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## Protecting birds from development

Find out what can and cannot be done to protect birds, their nests and habitat from development proposals and other threats.

### Key points:

- The presence of nesting birds can generally only delay development, not prevent it.
- Local authorities must consider wildlife when making planning decisions. Do contribute your evidence of the wildlife on the site, but be realistic.
- A wildlife designation on a site weighs far more heavily than the simple fact that wildlife is present; find out what designations exist locally, or consider whether it is possible to demonstrate that a site should be designated based on accepted criteria.
- If you think development may go ahead despite your concerns, tell the Local Planning Authority how they could use planning conditions to reduce or avoid harm to wildlife, or compensate for lost habitats by creating new areas nearby.

### The Wildlife & Countryside Act

The Wildlife & Countryside Act (WCA) is the main piece of legislation that protects all wild birds in Wales. It is illegal to intentionally take, injure or kill any wild bird, or to take, damage or destroy an active nest or its contents. Species listed in Schedule 1 of the WCA are also protected from intentional or reckless disturbance when at, or close to, an active nest, or when with dependent young.

You can find out more about the Act, including species in Schedule 1, on our website ([www.rspb.org.uk](http://www.rspb.org.uk)). Search for 'wild birds and the law'.

Legal protection is on the bird, not on its habitat. In the vast majority of the cases only when a bird is nesting does the nest site receive legal protection. Consequently, the presence of nesting birds can only delay a development, not prevent it.

The nest site can be destroyed quite legally (if it does not have any other form of protection) when the bird has finished breeding for that year and is no longer using the nest. The exceptions to this are osprey, golden eagle and white-tailed eagle nests, which are protected at all times, even when not in use. It is good practice for developers to employ an environmental consultant to advise them on appropriate times of the year to carry out the works.

Birds' breeding seasons vary, depending on the species and on weather conditions. The Wildlife & Countryside Act does not define a bird's breeding season, but protects all active nests regardless of the time of the year. We recommend that any work that would risk destruction of active nests, such as tree felling and clearance of scrub, should avoid the main

nesting season of mid-March to August (earlier after a mild winter). Work outside this period runs less risk of destroying active nests, but since birds have been recorded nesting in every month of the year, care is needed at all times to avoid committing an offence.

The way the Wildlife & Countryside Act is worded, a person is only committing a crime if he or she knows that an active nest is present and still goes ahead with the work, damaging or destroying the nest in the process. If a nest is destroyed as the incidental result of an otherwise legal activity that could not have reasonably been avoided, particularly if the person was not aware of the nest's presence, no crime was committed. This is particularly true for legitimate farming operations that are time-dependent.

On the other hand, a developer cannot use this defence if he wants to clear the ground in preparation for building work. If you know that an area to be developed contains an active bird's nest, it is important to immediately inform the people carrying out the work, and most importantly to document that you have done so. This way they cannot claim they did not know about the nest.

Planning permission does not override the Wildlife & Countryside Act (WCA). Removal of any active bird nest requires a special licence from the Countryside Council for Wales. There is no provision in the WCA for nest removal for building work, and therefore a licence would not be granted. A famous case was at the Millennium Dome, whose construction was delayed because Defra would not allow the removal of a mallard's nest that was in the way of the building work.

Even minor projects can risk contravening the Wildlife & Countryside Act. Therefore, it is important to take nesting birds into consideration when planning any kind of home improvement or other building work. Always check carefully for nests prior to the work commencing, and delay it if an active nest is found. If you regularly have birds nesting in your roof, make sure that you schedule any roofing work away from their breeding season.

### **What are 'red listed' birds?**

Red listed birds are species of high conservation concern. The conservation status of each British bird is assessed every five years, and each species is assigned to a red, amber or green list depending on how serious their need for conservation action is.

Red listing does not necessarily mean a species is about to become extinct – it means that for a variety of reasons the bird needs some conservation action. Following long-term declines of over 50%, some of our most familiar birds, eg song thrushes, house sparrows and skylarks, are red listed. Although these birds are still quite common and very widespread, you may think a development should be stopped because red listed birds like these are present.

Being red or amber listed indicates the UK conservation status of the species, not its legal status. In particular, it does not offer automatic protection to the habitat the birds use.

The importance that Local Planning Authorities give to wildlife in the decisions they make about development depends on a realistic assessment of the site's value relative to the

general area. To help them make an informed decision, it is always worth giving them a list of species present on the site. It may be the only data available, or it can supplement information provided by the developer.

If your species list is categorised against the red and amber list, and particularly if population estimates are provided, this will help the local authority decide what weight they should give to refusing (or negotiating alterations to) the development for nature conservation reasons.

However, be realistic; old records or records of feral or escaped species are of little relevance. Remember that even if a familiar red listed bird such as the skylark is present, the site will hold only a minute fraction of the UK population, and any similar area of habitat will probably have the same species.

### **Biodiversity Action Plans**

Each Local Planning Authority in Wales is responsible for preparing a Local Biodiversity Action Plan (LBAP). These set priorities, actions and targets for animals, plants and habitats felt to be important to the local area. They also identify the organisations tasked with particular actions. A wide partnership of organisations is involved, including statutory agencies and environmental charities.

LBAPs can help influence decisions about developments. LBAPs are public documents and can be viewed at the council offices, or often on their website. It is useful to find out from the LBAP for an area which species and habitats the Local Planning Authority has pledged to conserve, and what actions they have committed to carry out.

Granting planning permission for a development that would destroy a significant area of the habitat of a LBAP species may go against the Local Planning Authority's own biodiversity pledges.

### **Conservation designations**

There are many types of conservation designations, based on a wide range of wildlife, geological, landscape and historical features.

The type of designation depends on how important the site is in a local, national or international context. The higher the wildlife value, the greater the degree of protection in local planning policy, UK, EU and international law.

Generally, if a site has a conservation designation, it is a lot easier to defend than a site that does not. Therefore, it is vital to check if the site of a proposal has any kind of conservation designation on it, or if there is a designated site so close by that birds and other wildlife could be affected indirectly (eg through disturbance, light pollution, or impacts on hydrology).

If a site has a conservation designation, it is important to focus on why the site was designated. The reasons for a designation can sometimes point you towards the key issues when commenting on a planning application.

If there is no designation but you are convinced the site is valuable for wildlife, then any records you have may help demonstrate that the site, logically, should be protected. At a local scale, the most realistic objective is probably to campaign for the site to be designated as locally important, and thereby protected by the policies in the Local Development Plan.

To achieve this, you will almost certainly need time for data collection and considerable support from the local Wildlife Trust and the local authority ecologist (if there is one). You'll also need clear, scientifically gathered evidence that the site meets the relevant criteria. Refer to our PDF *How to assess the value of a wildlife site* for more information.

### **How to get the best for birds out of the planning system**

Local Planning Authorities allocate land for different uses in the Local Development Plan. This forms part of the long-term strategic planning by the authority and is called the 'development plan'.

When objecting to a planning proposal, or when involved in a more proactive site safeguard project, always consult the Local Development Plan to see what policies affect the site – for, or against, your argument. This helps to place the project you are involved with into the wider planning context and will help guide you to the best ways to approach the subject.

If the Local Development Plan is not yet in place ('adopted') then you will need to refer to the previous version of the development plan for the area. Local planning authorities should determine applications in accordance with the policies and proposals set out in the development plan, unless material considerations indicate otherwise.

Further information on the planning system is available in our information PDFs *How to get involved with local development plans* and *Getting involved in planning applications*.

Welsh Government guidance states that attaching conditions to a planning permission can enable many development proposals to proceed where it would otherwise be necessary to refuse planning permission. Therefore, because a site is only protected under the Wildlife & Countryside Act while birds are actually nesting, a condition that requires the developer to schedule site clearance etc outside the whole of the breeding season is a legally acceptable way to overcome an objection based on the presence of breeding birds.

Planning conditions can be used to benefit birds. A common problem is loss of nesting sites for birds such as barn owls as outbuildings or barns are converted. Appropriate planning conditions might include incorporating an owl window into the design or erecting and maintaining owl nestboxes if there are suitable trees close by.

If you think your objection based on wildlife impacts might not result in the outright refusal of a planning application, think about how the development could be phased, re-designed or operated in a way that reduces the impact, and suggest to the Local Planning Authority they secure this by a planning condition.

If the above cannot be applied in your case, and wildlife habitat is going to be lost because of the development, the permission could contain a condition that requires the creation of an equal or greater area of the same habitat nearby.

Planning conditions cannot be used to require works to take place on land outside of the applicant's control, or require financial contributions. On some larger, more complex schemes, the applicant may be prepared to enter into a planning obligation, which is a legal agreement that offers more flexibility than conditions. Planning obligations are useful arrangements to overcome obstacles which may otherwise prevent planning permission from being granted.

The Welsh Government advises that contributions from developers may be used to offset negative consequences of development, to help meet local needs, or to secure benefits which will make development more sustainable. Planning obligations can therefore potentially be used to reduce the impact of the proposed development on wildlife.