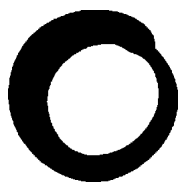


How to win

Saving wildlife sites



**Friends of
the Earth**

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Friends of the Earth inspires solutions to environmental problems, which makes life better for people.

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This is an extract

A full copy of How to win: Saving wildlife sites can be downloaded from Friends of the Earth's website.

http://www.foe.co.uk/resource/local/saving_wildlife_sites/

5 Wildlife development and planning law

Land-use planning is a crucial issue for nature conservation. As campaigners we frequently find ourselves dealing with one aspect or other of the planning system – for example to oppose a development which would damage a wildlife site. However planning law is by no means all-encompassing when it comes to determining land use. Agriculture and forestry land use are not covered by UK planning law which is primarily concerned with what is called development – building, engineering and mining operations.



Key point

The planning system is essentially a means to resolve conflict between differing land-use objectives. As such, it is designed to be responsive to national and local concerns, and to be influenced by public pressure and by technical arguments.

The Government's general policy guidelines outline the role of planning as being to 'enable the provision of homes and public buildings, investment and jobs in a way which is consistent with the principles of sustainable development. It needs to be positive in promoting competitiveness whilst being protective towards the environment [as] an amenity' (REF: DETR, 1997, PPG1 General Policy and Principles, The stationary office).

There are two processes at work in town hall planning offices:

- i) The production of development plans – the authority's strategy for determining where and how new development takes place, and
- ii) development control – the process of determining individual planning applications.

On a practical level, planning is administered by local authorities. These are either 'unitary' or 'two tier' (the two tier being the old-style County and District authorities). Unitary authorities are responsible for all aspects of planning whereas in two-tier authorities responsibility is split. County councils produce structure plans and determine additional plans for such areas as waste and minerals planning, whereas District councils produce the more detailed local plans and determine all other

planning applications. In exceptional circumstances applications can be called in by the Government to be determined by the Secretary of State.

1 Development plans

Development plans provide the framework by which planning authorities determine planning applications. There are three types:

i) Structure plans

Usually produced by county councils, structure plans define broad strategic planning policy for their administrative area. Structure plans have to take into account a range of Government advice and policy and must assess the environmental impact of their strategies. Structure plans should list all designated nationally and internationally important wildlife sites (SSSIs, SACs, SPAs, NNRs and Ramsar sites) and place the nature-conservation importance of the area covered by the plan in a national context.

ii) Local plans

Local plans put the flesh on the bones of the structure plan to which they must conform. They are produced by district or unitary authorities and go into the detail of what will be allowed to happen where. Local plans should identify, and usually map, all local, national and international nature conservation interest – not necessarily just designated sites – and outline what weight will be given to those interests in determining planning applications.

iii) Unitary development plans

Some unitary authorities produce UDPs which are essentially a hybrid structure plan (part 1) and local plan (part 2). Other unitary authorities however produce structure plans jointly with neighbouring authorities and their own local plan.

Influencing development planning

Getting involved in influencing development plans can seem a daunting task. The process can be long - years in some cases - and time-consuming. However, whether it is a structure plan, local plan, waste plan or minerals plan, the benefits for wildlife if you get involved can be significant. There is also a great deal of help to guide you through the stages. Development plans can be used to ensure damaging operations which require planning permission do not go ahead, and also to encourage the adoption of positive management for wildlife. Especially in the case of minerals and waste plans, you can help ensure degraded sites are restored with wildlife in mind.

There have been many positive policies which have been included in development plans (REF: WWF/Green Balance, 1997, *Planning for wildlife – a practical guide*):

- identifying strategic wildlife corridors
- creating areas of wildlife interest in development of areas lacking ecological interest
- providing for the restoration of mineral workings primarily for wildlife
- provision of structures to encourage species such as dormice, bats and otters
- requiring that appropriate habitat management plans are drawn up for local authority-owned land.

When putting together development plans, planning authorities are obliged to take into account the views of local people and interested parties, as well as government guidelines. The process is long and complex, usually with several opportunities for participation, although this can vary between authorities.

Top Tip

If you decide to try to influence the plan you should get involved as early in the process as possible.

Contact your local planning department and find out what stage the plan is at and when the public consultation stages will take place. Also ask to be included on the list of consultees so you will receive notification of all the important stages. You can start to influence the process even before the initial stages by writing to the council letting them know your views on planning for wildlife in your area.

Top Tip

You should also start to build a network of contacts in other relevant organisations, NGOs and other local authorities. These organisations may be able to give you valuable information and expertise and it could be possible to agree a common policy and submit joint objections - or at least ensure that your objections don't contradict, which will give extra legitimacy to your case.

There are usually three main stages to the process of producing development plans:

i) The pre-deposit consultation draft

This is the first stage in the procedure for passing a plan, and the local authority will consult at this stage with bodies such as the DETR, the wildlife agencies, the Environment Agency and any members of the public and interest groups. There is often a six-week consultation period, and this is where letters of objection are needed. You should identify the parts of the plan you object to, why you object to them and the changes you would like to see. The more letters the council receives at this stage the better.

ii) The deposit stage

This is a more formal draft, advertised in the local paper and setting out the views of the local authority. Objections are submitted on council forms.

*** Top Tip**

You don't have to respond to the whole plan - it is better to respond to a few points thoroughly in the order they appear, explaining your objection specifically and suggesting any new areas of policy not included. It is also a good idea to make clear your support for those policies you endorse.

At this stage the authority may decide on revision or withdrawal of some of its proposals, which again must be consulted upon in the same way.

iii) The plan inquiry

The plan inquiry is presided over by independent inspectors appointed by the DETR. They hear the council's and objectors' cases and make recommendations relating to all the matters considered. The local authority must then draw up a statement of the post-inquiry modifications, giving reasons for any recommendations not acted upon. This statement must be made publically available, and you can object to the modifications or any recommendations not acted upon. You cannot go back and object to the original plan. Finally the authority must give at least 28 days' notice of its intention to adopt the plan, advertise and send copies to the DETR.

2 Development control

Development control is the sharp end of the planning system that determines the specifics of what gets built where. Most types of development require planning permission but there are some significant and potentially damaging exceptions.

i) Planning policy guidance notes

The primary piece of guidance available to local authorities concerning planning and wildlife is Planning Policy Guidance Note 9: Nature Conservation (PPG9). This is a key document in the decision-making process and sets out in detail the Government's view of how local planners should balance nature conservation with development.

Top Tip

We strongly recommend that you study PPG9. It is essential reading for any wildlife campaigner who intends to have any involvement in the planning process.

The equivalents of PPG9 in Wales, Scotland and Northern Ireland are:

Wales TAN 5 Planning and Nature Conservation (Welsh Office 1996)

Scotland NPPG14 Natural Heritage (Scottish Office 1999)

Northern Ireland Planning Policy Statement 2

ii) Permitted development

As already mentioned, forestry operations and agriculture are excluded from the planning process and even mobile phone masts and some agricultural buildings are classed as permitted development which does not require permission. In addition, many seemingly minor developments such as fencing may be permitted but could have a significant impact on wildlife.

Short of scouring your area on foot it is very difficult to know when permitted developments are taking place - precisely because they do not require planning permission. If you do come across such cases, however, there is a procedure whereby local authorities can issue an Article 4 Direction to regain planning control over permitted developments. To do this they must justify their case to central government and the Direction has usually only been applied in sites of recognised wildlife or landscape importance such as SSSIs. But it's worth a shot.

If you wish to pursue an Article 4 Direction for an area of land, you need ultimately to contact a planning officer at your local authority.

*** Top Tip**

It is usually appropriate to approach the landowner first, explain your concerns, and give them the opportunity to adopt positive management for the wildlife on the area concerned, before resorting to the authorities.

Influencing development control

i) Planning permission

If planning permission is required, which it is for most types of development - details of applications are published weekly in the local press by the planning authority. You can check these at your local planning office or you may be able to subscribe to a mailing service and get the weekly list delivered - at a cost, obviously. There are two types of planning applications, outline applications and detailed applications.

Outline applications

Outline applications are used by developers to establish whether a planning authority is in favour, in principle, of a particular development without having to go to the lengths and expense of a full application. Details are usually sketchy and it is often difficult to determine anything useful from outline applications beyond where the development will be and what it is. Councils can request more details before they make a decision, however. Once approved, outline planning permission gives the developer three years to come up with a detailed application and get approval.

Detailed applications

Detailed applications, as the name might suggest, examine the proposal in far more depth. The application may be supported by a range of other information on subjects pertinent to the application, such as transport implications or the effect of the development on the environment. If an environmental report exists it is worth looking at very closely as its inclusion amounts to an admission by the developer that the impacts of the scheme are potentially significant.

In certain cases, developers will be required to carry out an Environmental Impact Assessment (EIA) under the provisions of the Town and Country Planning (Assessment of Environmental Effects) Regulations 1998 which implement EC Directive 97/11/EC. Some developments will require an EIA (Schedule 1)

automatically, while others are at the discretion of the local authority (Schedule 2) (see Section 9: How to find out more, for more detail).

Environmental reports and EIAs should always be examined critically and bear in mind that they are likely to try to portray the development in a favourable light. It is worth checking the following:

- that a full range of species surveys were carried out and that they were done at the correct time of year
- make sure the report looks not just at the direct physical impact of the development but also at the long-term impacts
- will noise or increased traffic affect local species?
- examine closely any claims made about the level of impact the site is likely to have and try to ensure they are justified.

If required, try to get some technical assistance from your county wildlife trust or local naturalists and see if it is feasible to have access to the site to carry out your own assessment.

If you can show that the level of environmental information available to the planning committee is not sufficient, the planning office may be able to convince the developer to commission an independent survey of the site.

ii) The decision process

Once all the relevant information is available, the local planning authority will make a decision. This will not be arbitrary and must conform to the appropriate development plans described previously.

Key point



It is a legal obligation to ensure that the decision is in accordance with these plans unless the authority can show significant "material considerations" which override the directions given in the plan.

Although different applications vary, the decision will be based broadly on the following:

- Central Government guidance contained in Planning Policy Guidance Notes (PPGs)
- regional planning guidance (RPGs)
- the existing structure plans and local plans or unitary development plan
- previous court judgements in relation to appeals in similar cases
- the merits of the individual proposal as described in the planning application
- landscaping, access, loss of amenity value and sustainable development (including wildlife considerations).

Planning authorities are also required to consult with a number of other statutory consultees on all applications. These will vary depending on the application. The wildlife agencies must be consulted about any development affecting SSSIs, for example.

iii) Objecting to an application

The local planning authority must reach a decision within eight weeks of receiving the application, or 16 weeks if an environmental statement was required. So you will need to move quickly. Objections are usually required within 21 days of the application being submitted and sometimes within as little as ten days. If you are pressed for time you may be able to submit an outline objection and follow it up with the detail as soon as possible.



Top Tips

Gathering information

- **Obtain a copy of the full application plus any additional reports or environmental statements.**
- **Network with other wildlife groups and get their views on the proposal. If other groups intend to lodge complaints co-ordinate your objections to give more weight to your arguments and prevent contradictions.**
- **Find out the views of the wildlife agency and the environment agency and any statutory consultees.**
- **Obtain a copy of any relevant development plans.**
- **Check with the planning authority to see if there have been any previous applications to develop the same site. If so find out what happened to them and why.**
- **Obtain the relevant Planning Policy Guidance Notes (PPGs).**

Writing the objection

Try to keep your objection as concise as possible and summarise the key points up front. Submit the application in the name of your group and make sure that copies are sent to all the councillors on the planning committee and to the local media, along with a press release. Make sure you get a copy of the planning officer's report on all the objections and check your views have been represented correctly.

You shouldn't feel the need to concentrate solely on wildlife. You may well have other issues with the development. Is it necessary, for example. Is it consistent in your view with the development plan? But do try to ensure you limit objections to what is contained in the application and concentrate on the material considerations. Quote from the relevant plans and government guidance and try to frame your arguments in terms of whether the development is in the public interest.

The decision

Once a decision has been reached by the planning authority the opportunities to appeal are limited. If the application is refused the developer has the right of appeal which will be heard by an independent planning inspector.

If the application is approved, however, objectors have no right of appeal. The only course of action left is a judicial review of the planning authority's decision through the courts. To succeed, you must show the authority acted unlawfully in approving the application. The authority will require costly legal representation, so this course of action should be approached with caution ...

3 Public inquiries

In particularly contentious cases, the planning application may be called in by the Secretary of State, who will then make the decision. This can happen for an issue that has impacts beyond the local authority, or one that could give (or is giving) rise to substantial regional or local controversy. The applicant can also appeal to the Secretary of State for an inquiry to be held if the local authority has rejected a proposal or failed to determine it within the required time. Inquiries are presided over by a planning inspector who will make a recommendation to the Secretary of State.

A public inquiry attracts more publicity to a planning application and offers an opportunity for opposition views to be expressed and to convince a wider audience of the public antipathy to the project. They are time-consuming, however, and usually favour the developers in that they will have more time and resources to make their case.

4 Planning in Northern Ireland

Although broadly similar in function, planning in Northern Ireland is controlled centrally by the Planning Service, an agency of the Department of the Environment Northern Ireland (DOENI). At the time of writing a consultation is underway on Proposals for Amendments to Planning Legislation in Northern Ireland and significant changes to the planning system are being proposed.

A good introductory guide to planning in Northern Ireland is contained in the Planning Service Charter Standards Statement available from DOENI. See also *The Northern Ireland planning system: a user's guide* (Friends of the Earth Northern Ireland, 1997).

The Planning Service website
www.doeni.gov.uk/planning/

Planning Service Charter Standards Statement
www.doeni.gov.uk/planning/Charter_Standards_Statement/citizens.htm