March 2008

Validation of Planning Applications

PLANNING APPLICATION REQUIREMENTS (LOCAL)

BIODIVERSITY AND GEOLOGICAL CONSERVATION VALIDATION CHECKLISTS FOR SOLIHULL METROPOLITAN BOROUGH COUNCIL

In Accordance With

The Town and Country Planning (General Development Procedure) (Amendment) (England) Order 2007

Based on a template prepared by the Association of Local Government Ecologists in collaboration with Defra and Natural England

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PART I *LOCAL REQUIREMENTS FOR PROTECTED, PRIORITY SPECIES AND LBAP SPECIES*

The planning authority has a duty to consider the conservation of biodiversity when determining a planning application; this includes having regard to the safeguard of species protected under the Wildlife and Countryside Act 1981, the Conservation [1](Natural Habitats etc) Regulations 1994 and the Badgers Act 1992. In addition, under s.40 of the Natural Environment & Rural Communities (NERC) Act 2006 local authorities have a duty to have regard for the conservation of biodiversity in the exercise of all of their functions. Reference is made in s.41 to a list of habitats and species maintained by Defra which are of principal importance for the conservation of biodiversity, here referred to as priority species and habitats. Where a proposed development is likely to affect protected, priority or LBAP species, the applicant must submit a ***Protected and Priority Species Survey and Assessment*.**

If the application involves any of the development proposals shown in **Table 1** (Column 1), a protected species survey and assessment must be submitted with the application unless the LPA has otherwise confirmed in writing. Following the table, exceptions to when a survey and assessment may not be required are explained. There may be limited circumstances where survey will be required outside of these criteria due to unusual local circumstances. **Pre-application discussion is recommended to ensure clarity in regard of survey and assessment requirements.**

The **Survey** should be undertaken and prepared by competent persons with suitable qualifications and experience, and appropriate protected species licences, and must be carried out at an appropriate time and month of year, in suitable weather conditions and using nationally recognised survey guidelines/methods where available[1] Survey methodology should be documented. The survey should be informed by the results of a search for ecological data from The Warwickshire Biological Records Centre. The survey must be to an appropriate level of scope and detail, cover land outside of the development site where species ecology and/or survey guidelines require, and must:

- Record which species are present and identify their numbers (may be approximate);
- Map their distribution and use of the area, site, structure and/or features (*e.g.* for feeding, shelter, breeding);
- Record any uncertainties and limitations that might affect survey results;
- Identify if further survey is required.

The **Assessment** must identify and describe potential development impacts likely to affect the species and/or their habitats identified by the records search and survey (these should include direct and indirect effects both on-site and off-site during site preparation, construction and afterwards). Where harm is likely, evidence must be submitted to show:

- How alternatives designs or locations have been considered;
- How adverse effects will be avoided wherever possible;
- How unavoidable impacts will be mitigated or reduced;
- How impacts that cannot be avoided or mitigated will be compensated[*].

[1] A Natural England Licence is required for any development that would affect a European Protected Species.

[*] Harmful effects on European Protected Species must be fully mitigated

In addition, in accordance with the local authority's duty under s.40 of the NERC Act, proposals are encouraged that will enhance, restore or add to features or habitats used by protected species. The Assessment should also give an indication of how species numbers are likely to change, if at all, after development *e.g.* whether there will be a net loss or gain.

Where relevant, the information provided in response to the above requirements should be consistent with that required for an application to Natural England for a European Protected Species Licence. A protected and priority species survey and assessment may form part of a wider Ecological Assessment and/or part of an Environmental Impact Assessment.

[1.] Further information on appropriate survey and assessment methods can be found in:

Guidance on Survey Methodology published by the Institute of Ecology and Environmental Management; available at:
http://www.ieem.org.uk/Guidelines%20for%20Survey%20Methodology.htm

Bat surveys – Good Practice Guidelines Bat Conservation Trust 2007
http://www.bats.org.uk/

Natural England *Bat mitigation guidelines* 2004
http://naturalengland.communisis.com/NaturalEnglandShop/product.aspx?ProductID=77002188-97f9-45a5-86a6-326a7ea3cd69

Natural England *Great crested newt mitigation guidelines* 2001
http://naturalengland.communisis.com/NaturalEnglandShop/product.aspx?ProductID=a7edae69-c711-4761-9829-458caf7c5e37

Existing species data are available from Warwickshire Biological Records Centre.
http://www.warwickshire.gov.uk/Web/Corporate/Pages.nsf/Links/735FEDF47C7F871380256A25004100D4

TABLE 1
Local Requirement for Protected/Priority Species: Criteria and Indicative Thresholds (Trigger List) for when a Survey and Assessment is Required

Column 1 **Proposals for Development That Will Trigger a Protected/Priority Species Survey and Assessment**	**Species Likely To Be Affected And For Which A Survey May Be Required**											
	Bats 3	Gt. Crested Newts	Otters	White clawed crayfish	Water Vole	Badger	Reptiles	Amphibians	Barn Owls	Breeding Birds1	Wintering & Migrating Birds1	Invertebrates 2
Proposed development which includes the modification, conversion, demolition or removal of buildings and structures (especially roof voids) involving the following:												
▪ all agricultural buildings (*e.g.* farmhouses and barns) particularly of traditional brick or stone construction;	●								●	●		
▪ all buildings with weather boarding, hanging tiles or soffit boxes and that are within 200m of woodland and/or water, are close to lines of trees and/or a network of hedges; or to mature gardens, parks, cemeteries or other urban open space;[3]	●									●		
▪ 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 caves, tunnels, mines, kilns, ice-houses, adits, military fortifications, air raid shelters, cellars and similar underground ducts and structures;	●									●		
▪ all bridge structures, aqueducts and viaducts (especially over water and wet ground).	●									●		
Proposals involving lighting of churches and listed buildings. Flood lighting of green space within 50m of woodland, water, field hedgerows or lines of trees with obvious connectivity to woodland or water.	●								●	●		
Proposals affecting woodland, or field hedgerows and/or lines of trees with obvious connectivity to woodland or water bodies.	●					●				●		●

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	Bats 3	Gt. Crested Newts	Otters	White clawed crayfish	Water Vole	Badger	Reptiles	Amphibians	Barn Owls	Breeding Birds1	Wintering & Migrating Birds1	Invertebrates 2
Proposed tree work (felling or crown reduction etc) and/or development affecting: ▪ mature and veteran trees that are older than 100 years; ▪ trees with obvious holes, cracks or cavities, ▪ trees with a girth greater than 1m at chest height;	● ● ●									● ● ●		
Proposals affecting quarries and natural cliff faces and rock outcrops with crevices, caves and other fissues	●					●	●			●		●
Where there are **no** existing great crested newt records: ponds within 500 m of Major proposals; ponds within 250 m of or Minor proposals; Where there **are** local records and no barriers to movement all ponds within 500 m of all proposal sites. (Note: A major proposals is one that is more than 10 dwellings or more than 0.5 hectares or for non-residential development is more than 1000m^2 floor area or more than 1 hectare)		●										
Proposals affecting or within 50 m of rivers, streams, canals, lakes, swamps, reedbeds or other aquatic habitats.	●		●	●	●		●	●		●	●	●
Proposals affecting 'derelict' land (brownfield sites), allotments, mature gardens and railway land including bare ground that may support ground-nesting birds or invertebrates.		●				●	●	●		●		●
Proposals affecting arable, pasture, semi-natural habitats and uncultivated land						●	●		●	●	●	●
Proposals for wind turbines and wind farms	●									●	●	
Proposed development affecting any buildings, structures, feature or locations where protected, BAP Priority or LBAP species are known or there is a reasonable likelihood that they are present [4]	As records and scoping reports indicate											

1. With particular focus on WCA Schedule 1, BAP Priority Species/LBAP Species and RSPB red list.
2. With particular focus on BAP Priority species/LBAP Species. Guidance on survey requirements should be sought where semi-natural habitat will be affected
3. Bats may be found in other situations. For example pipistrelle bats will use modern buildings such as schools or industrial buildings. Where buildings are close to woodland water, tree lines, hedges, mature gardens, cemeteries, parks or other open space a scoping survey is recommended and its findings should be implemented.
4. Confirmed as present by either a data search through Warwickshire Biological Records Centre or as notified to the developer by the local planning authority, and/or by Natural England, the Environment Agency or other nature conservation organisation or by credible report from the public.

TABLE 2: WARWICKSHIRE COVENTRY AND SOLIHULL LBAP SPECIES MARCH 2008
Adder
Argent and Sable Moth
Barn Owl
Bats
Bittern
Black Poplar
Bloody-nosed beetle
Chalk carpet moth
Common Dormouse
Cuckoo Bee
Dingy Skipper Butterfly
Dotted Bee-fly
Farmland Birds
Great Crested Newt
Lapwing
Leaf-rolling Weevil
Otter
Rare Bumblebees
Red Wood Ant
Scarce Arable Plants
Small Blue Butterfly
Snipe
Song Thrush
Water Vole
Wood White Butterfly
White Clawed Crayfish

Exceptions for When a Full Species Survey and Assessment may not be Required

a. Following consultation by the applicant at the pre-application stage, the LPA has stated in writing that no protected species surveys and assessments are required.

b. If it is clear that no protected species are present, despite the guidance in the above table indicating that they are likely, the applicant should provide evidence with the planning application to demonstrate that such species are absent (*e.g.* this might be in the form of a letter or brief report from a suitably qualified and experienced person, or a relevant local nature conservation organisation).

c. If it is clear that the development proposal will not affect any protected species, then only limited information needs to be submitted. This information should, however, (i) demonstrate that there will be no significant affect on any protected species recorded or likely to be present and (ii) include a statement acknowledging that the applicant is aware that it is a criminal offence to disturb or harm protected species should they subsequently be found or disturbed.

In some situations, it may be appropriate for an applicant to provide a protected species survey and report for only one or a few of the species shown in the Table above *e.g.* those that are likely to be affected by a particular activity. Applicants should make clear which species are included in the report and which are not because exceptions apply.

PART II *LOCAL REQUIREMENTS FOR DESIGNATED SITES, PRIORITY HABITATS AND FEATURES OF BIODIVERSITY IMPORTANCE (Ie LBAP HABITATS) AND GEOLOGICAL CONSERVATION*

The planning authority has a duty to consider the conservation of biodiversity when determining a planning application; this includes having regard to the safeguard of designated sites and priority habitats. Where a proposed development is likely to affect such a site, habitat or geological feature, the applicant must submit an ***Ecological/Geological Survey and Assessment*.**

Effects on designated sites may be direct or indirect; the proposed development may, in some cases, be at some distance from the site, for example where there may be hydrological or air quality effects. Natural England should always be contacted where there is potential for adverse effects on internationally or nationally designated sites.

If the application is likely to affect any of the designated sites, priority habitats or biodiversity features listed in **Table 3** or geological features listed in **Table 4**, a survey and assessment for the relevant feature must be submitted with the application. Following the tables, exceptions to when a survey and assessment may not be required are explained. The **Survey** should be undertaken and prepared by competent persons with suitable qualifications and experience and must be carried out at an appropriate time and month of year, in suitable weather conditions and using nationally recognised survey guidelines/methods where available*. The survey should be informed by the results of a search for ecological or geological data from a local environmental records centre. The survey must be to an appropriate level of scope and detail and must:

- Record which habitats and features are present on and where appropriate around the site;
- Identify the extent/area/length present;
- Map their distribution on site and/or in the surrounding area shown on an appropriate scale plan

The **Assessment** should identify and describe potential development impacts likely to harm designated sites, priority habitats, other listed biodiversity features or geological features (these should include both direct and indirect effects both during construction and afterwards). Where harm is likely, evidence must be submitted to show:

- How alternatives designs or locations have been considered;
- How adverse effects will be avoided wherever possible;
- How unavoidable impacts will be mitigated or reduced;
- How impacts that cannot be avoided or mitigated will be compensated.

In addition, proposals are to be encouraged that will enhance, restore or add to designated sites priority habitats, other biodiversity features or geological features. The assessment should give an indication of likely change in the area (hectares) of

priority habitat on the site after development *e.g.* whether there will be a net loss or gain.

The ecological/geological survey and assessment may form part of a wider Environmental Impact Assessment.

Further information on appropriate survey methods can be found in *Guidance on Survey Methodology* published by the Institute of Ecology and Environmental Management; available at:
http://www.ieem.org.uk/Guidelines%20for%20Survey%20Methodology.htm

Existing environmental information is available from Warwickshire Biological Records Centre , and the Warwickshire RIGs Group. Also online information on internationally and nationally designated sites can be found at: www.natureonthemap.org.uk

TABLE 3 Local Requirements for Designated Sites and Priority Habitats Criteria (Trigger List) for When a Survey and Assessment are Required

1. DESIGNATED SITES	
Nationally designated sites	Site of Special Scientific Interest (SSSI)
Regionally and locally designated sites	Local Nature Reserve (LNR) Site of Importance for Nature Conservation (SINC) or Proposed Sites of Importance for Nature Conservation (pSINC)
2. RELEVANT SOLIHULL PRIORITY HABITATS – Habitats of Principal Importance for Biodiversity under S.41 of the NERC Act 2006 (*including UK BAP 2007 Habitats and Species Review Report recommendations)* **(see UKBAP.org.uk for full list)** ▪ Ancient and/or species-rich hedgerows ▪ Lowland mixed deciduous woodland (e.g. ancient woodland) ▪ Wet woodland ▪ Lowland wood-pasture and parkland ▪ Traditional orchards ▪ Floodplain grazing marsh ▪ Fen, marsh, swamp and reedbeds ▪ Lowland calcareous grassland ▪ Lowland meadows (e.g. species-rich flower meadows) ▪ Lowland heathland and/or dry acid grassland ▪ Rivers and streams ▪ Standing open water (*e.g.* lakes, reservoirs, ponds) and canals ▪ Open mosaic habitats on previously developed land	

3. OTHER BIODIVERSITY FEATURES (LBAP HABITATS)

(as identified by the **Warwickshire, Coventry Solihull LBAP Partnership** - see paragraph 84 ODPM Circular 06/2005))

- Woodland
- Allotments
- Canals
- Churchyards and cemeteries
- Disused industrial and railway land
- Fen and swamp
- Field margins
- Gardens
- Hedgerow
- Lowland acid grassland
- Lowland calcareous grassland
- Lowland heathland
- Lowland wet grassland
- Lowland neutral grassland
- Parks and public open spaces
- Ponds lakes and reservoirs
- Quarries and gravel pits
- Reedbeds
- Rivers and streams
- Roadside verges
- School grounds
- Scrub and carr
- The built environment
- Traditional orchards
- Woodpasture parkland and veteran trees

Exceptions When a Full Habitat Survey and Assessment May Not Be Required

National Sites: A survey and assessment will not be required where the applicant is able to provide copies of pre-application correspondence with Natural England, where the latter confirms in writing that they are satisfied that the proposed development will not affect any statutory sites designated for their national or international importance.

Regional and Local Sites and Priority Habitats: A survey and assessment will not be required where the applicant is able to provide copies of pre-application correspondence with the Local Planning Authority's ecologist that they are satisfied that the proposed development will not affect any regional or local sites designated for their local nature conservation importance or any other priority habitats or listed features.

TABLE 4: Local Requirements For Designated Geodiversity Sites And Features Criteria (Trigger List) for when a Survey and Assessment are Required

1. DESIGNATED SITES Locally designated sites **Regionally Important Geological Site (RIGS)**

Exceptions When a Full Geodiversity Survey and Assessment May Not Be Required

Regional and Local Sites: A survey and report will not be required where the applicant is able to provide copies of pre-application correspondence with appropriate local geological experts (such as the Local RIGS Group) that they are satisfied that the proposed development will not affect any regional or local sites designated for their local geodiversity importance. The RIGS Group can be contacted via Warwickshire County Council.

Figure A1: ECOLOGICAL SURVEY SEASONS

Key: Optimal Survey Time: Extending into:

	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 (Over Wintering)												
Dormice												
Great Crested Newts (Terrestrial)												
Great Crested Newts *adults* (Aquatic) *larvae*												
Invertebrates **												
Otters												
Reptiles												
Water Voles												
White-Clawed Crayfish												
WOODS Habitats/Vegetation *** OTHER HABITATS												

* Some breeding birds, such as owls, breed outside of the main season shown in Figure 2. Survey timing should therefore be adjusted according to specialist ecological knowledge of species likely to be encountered

** The optimum time to survey for invertebrates is highly dependant on the weather and the target groups or species under consideration. Survey timing should therefore be adjusted according to specialist knowledge of the ecology of target groups or species.

N.B. For great crested newts at least four survey visits are required to confirm presence or absence between March and June.

Points to note regarding surveys are as follows:

- For certain species and habitats surveys can be carried out at any time of year, but for other species, particular times of year are required to give the most reliable results, as indicated in Figure A1.

- Surveys conducted outside of optimal times (Figure A1) may be unreliable. For certain species (*e.g*. Great Crested Newt) surveys over the winter period are unlikely to yield any useful information. Similarly negative results gained outside the optimal period should not be interpreted as absence of a species and further survey work maybe required during the optimal survey season. This is especially important where existing surveys and records show the species has been found previously on site or in the surrounding area. An application may not be valid until survey information is gathered from an optimum time of year.

- Species surveys can be very weather dependent so it may be necessary to delay a survey or to carry out more than one survey if the weather is not suitable, *e.g*. heavy rain is not good for surveying for otters, as it washes away their spraint (droppings). Likewise bat surveys carried out in wet or cold weather may not yield accurate results.

- Absence of evidence of a species does not necessarily mean that the species is not there, nor that its habitat is not protected (*e.g.* a bat roost is protected whether any bats are present or not).

- Warwickshire Biological Records Centre and local species conservation groups will have useful existing information and records which should be used to help scope and plan surveys.

- Competent ecologists should carry out any surveys. Where surveys involve disturbance, capture or handling of a protected species, then only a licensed person can undertake such surveys (*e.g.* issued by Natural England). Surveys should follow published national or local methodologies. Further details may be found on the following web sites:

IEEM at: (http://www.ieem.org.uk/Publications.htm - Guidelines for Survey Methodology)
Natural England: http://www.naturalengland.org.uk/publications/default.htm

Legislative and National and Regional/local Policy Context for Biodiversity in the Planning System

The legislative and national policy context for biodiversity within the planning system in England can be found in the following documents available through the web sites shown.

- PPS 9 *Biodiversity & Geological Conservation* (2005); available at: http://www.communities.gov.uk/pub/833/PlanningPolicyStatement9BiodiversityandGeologicalConservationPDF243Kb_id1143833.pdf

- ODPM Circular 06/2005 Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within The Planning System; available at: http://www.communities.gov.uk/pub/319/Circular0605BiodiversityandGeologicalConservationStatutoryObligationsandTheirImm_id1144319.pdf

- Further information can also be found in *Planning for Biodiversity and Geological Conservation: A Guide to Good Practice* (2006); available at: http://www.communities.gov.uk/pub/843/PlanningforBiodiversityandGeologicalConservationAGuidetoGoodPractice_id1164843.pdf

- The Regional Spatial Strategy for The West Midlands Policy QE7 in the West Midlands Spatial Strategy; available at: http://www.wmra.gov.uk/UploadFiles/file/Quality%20of%20the%20Environment.pdf

- Solihull Metropolitan Borough Council UDP 2006 available at: http://www.solihull.gov.uk/udp/default.htm

- Solihull Metropolitan Borough Council Nature Conservation SPG; available at: http://www.solihull.gov.uk/Attachments/nc.pdf

Useful Web Sites and References

Online information on internationally and nationally designated sites can be found at: www.natureonthemap.org.uk

Association of Local Government Ecologists	http://www.alge.org.uk
Department of Communities and Local Government	http://www.communities.gov.uk/
Department of Environment and Rural Affairs	http://www.defra.gov.uk
Environment Agency	http://www.environment-agency.gov.uk
Institute of Ecology and Environmental Management	http://www.ieem.org.uk
Joint Nature Conservation Committee	http://www.jncc.gov.uk/
National Biodiversity Network (NBN)	http://www.nbn.org.uk/
Natural England	http://www.naturalengland.org.uk/default.htm
Planning Officers Society	http://www.planningofficers.org.uk
Planning Portal	http://www.planningportal.gov.uk/
Royal Town Planning Institute	http://www.rtpi.org.uk
Royal Society for the Protection of Birds	http://www.rspb.org.uk (red list)
The Wildlife Trusts	http://www.wildlifetrusts.org
Town and Country Planning Association	http://www.tcpa.org.uk
Wildlife and Countryside Link	http://www.wcl.org.uk/index.html

UKBAP	www.ukbap.org.uk
RIGs	http://www.ukrigs.org.uk
Warwickshire Biological Records Centre	http://www.warwickshire.gov.uk
Warwickshire Biodiversity Action Plan for Warwickshire Coventry and Solihull (2006)	http://www.warwickshire.gov.uk

British Standards Institution (2006) PAS 2010 Planning to halt the loss of biodiversity: biodiversity conservation standards for planning in the United Kingdom – Code of Practice.

DCLG (2006) Validation of Planning Applications – Consultation

DCLG (2007) The Validation of Planning Applications: Best practice guidance for local planning authorities

Institute of Ecology and Environmental Management (2006) Guidelines for Ecological Impact Assessment (EcIA)

Judicial Review (2001) Mr. Justice Harrison; Regina -v- Cornwall County Council ex parte Jill Hardy. Journal of Planning Law 78