woodland, or field hedgerows and/or lines of trees with obvious connectivity to woodland or water bodies		
Q4	Does the proposal affecting gravel pits or quarries and natural cliff faces and rock outcrops with crevices, caves or swallets.		
Q5	Is the development a Major proposal within 500m of a pond or a Minor proposals within 250m of pond		
Q6	Will the proposal affect or be within 30m of rivers, streams, canals, lakes, or other aquatic habitats.		
Q7	Does the proposal affecting 'derelict' land (brownfield sites), allotments and/or railway land.		
Q8	Is the proposal previously undeveloped (Greenfield) land (with the exception of domestic gardens and in some cases intensively farmed arable land)		
Q9	Will the proposed development affect any buildings, structures, feature or locations where protected or priority species or habitats are known to be present (including internationally, nationally or locally designated biodiversity or geodiversity sites)		
Q10	Does the proposal related to quarries, pits, cliffs, river sections, outcrops, mines, caves, tunnels, cuttings, and mine dumps.		
Q11	Has a survey been requested by Natural England, Environment Agency, Staffordshire Wildlife Trust or Staffordshire County Council		
If you have answered YES to ANY of the questions above further information is required to support your application to show how the proposal has accounted for the potential impacts. The table in appendix 2 gives further advice on the protected species surveys to be undertaken			
If you have answered No to all the questions above no further information is required to support your application. Applicants may wish to submit a completed copy of this form with their application.			

Appendix 2 – Protected Species

Development Proposals that will Trigger a Protected Species Survey	Select if YES	Species protected by Law and for which further surveys will be required								
		Bats	Barn Owl	Dormouse	Breeding Birds	Amphibians	Water Vole	Badger	Other	Reptiles
<p>Will the proposed works affect existing buildings / structures with ANY of the following features?</p> <ul style="list-style-type: none"> • Clay-tiled pitched roofs • Loft spaces (including bell towers etc) • Hanging tiles • Wooden cladding • Open soffits • Bridge structures, aqueducts or viaducts especially over water or wet ground • Dense climbing plants • Bird boxes (especially owl boxes) or bat boxes which have previously been fitted • Large agricultural buildings, particularly but not exclusively those of a traditional construction • Other buildings in a derelict or decayed state in a rural location 	<input type="checkbox"/>	●	●		●					
<p>Are there streams, rivers, lakes or other watercourses/ aquatic habitat on or within 250m of the proposals?</p>	<input type="checkbox"/>	●		●	●		●		●	
<p>Will the proposals affect any areas of mature deciduous woodland, field hedgerows over 1m tall and over 0.5m thick, or scrub well connected to woodland or hedgerows on or adjacent to the site?</p>	<input type="checkbox"/>	●		●	●			●		

Will the proposal affect any of the following? - <ul style="list-style-type: none"> • Old and veteran trees • Trees with obvious holes, cracks, cavities or heavy vegetation • Trees with a girth over 1m at chest height 	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is the proposal a major application within 500m or any other application within 250m of a pond?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Will the proposal affect mature/overgrown gardens over 0.25ha, any rough grassland or derelict/brownfield land, railway land, allotments, on or adjacent to the site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Will the proposal affect species-rich meadows or grassland on or directly adjacent to the site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Please select boxes to indicate all protected species that may be affected by the development	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Appendix 3 – Survey Calendar
Ecological survey seasons

	Licence?	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Badgers	Y		█	█	█	█					█	█	
Bats (hibernation roosts)	Y	█	█	█	█							█	█
Bats (summer roosts)	Y					█	█	█	█	█			
Bats (foraging/commuting)	Y					█	█	█	█	█			
Birds (breeding)	N			█	█	█	█	█	█				
Birds (overwintering)	N	█	█									█	█
Dormice (nut searches)	N									█	█	█	█
Dormice (nest searches)	Y	█	█	█									
Dormice (cage traps/hair tube surveys)	Y			█	█	█	█	█	█	█			
Fish	Some	Optimal survey season varies with species											
Great crested newts (terrestrial surveys)	Y			█	█	█	█	█	█	█	█	█	
Great crested newts (aquatic surveys: ponds etc)	Y					█	█	█	█	█			
Invertebrates	N					█	█	█	█	█			
Otters	Y	█	█	█	█	█	█	█	█	█	█	█	█
Reptiles (Common lizard / Other)	Y / N					█	█	█	█	█			
Water voles	Y					█	█	█	█	█			
Habitats - Phase I surveys	N					█	█	█	█	█			
Vegetation - Mosses, lichens	N							█	█	█			
Vegetation - Higher plants	N					█	█	█	█	█			