Conwy Local Development Plan 2007 – 2022

SUPPLEMENTARY PLANNING GUIDANCE

LDP5: Biodiversity in Planning

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COUNTY BOROUGH COUNCIL

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List of Abbreviations

AMR	Annual monitoring report
BSI	British Standards Institute
CCBC	Conwy County Borough Council
DCC	Denbighshire County Council
EIA	Environmental Impact Assessment
HAP	Habitat Action Plan
LBAP	Local Biodiversity Action Plan
LDP	Local Development Plan
NRW	Natural Resources Wales
RSPB	Royal Society for the Protection of Birds
SAC	Special Area of Conservation
SAP	Species Action Plan
SPA	Special Protection Area
SPG	Supplementary Planning Guidance
TAN	Technical Advice Note
TAP	Topic Action Plan
WG	Welsh Government
WBP	Wales Biodiversity Partnership

List of Terms

Section 42	Section 42 of the Natural Environment and Rural Communities Act (NERC) 2006.
European protected species	species protected by the provisions of the Habitats Regulations 2010
Cofnod	North Wales Environmental Information Service
Biodiversity Convention	The first global treaty to provide a legal framework for biodiversity conservation, adopted at the Earth Summit in Rio de Janeiro, Brazil in June 1992

1. Context

1.1 The main purpose of this SPG is to be of assistance to everyone involved in dealing with new development in Conwy and assessing what impact it may have on biodiversity. Whilst the document expands from LDP policy, development will also be expected also to comply with the Biodiversity Code of Practice BS42020:2013 available from BSI.

1.2 Much of the pressure on biodiversity is related to development and land use. Therefore the planning system has a vital role in protecting and enhancing biodiversity through new development proposals.

1.3 Well-designed development can help home-owners meet their changing needs, add value to properties and provide vibrant retail, office or tourism opportunities enhancing the local area. With good design it is also possible to reduce energy use and avoid wasting natural resources. Most development can also provide and enhance habitats for various species and improve the biodiversity of the site and surrounding area.

1.4 The Council will have regard to this SPG when making planning decisions with immediate effect. Welsh Government (WG) advises that SPGs may be used as a means of setting out more detailed guidance on the application of LDP policies. Although this guidance supplements existing policies, it also reflects the updated national policy context, and this will be reflected in the LDP through annual monitoring.

1.5 In addition the SPG will promote the conservation of habitats and species of principal importance to Wales, and any others identified in the Conwy Local BAP.

2. What is Biodiversity?

2.1 Biodiversity is the richness and diversity of habitats and species. Some habitats and species are recognised as being of international or national importance while others may be of local significance. All contribute to, and help to define, the natural character and importance of a given area. Wildlife of our rural and coastal open spaces constitutes a significant part of people's contact with the natural environment in Conwy and fortunately many of these places are easily accessible, adding to the quality of life and attractiveness of the area. Biodiversity is an integral part of a healthy and functional natural environment. It is essential for sustaining the natural living systems, or ecosystems, that provide us with food, fuel, health, wealth, and other vital services. It is vital for our wellbeing.

2.2 Humans are part of this biodiversity too and have the power to protect it. This SPG provides guidance on protecting and enhancing biodiversity in the context of all development. It sets out the measures required to enhance biodiversity, including what needs to be done to ensure that biodiversity net gain is part of delivering a sustainable future.

3. Biodiversity in Conwy

3.1 Conwy has a wealth of wildlife and a diversity of habitats. In the north is the beautiful headland of the Great Orme, with its sea cliffs, limestone pavements and grassland. It is accessed from Marine Drive which provides views across Traeth Lafan to Snowdonia, Puffin Island and Anglesey to the west, and the North Wales and Lancashire coasts to the East. In stark contrast are the windswept uplands of the Hiraethog moors forming a niche between the vast coniferous forest of Clocaenog, the hills forming the Migneint and the course of the River Conwy. The Hiraethog provides habitat for breeding hen harrier, merlin and black grouse whilst the red kite is slowly gaining a stronghold in the South of the County.

3.2 Our rural hinterland forms the core of Conwy and provides a patchwork of woodlands, grazed uplands, valleys and hedgerows. Oak woodland offers habitat for summer visitors such as the redstart, pied flycatcher and wood warbler whilst tawny owls and woodpeckers are here all year round. The wide Conwy valley links Snowdonia's northern Carneddau range and Gwydir Forest in the west to Coed Hafod and the rolling hills to the east which continue into Denbighshire and its agriculturally diverse Clwyd valley and further east, the Clwydian Range, Area of Outstanding Natural Beauty (AONB).

3.3 Our marine life is a rich variety of animals, including soft corals, sea anemones, fish, crabs, and breeding sea birds. Conwy's coastal sea cliffs provide habitats for the red-billed chough, the rarest species of crow breeding in Britain. Kinmel Bay hold important areas for water vole and common lizard. Conwy also has nine species of bat, including the critically endangered lesser horseshoe bat, which has disappeared from most of its northern range in Europe. The Conwy Valley, in particular, holds strong populations of this species therefore the reuse of derelict buildings needs careful assessment.

4. Local Policy and Interpretation

4.1 Within the 25 planning authorities in Wales (22 local authorities and 3 national park authorities) the land use planning system sets the framework for the development and use of land. All authorities are required to prepare a Local Development Plan which provides a legally recognised framework for controlling development and determining planning applications within the hierarchy of the Community Strategy.

4.2 The LDP has a crucial role in safeguarding the important habitats and species identified in this guidance. This SPG is an important link showing how it is implemented through the planning system.

4.3 Loss of biodiversity runs contrary to the aims and objectives of the LDP in terms of achieving sustainable development. Therefore it is important that new development, re-development and changes in land use avoid loss or harm to wildlife features present on a site wherever possible. However, in exceptional

cases, where there are over-riding material planning considerations that might mean avoidance is not possible. The Council will then seek measures from developers that minimise any adverse effects and offset or compensate for those impacts that cannot be avoided or reduced, prior to the commencement of development.

4.4 Much of the pressure on biodiversity is related to development and land use. Consequently, the planning system has a vital role to play in biodiversity conservation. The Council has an ecologist and a planning enquiries officer who can advise on biodiversity issues relating to planning applications. There is also an increasing value to be had from pre-application discussion and enquiries.

4.5 **Conwy LDP Biodiversity Policy NTE/3**

BIODIVERSITY

POLICY NTE/3 BIODIVERSITY

1. *New development should aim to conserve and, where possible, enhance biodiversity through:*

    a) *Sensitive siting; avoiding European protected sites or those of national or local importance,*
    b) *Sensitive layout and design which avoids impacts or mitigates through an agreed programme for any identified adverse impact on biodiversity.*
    c) *Creating, enhancing and managing wildlife habitats and natural landscapes including connectivity,*
    d) *Integrating biodiversity measures into the built environment,*
    e) *Contributing to achieving targets in the Conwy Local Biodiversity Action Plan (LBAP),*
    f) *Providing for a management agreement with the Local Planning Authority to secure the retention and long term future of biodiversity interests where applicable.*

2. *All proposals should include a Biodiversity Statement detailing the extent to impact on biodiversity.*

3. *The Council will refuse proposals which would have a negative impact on a European Site, protected or priority species or habitat unless the impact is adequately mitigated and appropriate remediation and enhancement measures are proposed and secured by planning conditions or obligations.*

5. Interpretation of Policy and Achieving Biodiversity Gains

5.1 This section offers guidance on how to address and comply with the requirements in policy NTE/3. The main question to ask is whether all likely adverse effects on natural features, wildlife species and habitats have been avoided as far as possible.

5.2 In particular applicants should:

- Avoid adverse impacts on designated sites (see NRW website) and protected species (including those listed in Appendix 3).
- Avoid adverse impacts to priority habitats and species identified in the Section 42 list of habitats or species of principle importance to Wales and the Conwy LBAP.
- Retain existing habitats and consider species in the site layout and design integrating the process into the DAS/Biodiversity Statement.
- Where appropriate prepare a landscaping scheme at pre-app stage taking into account the above prior to submitting an application.
- Avoid leaving existing habitats and species isolated within the finished development by linking them to adjacent habitats via appropriate wildlife corridors as identified in earlier survey work.

5.3 Ideally the design stage should follow on from the survey information gathered during Pre-Application Stage. The aim should be to provide sufficient measures in the design for the biodiversity identified on site to be retained or enhanced, linking with adjacent wildlife features wherever possible. These can be detailed and justified in the Biodiversity Statement.

5.4 **Pre- Application Stage**

The pre-application stage is very important when considering biodiversity within a development. It is an opportunity to discuss the development with planning officers and, where appropriate, other organisations such as the local Wildlife Trust or RSPB. Any particular issues can then be highlighted at an early stage and the relevant information obtained, avoiding unnecessary delay later in the planning process. Such pre-application discussions can help to inform the selection of a development site, survey work and site layout.

5.5 **Mitigation to Minimise Unavoidable Harm**

Where adverse effects are unavoidable they can be minimised by appropriate mitigation measures that can be included in conditions or planning obligations / agreements. In particular applicants will be required to ensure that:

- Works are carried out at the appropriate time of year to avoid disturbance to species, see Appendix 6.
- Any necessary licences are obtained, so that protected species are treated appropriately. NRW provides guidance on protected species, see Section 7, page 18. However, note that a licence to disturb a European protected

species can only be applied for after planning permission has been granted.

- All other measures have been taken to reduce effects on biodiversity to a minimum, for example by creating buffer zones between sensitive areas and development areas to reduce disturbance to habitats.
- New infrastructure (for example bridges) are designed to enable continued movement and housing of wildlife.
- The hydrological status of sensitive sites is maintained through the careful design of drainage infrastructure.
- Habitats which cannot be retained in their current location are translocated whenever possible. Hedgerows, for example, can be successfully translocated if sufficient care is taken
- Species from destroyed habitats are translocated to suitable receptor sites (to be used only as a rescue operation to save species that would otherwise be lost).

5.6 **Compensation to Offset Residual Harm**

Where, despite all possible mitigation, there will be residual adverse effects on wildlife, they can be compensated for by measures that are designed to offset the harm. Developers should, where necessary, alter the site design to accommodate compensatory features at an early stage in the planning process.

Whilst compensation is always a last resort, the Planning Authority will seek to:

- Ensure that habitats are enhanced, restored or recreated on the site or on other areas of land (such as an offsetting scheme).
- Ensure that compensatory measures are guaranteed by conditions or planning obligations / agreements.

5.7 The ecology of existing semi-natural habitat, such as ancient woodland or heathland, has usually developed over a long period of time, increasing its biodiversity value. In contrast, newly created habitat, such as new woodland or a wildflower meadow, will usually be ecologically poorer for some time to come, with lower biodiversity value. For this reason, the restoration or enhancement of existing habitats is usually regarded as preferable to their re-creation.

5.8 **New Benefits**

In addition to proposals for mitigation or compensation for direct impacts, there may be opportunities to provide new benefits for wildlife, for example by habitat creation or enhancement. These may be secured through planning obligations / agreements. Every opportunity should be taken for a development proposal to contribute positively to enhancing one or more of the Section 42 species or habitats. This improves the quality of the development and its environment generally, and offers the advantage of improving the sustainability of the project and its compliance with planning policies.

5.9 Examples of design measures that might achieve new benefits which developers should consider include:

- Creating areas of new habitat such as woodland, rough grassland, wildflower grassland, green roofs, or ponds in landscaped areas or public open space.
- Siting open space and landscaping so that planting within such areas forms a wildlife corridor between areas of habitat adjacent to the site
- Making provision on new buildings for species such as bats, swallows, swifts or barn owls.
- Restoring landfill and mineral sites to grassland, heathland or reed bed
- Using Sustainable Drainage Schemes (SUDS) so that drainage infrastructure (such as reed bed filtration) also acts as biodiversity habitat.

5.10 **Achieving Biodiversity gains**

A gain in biodiversity means an increase in the abundance, quality or extent of species and/or habitats as a result of development. In other words, the development of a site results in an increase in the area's biodiversity assets.

5.11 This involves safeguarding and enhancing what is already present, as well as providing new areas of habitat and features for wildlife that are as multifunctional as possible. It requires that all areas of existing habitat of national, regional or local importance will be protected, and that measures will be put in place to optimise their condition (including increasing populations of characteristic species and those of conservation importance).

5.12 These areas of safeguarded habitat will be extended or added to through restoration of degraded habitat or creation of new habitat where conditions allow. This will form an extensive network of linked green infrastructure that will provide additional, complementary wildlife habitat, buffering key habitats from adverse impacts related to developed areas within sites and their associated activities.

5.13 **Adequate Information**

In dealing with a planning application, the Planning Authority needs to ensure that sufficient information is available about the site's biodiversity, the potential effects of the development on biodiversity on and off-site and the significance of these effects.

To provide adequate information planning applicants can:

- Consider whether the proposed development site is within or in close proximity to a site designated for nature conservation interest.
- Consider fully the site's biodiversity interests and the presence or absence of protected species and habitats of biodiversity importance. A detailed survey may be needed.

- Consider linkages with habitats or natural features outside the site.
- Contact the Local Record Centre (such as COFNOD) to obtain site-specific habitat and species data (if it is available) that may assist in informing the function and method of any survey.
- Consider whether the development requires an Environmental Impact Assessment (EIA).

5.14 Professional surveys and survey reports can assist the developer to:

- Assess the impact of the development on biodiversity.
- Provide sufficient environmental information to the Planning Authority about the site's interests and the likely effects of the development.
- Consider whether licences need to be applied for.
- Consider whether an Appropriate Assessment may be required under the Habitats Regulations.

5.15 Detailed design of buildings and other structures should include specific measures for biodiversity. This includes incorporating trees into street design and 'hard' open spaces. Schemes should include specific standards for the integration of biodiversity features in built structures and areas of hard landscaping. Such features include nesting or roosting sites and structures, 'living roofs and facades', and building-integrated vegetation (see the Environment Agency's 'Green Roof Toolkit', at: http://www.environment-agency.gov.uk/business/sectors/91967.aspx, and CIRIA's 'Building Greener' project, at http://www.ciria.com/buildinggreener/.

5.16 It should be noted that currently developing research aims at the creation of analogues of BAP habitats on roofs, so very significant contributions to biodiversity are possible.

5.17 It is important to note that provision for particular species should be guided by what is locally appropriate, and that advice on the amount of provision, its location within the development, siting and associated information should be sourced from an experienced ecologist. Technical guidance on how these features can be incorporated continues to be developed. Details of measures for consideration can be found from the following sources:

- Bat Conservation Trust – http://www.bats.org.uk
- RSPB (Royal Society for the Protection of Birds) – http://www.rspb.org.uk
- London's Swifts – http://www.londons-swifts.org.uk
- Barn Owl Trust – http://www.barnowltrust.org.uk
- Black Redstarts – http://www.blackredstarts.org.uk

5.18 Where an impact has been identified the applicant will be expected to mitigate the impact of development and secure a net biodiversity gain. Many developments, even if they do not contain priority habitats, are important in sustaining more widespread and common species, as well as providing

buffering for key habitats. These areas may also provide other Green Infrastructure functions.

5.19 This can be achieved by following guidance provided in this document and by using specific references listed at the back of the document. These modifications to design should be included on the drawings submitted as part of the application as well as described in the Biodiversity Statement.

5.20 **Management Agreements**

While Policy NTE/3 refers to a management agreement with the Local Authority, this may not always be necessary as some issues can be covered by condition. However, where the biodiversity interest is mainly dependent on future management of a specific site, be it on or off the application site, an agreement will need to be reached prior to the granting of planning permission.

6. Biodiversity Statement

6.1 All proposals should include a Biodiversity Statement which can be submitted as part of the 'One App' approach in the DAS or as a separate document. The level of detail will depend on the proposal and extent of impact on biodiversity. This assessment of impact should form the reasoning behind the Biodiversity Statement. This will also provide the framework for delivering net biodiversity gain by setting out what is to be achieved and the steps that are needed to achieve it. Also, most importantly, how biodiversity will be increased and enhanced in advance of and alongside development rather than at the end of the development process.

6.2 Larger proposals should include specific measurable targets for net biodiversity gain, reflecting local priorities for biodiversity (and contributing to Wales' targets as appropriate). They should also take account of the challenges posed by climate change.

6.3 Appendix 4 provides basic examples of what is expected in a Biodiversity Statement in relation to the size and scope of a development. For larger developments the Council encourages developers to engage in pre-application discussions.

6.4 The following flow chart (figure 1) provides guidance on when a survey(s) and Biodiversity Statements are required. The Planning Authority can provide further clarification if required.

Figure1. Biodiversity Survey Methodology

1. Establish the type of development - What is the proposal?

- New dwelling(s) on greenfield site
- New dwelling(s) on brownfield site
- Rural conversion
- Employment development
- Tourism or sports development
- Wind farm proposals
- Large scale retail

These, for example, are likely to have an impact on biodiversity and this may need to be assessed further through a habitat and/or protected species survey.

- Small household extension
- Change of use
- Small scale retail development
- Telecommunications

These may not require a survey. A Biodiversity Statement will need to confirm that there is unlikely to be any impact on biodiversity and what details the development includes to enhance biodiversity in general. Cross-check the development with species or habitat mentioned in Appendix 4

See Section 6 for guidance on how to complete a Biodiversity Statement and Appendix 4.

Proceed to stage 2.

Submit application

2. Establish whether any important habitats are likely to be affected.

If your development is likely to impact, or may impact on, any of the habitats or species listed in Appendix 3 proceed to Stage 3. If not, a Biodiversity Statement will need to confirm that there is unlikely to be any impact on biodiversity and what the proposal includes to enhance biodiversity in general. See section 6 for guidance on how to complete a Biodiversity Statement and appendices 1-7

Impacts expected?

No impacts expected

See Section 6 for guidance on how to complete a Biodiversity Statement and Appendix 4.

Submit application

3. Assess impact on Biodiversity

A habitat and/or protected species survey should be carried out prior to submitting an application (see appendix 5). This will be a supportive document submitted in addition to the Biodiversity Statement, or in some cases, may replace it.

See sections 5 and 6 for guidance on how to complete a Biodiversity Statement and remaining appendices

Submit application

6.5 **The principal objectives for a Biodiversity Statement are to show how the following have been achieved within the development proposal:**

- **Protecting and enhancing the best of existing biodiversity:** key habitat areas of sufficient quality and quantity to support both characteristic and uncommon species should be sustained. These areas include designated conservation sites, and habitats of national, regional and local importance, where environmental conservation is the main priority. Mechanisms and resources will be required for long-term management of these habitats to ensure no net loss as a result of development.
- **Mitigating the impact of development and securing biodiversity gains:** where nature conservation is not the primary concern, 'supplementary' or 'transitional' habitats (in addition to key habitats) will be important in sustaining more widespread and common species, as well as providing buffering for key habitats. These areas may also provide other Green Infrastructure functions.
- **Integrating biodiversity with the built environment:** large scale sites should incorporate a high degree of permeability for wildlife within the built environment, helping to increase and sustain biodiversity. Planning and designing for this is particularly important due to recent changes in building regulations leaving very few roosting or nesting opportunities for certain species in new-build.

6.6 **Key elements of a Biodiversity Statement:**

- **Siting, location and context:** Adverse impacts of development should be mitigated and compensatory measures should be taken to ensure an overall gain in biodiversity. Strategic site proposals will need to include an Environmental Impact Assessment, context studies, and careful consideration of the footprint of the development.
- **Design:** Detailed design of buildings and other structures should include specific measures for biodiversity, including trees in hard landscaping, living ('green') roofs, nesting and roosting sites.
- **Management:** Positive management can ensure long-term sustainability. If left unmanaged, neglect and the impact of development can adversely affect habitats and green spaces. Management should be planned and properly funded, and should involve local communities.
- **Funding:** Allocation of funding for long-term management should be an integral part of the green infrastructure funding arrangements, including the provision of contingency funding.

7 Licences

7.1 The Welsh Government is responsible for issuing licences for activities that would be illegal, for example the disturbance of a European protected species, but where a valid justification exists, for example for public health and safety, agricultural purposes etc.

7.2 Most licences are issued free of charge. NRW also issue licences for certain purposes such as science and education.
Visit: http://naturalresourceswales.gov.uk/apply-buy-report/apply-buy-grid/protected-species-licensing/?lang=en

8. Appendices

8.1 Appendix 1 - Policy and Legal Framework

8.1.1 Introduction

Many wild animals and habitats are legally protected by both European and national legislation, including:

- EC Directive on the Conservation of Wild Birds (The Birds Directive, 79/409/EEC)
- EC Directive on the Conservation of Natural Habitats and Wild Flora and Fauna (The Habitats Directive, 92/43/EEC)
- The Wildlife and Countryside Act 1981
- The Countryside and Rights of Way Act 2000
- The Hedgerows Regulations 1997
- The Protection of Badgers Act 1992
- The Natural Environment and Rural Communities (NERC) Act 2006
- The Environmental Damage (Prevention and Remediation) Regulations 2009.

8.1.2 European Law

The EC Directive on the Conservation of Wild Birds (The Birds Directive, 79/409/EEC) and the EC Directive on the Conservation of Natural Habitats and Wild Flora and Fauna (The Habitats Directive, 92/43/EEC) establish a legislative framework for protecting and conserving Europe's wildlife and habitats.

8.1.3 The directives implement in Community law the requirements of the Bonn Convention on the Conservation of Migratory Species and the Bern Convention on the Conservation of European Wildlife and Natural Habitats. The Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations) transposed the requirements of these Directives into national law in Great Britain. The 2010 Regulations are consolidating regulations and replace earlier versions of the Regulations.

8.1.4 At the centre of the policy is the creation of a coherent ecological network of protected areas across the EU; known as NATURA 2000; for habitats and species considered to be of outstanding international significance, and therefore importance to the maintenance of biodiversity in the European Union. Its purpose is to maintain or restore the habitats and species at a favorable conservation status in their natural range. The network comprises:

- Special Protection Areas (SPAs): To conserve the birds listed in Annex 1 of the Birds Directive as well as migratory birds
- Special Areas of Conservation (SACs): To conserve the habitat types and animal and plant species listed under the Habitats Directive

8.1.5 Member States are required to adopt qualifying sites as Special Areas of Conservation. Proposed SACs and SPAs are recommended to government by the Joint Nature Conservation Committee (JNCC) and the country nature

conservation agencies. In Wales this is Natural Resources Wales. Public consultations are held before sites are submitted to the European Commission.

8.1.6 In line with guidance in TAN5, A local *Habitats Regulations Assessment* of possible impacts from policies in the LDP on European Protected Sites has been undertaken in Background Paper 11 as part of the LDP process. This document is available on the Conwy website here: www.conwy.gov.uk/ldp

More information on SACs is available here:
http://www.jncc.gov.uk/protectedsites/sacselection/SAC_list.asp?Country=W

More information on SPAs is available here:
http://www.jncc.gov.uk/page-1403

8.1.7 **UK Law**

Sites of Special Scientific Interest (SSSIs) are notified under the wildlife and Countryside Act (as amended) to safeguard these important assets for the benefit of current and future generations. At the time of publication of the SPG there are over 1,000 SSSIs in Wales covering almost 11 per cent of the land area.

8.1.8 SSSIs are notified by NRW, which selects sites for notification on the basis of well-established scientific criteria (published by the Joint Nature Conservation Committee). Some SSSIs may additionally be protected at the European level – see 8.1.4 above

8.1.9 The Wildlife and Countryside Act 1981 was amended by the Countryside and Rights of Way Act 2000 to strengthen the protection and management of SSSIs. Key provisions include:

- A power for NRW to refuse consent for activities on SSSIs
- A power for NRW to formulate management schemes for SSSIs in consultation with land managers, and to enforce these schemes in specific circumstances
- Rights of appeal to the Assembly against certain actions by NRW in relation to SSSIs
- Duties on public bodies to further the conservation and enhancement of SSSIs, and to consult NRW before undertaking or approving operations likely to damage the features of an SSSI
- Measures to address damaging activities by third parties on SSSIs including increased penalties for offences relating to SSSIs.
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8.1.10 Regulations governing the procedures by which the Assembly handles appeals relating to SSSIs came into force on 31 July 2002.

8.1.11 Sections 9 and 13 of the Wildlife and Countryside Act 1981 (WCA) (as amended) provide legislative protection for certain wild plants and animals listed on schedules 5 and 8 of the above Act.

8.1.12 **Countryside and Rights of Way (CRoW) Act 2000**

The CRoW Act 2000A8 provides for public access on foot to certain types of land, amends the law relating to public rights of way, increases measures for the management and protection for Sites of Special Scientific Interest and strengthens wildlife enforcement legislation, and provides for better management of Areas of Outstanding Natural Beauty. It also provided for the establishment of Local Access Forums.

8.1.13 **National Guidance**

Welsh Government has recognised the important role for the planning system in conserving biodiversity in its planning policy guidance:

8.1.14 Planning Policy Wales (PPW) sets out the land use planning policies of the Welsh Government. It is supplemented by a series of Technical Advice Notes (TANs). Procedural advice is given in National Assembly for Wales / Welsh Office circulars. PPW, TANs and circulars together comprise national planning policy to which local planning authorities in Wales must have regard in the preparation of development plans. They may be material to decisions on individual planning applications and will be taken into account by the Assembly Government and Planning Inspectors in the determination of called-in planning applications and appeals.

8.1.15 Planning Policy Wales paragraph 5.2.8 states: "*The planning system has an important part to play in meeting biodiversity objectives by promoting approaches to development which create new opportunities to enhance biodiversity, prevent biodiversity losses, or compensate for losses where damage is unavoidable. Local authorities must address biodiversity issues, insofar as they relate to land use planning, in both UDPs and development control decisions*."

8.1.16 Furthermore at paragraph 5.1.4 it states: *"It is important that biodiversity and landscape considerations are taken into account at an early stage in both development plan preparation and development control".*

8.1.17 PPW is supported by a series of Technical Advice Notes. TAN 5 'Nature Conservation and Planning, 2009' gives detailed advice on the importance of the planning system in conserving biological diversity.
See: http://wales.gov.uk/topics/planning/policy/ppw2010/?lang=en

8.1.18 Section 40(1) of Natural Environment and Rural Communities Act 2006 (NERC) places a duty on every public authority, in exercising its functions, to "have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity". TAN 5 sets out the manner in which planning authorities should comply with this duty.
See: http://wales.gov.uk/topics/planning/policy/tans/tan5/?lang=en

Water Framework Directive

The EU Water Framework Directive (WFD) came into force in 2000 and was transposed into UK legislation in 2003. The overarching target of the WFD is for all inland and coastal waters to meet 'good ecological status' (or good ecological potential in the case of heavily modified water bodies) at the latest by 2027. In addition to this, no water bodies should deteriorate in status. River Basin Management Plans have been developed for all 11 River Basin Districts in England and Wales. These plans set out the status of waterbodies and the actions that are needed to meet European obligations. Planning has an important role to play in helping to meet these challenges. Advice on the WFD initially provided to local planning authorities by the NRW is still relevant and is accessible at: http://naturalresourceswales.gov.uk/our-work/policy-advice-guidance/water-policy/water-framework-directive/?lang=en

Flood and Water Management Act 2010

Schedule 3 of the Flood and Water Management Act 2010 requires all new developments of over one dwelling to incorporate SuDS into their development plans. These need to be approved by a SuDS Approving Body (SAB) (within local government jurisdiction) before construction begins.

Sewerage Undertakers, Natural Resources Wales, Internal Drainage Boards, British Waterways, and Highway Authorities are to be statutory consultees to the SAB. The Secretary of State has published National Standards for the design, construction, operation and maintenance of SuDS, and all SuDS must, at a minimum, comply with these standards. Local planning authorities can develop these standards further by taking other legislation and policy into account (for example the Natural Environment and Rural Communities Act and species of principal importance), thereby using SuDS for multi-disciplinary functions. Local developers will have to comply with the local standards produced by their local planning authority. Also see policy NTE/9.

8.1.19 ### Environmental Impact Assessment

Developers should check whether their development requires assessment under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. An EIA is mandatory for projects listed in Schedule 1 of the Regulations. Schedule 2 lists those projects (including those that would otherwise have benefited from permitted development rights) which need to be "screened" by Conwy County Borough Council to establish whether they comprise "EIA development".

8.1.20 If the proposal exceeds specified thresholds or is located in a sensitive area, Conwy County Borough Council will need to decide whether it would be likely to have significant environmental effects by virtue of factors such as its size, nature or location.

8.1.21 If in doubt about whether the development requires an EIA, applicants should initially contact Conwy County Borough Council or apply for a “screening opinion”.

8.1.22 **Appropriate Assessment**

Where a development proposal is likely to have a significant effect on a Special Area of Conservation (SAC), Special Protection Area (SPA) or RAMSAR site, Conwy County Borough Council is required to carry out an appropriate assessment under regulation 48 of the Habitats Regulations (Conservation (Natural Habitats**,** &c.) Regulations 1994**.** The applicant must provide the Planning Authority with an appraisal containing information on all the aspects of the development and its potential impacts, in order for the completion of an appropriate assessment. The appraisal should take the form of an ecological report and be submitted as part of the planning application. The applicant must provide such information as the authority may require. The applicant must pay for any surveys required and for writing the report. The Authority is required to consult NRW as part of the process.

8.1.23 Planning permission cannot be granted until the appropriate assessment has been completed and then only if the results of the assessment show that the proposal will not adversely affect the integrity of the site.

8.2 Appendix 2 – UK and Local Biodiversity Action Plan (LBAP)

8.2.1 As a response to the Biodiversity Convention the UK Government produced a report, 'Biodiversity: The UK Action Plan' (1994), its overall goal being: "To conserve and enhance biological diversity within the UK, and to contribute to the conservation of global biodiversity through all appropriate mechanisms." This incorporates an aim of no net loss of biodiversity, and some restoration of species and habitats to mitigate for past losses. The UKBAP identified a number of Priority Habitats and Species and outlined UK Habitat Action Plans (HAPs) and Species Action Plans (SAPs) to conserve them. Lead Partners were identified for each UK HAP and SAP and included governmental bodies such as NRW and the Environment Agency as well as non-governmental organisations such as the Wildlife Trusts. As a result of the UK Action Plan, the UK Biodiversity Steering Group was set up and produced 'Biodiversity: The UK Steering Group Report' (1995), a detailed programme of action to achieve the objectives of the UK Action Plan. It advocated a number of actions including production of Local Biodiversity Action Plans (LBAPs) as a means of implementing the UK Action Plan.

8.2.2 In Wales, the Wales Biodiversity Partnership (WBP) provides a leadership role and an expert steer on priorities for action on biodiversity, and brings together key players from the public, private and voluntary sectors to promote and monitor biodiversity action in Wales.

8.2.3 WBP is responsible for the Section 42 list which identifies those species and habitats which are most in need of action in Wales, if the UK's commitment under the Convention to halt biodiversity loss is to be met

8.2.4 The Conwy Local BAP includes all the Section 42 species and habitats occurring within the Conwy Planning Authority area plus any others of local significance. Actions are identified in which Conwy CBC is a major partner. Such actions may focus on species such as water vole, habitats such as calcareous grassland, or more general topics such as Conwy's urban green spaces (Biodiversity Areas). For further information on the Conwy LBAP, see:
http://www.conwy.gov.uk/biodiversity

8.2.5 All the species and habitats in the Conwy LBAP, whether or not they have associated actions or action plans, should be regarded as *priority species or habitats* in terms of the guidance in this SPG (see section 5.2).

8.2.6 It should be noted that nothing in the LBAP introduces additional obligations on any partner organisation or landowner, and compliance with this document is wholly voluntary (although certain partner organisations may be instructed via other documents to comply with this LBAP).

8.2.7 Biodiversity Action has been defined into 6 different types. The UKBAP has set targets for each habitat and species in terms of type. The mitigation, enhancement and improvements delivered through developments can now be linked to targets by using these same types. Their definition is outlined below;

8.2.8 **Habitat & Species Action types**

Maintain Extent: This target defines how we will measure the physical extent of habitat. Given that vast areas of natural and semi-natural habitat have been lost in the past it is a key aim to ensure that there is no more loss of priority habitat, i.e. the LBAP aims to maintain the extent of the existing resource. Any development that leads to a loss of priority habitat would be to contrary to the aims of the UKBAP and the Conwy LBAP. However, in some cases this target type can be regarded as no net loss of habitat. This is only true where it is possible to easily re-create habitat, e.g. a development that requires the loss of secondary (non-ancient) woodland could include plans to replant a similar area of woodland.

8.2.9 **Achieve Condition:** This target defines the quality of a habitat. When the habitat is surveyed against a set of measurable attributes, it can be determined whether that habitat is in Favourable or Unfavourable condition. If a condition assessment has been carried out in the past it is possible to add to this condition statement as a trend. A positive trend is termed “Recovering”, a negative trend “Declining”, and no discernable trend termed “No Change”. The UKBAP states that proportions of the extent of priority habitats should be either Favourable or Unfavourable – Recovering by 2015. Any development that leads to a loss of existing quality or will prevent the potential improvement to a habitat is contrary to the aims of the UKBAP. Many of the enhancements listed in Section 3b of this document refer to the Achieve Condition target.

8.2.10 **Restoration:** This target defines the major improvements to relic, highly degraded or recently destroyed habitat. What constitutes Restoration as opposed to either Achieve Condition or Expansion is defined under each UKBAP priority habitat. In most cases development will not directly affect this target type as it essentially refers to reversing declines that have already occurred. However, it is likely that compensation or mitigation for the loss of extent or quality of habitat will require the restoration of similar or adjacent habitat.

8.2.11 **Expansion:** This target defines the creation of new areas of habitat, such as digging a new pond or planting new woodlands and hedgerows. As with Restoration it is likely that compensation or mitigation for losses will require a development to create new habitat where it is appropriate to do so.

8.2.12 **Range:** This target defines the physical area that the species is present within. As a baseline the UKBAP seeks to ensure that each species maintains its current range. To reverse past losses, each species has a target to increase its Range by moving to new sites or returning to sites it previously inhabited. Any development

that causes a reduction in the range of a species is contrary to the UKBAP. Many developments will be affected by the need to maintain the range of a species, particularly for species such as bats. It will often be a requirement of planning consent that the development includes the means for a species to maintain its presence at that site, such as including provision for bats to continue to use a building. Achieving Condition, Restoration and Expansion of habitats can also increase the range of certain species and so provision for species may be included in habitat management actions.

8.2.13 **Population:** This target defines the actual quantity of a species either in absolute values (e.g. number of individuals) or by using a suitable surrogate (e.g. the number of breeding pairs). Any development that leads to a loss of population would be contrary to the UKBAP. This loss can occur in a number of ways; loss of habitat area or quality; loss of specific features such as veteran trees; disturbance or exclusion that denies an individual access to refuge, cover or food; physical injury or death of an individual during construction either directly or indirectly. In many cases the manner and timing of a development can ensure that individuals are not harmed, but loss of habitat quality and extent are more long term effects that will require mitigation or compensation.

8.3 Appendix 3 - Development Checklist

Checklist of when biodiversity surveys are required
See also Appendix 4 Biodiversity Surveys

Where development is proposed which is likely to have an impact on protected or priority species or habitats, further information must be provided by the applicant in the form of a biodiversity survey and evaluation of impacts. The following table provides guidance on when such surveys are required, and you should ensure that all habitats present on the development site are covered.
Detailed survey information need not be provided where it is decisively shown that the habitat/species will not be affected, either because it is definitely not present or because the design of the development has avoided all possible impacts.
The guidance below is necessarily general, and you are welcome to contact the planning department to confirm site specific requirements.

Habitat	**Survey requirements ***
Ponds, other standing water, ditches Rivers and streams Fens, marshes and swamps	Habitat Survey to minimum of enhanced Phase 1 standard Great crested newt Otter Water vole Kingfisher Nesting bird
Brownfield sites Grassland (calcareous, semi-natural neutral, marsh and acid grassland)	Habitat Survey to minimum of enhanced Phase 1 standard Badger Reptile Nesting bird (Great crested newt if Cofnod has records within 500m)
Sand dune Coastal grassland Coastal shingle	Habitat Survey to minimum of enhanced Phase 1 standard Reptile Nesting bird Feeding &wintering bird
Foreshore	Feeding &wintering bird
Agriculturally improved grassland	Badger
Heath and heather moorland	Habitat Survey to minimum of enhanced Phase 1 standard Reptile Nesting bird (Great crested newt if Cofnod has records within 500m)
Hedgerows, scrub, woodland	Habitat Survey to minimum of enhanced Phase 1 standard Nesting bird Dormouse

	Bat
Quarries, cliff faces	Habitat Survey to minimum of enhanced Phase 1 standard Bat Nesting bird Reptile
Disused buildings, bridges	Bat Barn owl Nesting bird

* Please note that *all* biodiversity interest of a site should be recorded by the surveyor, even if it does not appear in the right hand column.

Specific development types

Additionally, the following two development types have specific survey requirements, but you may wish to seek further guidance:

Development type	**Survey requirements**
Development in rural areas which includes any roof alteration	Bat
Small scale wind turbine development	Habitat Survey to minimum of enhanced Phase 1 standard Bat

8.4 Appendix 4 – Biodiversity Statements

The following three examples layout the type of content expected for various developments. This is not an exhaustive list and some developments may require further work and consultation.

Example 1 of a biodiversity statement to accompany an application

Application reference no.
0/44444

Proposal
Extension to dwelling to provide additional bedroom and bathroom

Location in relation to habitats of biodiversity value
Edge of village, with trees, hedges, pasture land and a stream all within 100m

Biodiversity impacts
The extension has a footprint of 4m x 5m and will be built on land which is currently partially a lawn, and partially a patio. Additionally, one young hawthorn tree will need to be removed. This tree has no cavities which could be occupied by nesting birds or bats. The roof of the extension will be tied in to the gable end wall and the existing roof will not be disturbed

Evaluation of biodiversity impacts
Neither the lawn nor the patio have any biodiversity significance. The removal of the tree will be insignificant in the context of surrounding trees and hedgerows. The existing roof is not being touched, and therefore there is no possibility of impacts upon bats.

Enhancement measures incorporated into the development
A replacement hawthorn tree will be planted after completion of the extension.
A bird nesting box suitable for blue tits will be hung on the wall of the completed extension.

Example 2 of a biodiversity statement to accompany an application

Application reference no.
0/55555

Proposal
Renovation and conversion of redundant outbuilding to form new dwelling

Location in relation to habitats of biodiversity value
Edge of village, with trees, hedges, pasture land and a stream all within 100m

Biodiversity information
SPG LDP5 Biodiversity advised that a protected species survey was required to accompany this application. This has been carried out by Ecological Consultants Ltd. and is attached to this statement. The survey report stated that a small roost of pipistrelle bats was present under the eaves at the western end of the outbuilding and several recently used swallows' nests were also recorded.

Evaluation of biodiversity impacts
Because the renovation of the building includes re-roofing and alteration to the loft space, the existing bat roost will be destroyed. Similarly, it is not possible to retain the swallows nest sites in their current location, because they are nesting in what is to be the main living area of the new dwelling.

Proposals for mitigating the biodiversity impacts
In keeping with the consultants' report, the original designs have been modified to ensure that bats will be able to continue to roost within the new dwelling, and these modifications are shown on the plans submitted with the application A detailed scheme to show how other recommendations from the report will be implemented will be submitted to the Planning Authority for approval before commencement of development. This will deal with matters such as timing of works, external lighting, and access to the replacement roost etc. Similarly, details of a scheme for the retention and/or creation of suitable nesting sites for swallows including details of the proposed timing of works will be submitted to the Planning Authority for approval before development commences.

Enhancement measures incorporated into the development
In addition to the direct mitigation measures outlined above, the following enhancement measures have been incorporated into the development:

- Two Schwegler type bat boxes will be positioned on two different elevations of outbuildings to be retained, to provide additional opportunities for bats to roost.
- Several artificial house martins' nests will be positioned under the eaves of the new dwelling, in the hope of encouraging this species to nest.

Example 3 of a biodiversity statement to accompany an application

Application reference no.
0/66666

Proposal
Erection of 20 new dwellings on a site allocated within the LDP.

Location in relation to habitats of biodiversity value

Edge of village, with trees, hedges and pasture land on the application site. A stream forms the boundary of the site, with a narrow strip of woodland - about 15m – between the stream and the field, most of which is on a steep bank.

Biodiversity information

SPG LDP5 Biodiversity advised that an ecological survey was required to accompany this application. This has been carried out by Ecological Consultants Ltd. and is attached to this statement. The survey report stated that:

i There are no conservation designations on the site

ii The streamside woodland retains the characteristics of ancient woodland, but has suffered from the dumping of rubbish and from invasive species.

iii Otters regularly travel along the stream, but there are no signs of a holt on or near the application site.

iv Some of the trees on the site have features which could be used by bats, i.e. holes or crevices, however bat activity surveys did not identify any roosts. A number of bats were recorded foraging over the site

v No other priority species were recorded which will be impacted on by the development

vi A hedge crossing the site is species rich and probably ancient. However this hedge is not linked to other hedge as it ends at a road, so it is not of high value as a wildlife corridor.

vii The grassland is agriculturally improved and not of biodiversity significance

Description of biodiversity impacts and avoidance

The development has been designed to retain the streamside woodland and as much of the biodiversity interest as possible. The hedge cannot be retained in situ, but will be transplanted to form a new boundary between the woodland and the development, while two mature oak trees will be retained in situ. A third mature oak cannot be retained and will have to be felled.

Evaluation and mitigation of biodiversity impacts

i Woodland

The woodland is well linked to woodland at either end, so it is of high value as a wildlife corridor. Because it will be retained, impacts upon otters are not anticipated. The woodland will be managed by a local conservation group for a commuted sum, for the benefit of the community. (Increased public access will result in increased disturbance to part of the wood during the day, but since otters travel at night, impacts will be avoided). The management plan for the woodland will be submitted to the Planning Authority for approval before any of the dwellings are occupied.

ii Hedgerow

The hedge will be transplanted when it is dormant, in accordance with best practice. Bat activity surveys did not record large numbers of bats using the

hedge as a commuting corridor, so the relocation of the hedge should ensure that its existing biodiversity value will be retained.

iii Trees

The retention of two mature trees within the development avoids impacts which would have resulted from their removal. The mature oak tree to be felled will be re-examined for the possibility of a bat roost before felling, and felling will take place outside the nesting season. To compensate for the loss of roosting/nesting opportunities, two Schwegler type bat boxes and five nest boxes will be erected within the woodland.

Enhancement measures incorporated into the development

The streamside woodland will be managed to maximise its biodiversity value. A management plan will be drawn up (and submitted for approval) to ensure the level of management required to achieve this. Examples of work to be carried out include the removal of alien species (Himalayan balsam) and the removal of a considerable mound of dumped rubbish.

Each house will have a nest box positioned on the gable end.

Within the landscaping scheme, to be submitted for approval, additional tree planting will take place using species which are attractive to wildlife.

8.5 Appendix 5 - Recommended Survey Times

8.5.1 Where a survey is required, the following notes provide further guidance.

It is important to remember that as well as the survey itself, the Planning Authority requires an evaluation of impacts, and recommendations for how impacts will be avoided or, if they cannot be avoided, what mitigation is proposed. These will normally be included in the survey report after discussion between the surveyor and the applicant. It may also be useful to involve the LPA in discussions regarding proposed mitigation, to ensure that it is considered appropriate and adequate. This part of the report can replace the *Biodiversity Statement* if it contains all the information required.

8.5.2 At the time of publication of this SPG, a common template for presentation of survey results is in preparation for North Wales, and when this is agreed, it will be expected that survey reports will be presented in this format (see www.conwy.gov.uk/biodiversitysurveys)

8.5.3 By submitting survey results to accompany planning applications, the applicant is giving his/ her consent, and that of the surveyor, to these being passed to Cofnod, the North Wales Environmental Information Service and used to further the knowledge of biodiversity in North Wales, unless the Council is notified in writing that such consent is being withheld.

8.5.4 **Surveys**

- must be carried out by suitably qualified and experienced persons; if the surveyor is not a IEEM member, or if the surveyor is not previously known to the LPA, then a CV and reference will be required.
- must be carried out at an appropriate time and month of the year, in suitable weather conditions and use recognised surveying techniques;
- must be to an appropriate and recognised level of scope and detail and must record and map the range of habitats and species of flora and fauna found on site;
- must include the results of a search of ecological data from Cofnod, the North Wales Environmental Information Service (searches of the NBN gateway are **not** normally sufficient)

8.5.5 **Evaluation**

- must include an assessment of the likely effects of development on the nationally and locally important species and habitats recorded on site or in the locality;

8.5.6 **Mitigation**

- must identify measures to be taken to avoid impacting on the biodiversity of the site and in the locality, either directly or indirectly, both during construction and afterwards;

8.5.7 The Council will require additional surveys if the detail provided is deemed inadequate. Mitigation proposals may be imposed by the Council through planning conditions, either to ensure that those proposed by the applicant are implemented, or to ensure that mitigation proposals deemed appropriate by the Council are implemented as part of the development.

Survey for:	Type	J	F	M	A	M	J	J	A	S	O	N	D
Birds	Breeding			✓	✓	✓	✓	✓					
	Wintering	✓	✓								✓	✓	✓
Reptiles	Presence				✓	✓	✓	✓	✓	✓			
Great crested Newts	Presence			✓	✓	✓	✓	✓	✓				
Water Vole	Presence			✓	✓	✓	✓	✓	✓	✓	✓		
Otter	Search for signs at any time but note flooding along watercourses may remove spraints.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Badger	Sett surveys	✓	✓	✓	✓						✓	✓	✓
	Bait marking		✓	✓	✓					✓	✓		
Dormice	Hazel nut searches									✓	✓	✓	
	Nest searches					✓	✓	✓	✓	✓			
Bats	Roosts					✓	✓	✓	✓	✓			
	Hibernating	✓	✓	✓								✓	✓
Marsh fritillary Butterfly	Presence						✓			✓	✓		
High brown fritillary butterfly								✓					
Habitats:	Grassland					✓	✓	✓	✓				
	Woodland/hedgerow				✓	✓	✓						
	Ponds/watercourses					✓	✓						
Fungi								✓	✓	✓	✓	✓	✓

8.6 Appendix 6 - Species and Habitat guidance and further information

8.6.1 This section seeks to provide guidance for those species most likely to be affected, as listed in Appendix 3.

8.6.2 Some species are more affected by development pressures than others and, therefore, the planning system can have a greater influence on their conservation. Other species may be more affected by influences outside planning control, such as agricultural intensification. Species that planning and development in Conwy can have a particular influence on include bats, barn owls, breeding birds, badgers, and riparian and aquatic species, especially otters, water voles and fish species. All 17 UK species of bats have been recorded in buildings, and the built environment provides essential places for several species to roost, including Serotine, Greater and Lesser Horseshoes, Natterer's, Pipistrelle and Long-eared Bats.

8.6.3 Unprecedented change in the building industry, with new building regulations, techniques, materials and building styles, will help to reduce the carbon footprint of the future housing stock. However, the application of new standards will mean that, for the first time, there could be very few new roosting and nesting opportunities for some building-reliant species. However, small design changes can make new buildings suitable for bats and birds while still benefiting from the new improved standards.

8.6.4 The recent UK Green Building Council (GBC) Biodiversity Task Group report, *Biodiversity and the Built Environment 5* identifies how the detailed design of buildings and structures can maximise the ecological value of a site.

8.6.5 The UK GBC's online portal at http://www.ukgbc.org/ provides detailed guidance on how to enhance biodiversity in the built environment.

8.6.6 Wherever bespoke roosting or nesting opportunities have been incorporated into dwellings, information about them should be given to the occupiers by the developer. This helps to raise awareness and allay any fears, as well as promoting an interest in wildlife within larger site development and why it is important. For those who want to help record the wildlife they share their homes and gardens with, there are recording schemes for all levels of skill. These include the British Trust for Ornithology's Garden BirdWatch survey, see http://www.bto.org/gbw/ and the Bat Conservation Trust's National Bat Monitoring Programme, see: http://www.bats.org.uk/pages/nbmp.html).

8.6.7 **Bats**

All bats are protected by UK and European Legislation, and their use and preference for man made structures makes them the most frequently encountered incidence of protected species issues that developers come across in Conwy. It is

illegal to intentionally kill, injure or take bats or intentionally or recklessly damage or destroy their roosts or disturb bats. Because bats tend to return to the same roosts each year, these sites are protected whether the bats are present or not. When assessing development proposals, consideration should be given to external lighting/internal light spillage which can affect bats. In addition, where EPS are present there must be a presumption/requirement for the use of 'traditional' felt roofing as opposed to the use of 'modern' membranes to facilitate the prevention of "incidental capture/killing" of bats and thereby ensure compliance with Article 15 of the Habitats Directive.

8.6.8 Conwy is a stronghold for lesser horseshoe bats and there are numerous lesser horseshoe bat roosts throughout the county. A SAC and several SSSI's have been designated in Conwy and Snowdonia National Park due to the presence of lesser horseshoe bat roosts.

8.6.9 Factors affecting lesser horseshoe bats in Conwy include:

- Destruction, deterioration or renovation of old buildings and barns and outbuildings leading to the loss of roosting and hibernation sites.
- Loss of hibernation roosts underground as sites are blocked for safety reasons.
- Loss of insect-rich feeding habitats especially linear features including hedgerows, tree-lines and wooded riverside vegetation, as well as woodlands, wetlands and old pastures.
- Habitat fragmentation and lack of flight paths between fragments, especially hedgerows
- Use of toxic wood preservatives and other chemicals in loft spaces and old buildings is believed to have a negative impact on bat populations – both by direct poisoning of bats and through reducing availability of prey species.
- The species is thought to be very vulnerable to severe winters.

8.6.10 **Barn Owls**

Barn owls may leave white streaks of droppings (white wash) down roof timbers and walls and often leave feathers and pellets (grey regurgitated remains of prey) about 5cm long. Their nests consist of a layer of pellets on a flat enclosed area such as between bales, on a dry water tank, on a loft or attic floor or inside a chimney. Nest boxes can be installed to encourage a pair to establish a territory and breed. Development resulting in an unavoidable loss of a nest site would be expected to provide a suitable alternative and detailed within the proposal. Any additional agricultural buildings ought to provide new nest opportunities to increase the biodiversity gain of the development. Detail for nest boxes can be provided by the planning authority or from the Barn Owl Trust website at: http://www.barnowltrust.org.uk/infopage.html?Id=42 and from the BTO website at http://www.bto.org/notices/nestbox.pdf.

8.6.11 **Swifts, Swallows & House Martins**

Under Section 1 of the Wildlife and Countryside Act 1981 it is an offence to intentionally kill, injure or take (handle or remove) any wild bird (with the exception of a few pest species which may be controlled under licence), take or damage a nest whilst in use or being built, or take or destroy eggs.

8.6.12 In addition to the above, a number of bird species listed in Schedule 1 of the Act are given greater protection, it being an additional offence to intentionally disturb these birds while nesting or rearing young, or to disturb the dependent young. Developments will need to avoid disturbance to nesting birds during the breeding season and planning permission will reflect this, as well as conditioning nesting provision where nest sites are destroyed as part of a development.

8.6.13 Swifts, swallows & house martins often use buildings for nesting. Swallows build their nests within open covered spaces, such as on or under beams and ledges, enter the building through a hole under the eaves, under the soffit board, through broken slates or through open doors or windows. House martins on the other hand tend to nest outside under the eave, while swifts might use either area. Even if the nests are inaccessible, the birds are easily seen when they are flying to and from the nest sites.

8.6.14 Nest places for swifts can be created easily and cheaply in both existing and new buildings. The swifts should find the places sooner or later but chances of success are greatly enhanced if there are low-flying screaming swifts already in the vicinity. Swifts can usually be accommodated without difficulty. The LPA will expect that the following guidance is considered:

- No works are to be undertaken on the roof while swifts are nesting (May to August)
- That existing swift nesting places are left undisturbed by any works
- That the swifts' access holes are preserved or new ones are made to match the old ones exactly

8.6.15 Where the swifts may be nesting:

- Eaves - in "open" eaves, under the bottom row of tiles, above the gutter, just inside the roof-space
- Holes - in holes in walls where pipes have been removed
- Flashings - on brick ends or in holes under loose flashings on chimneys and skylights
- Gables - behind barge boards and gables, on the brick ends
- Tiles - under loose or displaced tiles, on the roof timbers or felt
- Pointing - in voids behind gaps between stones or bricks where the pointing has washed out.

8.6.16 How to save nests and let swifts breed safely:

- Never re-roof where and when there are swifts nesting (usually end of April to beginning of August)
- Eaves nests- leaving the eaves open is the simplest and best solution. Alternatively, cut slots in the soffit or facing boards to match the old entrances
- If necessary, install a ventilated plywood partition at least 30cm inside the loft to enclose the Swift nest areas and make the loft area usable.
- Hole nests - where they are not going to be a problem, leave old holes as they are. You can fit a tile into the pointing above to form a ledge to keep the rain out, or else fit a Swift Brick to provide an alternative nest place
- Behind flashings - offset or lengthen flashings and ridge / end tiles to let swifts back in without affecting weatherproofing
- Inside gables - either leave well alone or else fit simple wooden nest places behind the barge boards
- Under tiles - reinstate the tiles keeping the old gaps where the swifts gained entry exactly where they were
- Inside voids behind defective pointing - just leave un-pointed the access to where the swifts are nesting
- Don't treat areas used by swifts with insecticides or biocides

If none of the above are possible – consider nest boxes instead. Further information is available at: http://www.swift-conservation.org/

8.6.17 **Water Voles**

As of the 12th August 2008 Water Voles in Wales have been given full protection under Section 9 of the Wildlife and Countryside Act 1981.

8.6.18 It is an offence to:

- Intentionally kill, injure or take (capture) a water vole;
- Possess or control a live or dead water vole, or any part of a water vole or anything derived from a water vole;
- Intentionally or recklessly damage, destroy or obstruct access to any structure or place which a water vole uses for shelter or protection
- Intentionally or recklessly disturb a water vole while it is occupying a structure or place which it uses for shelter or protection;
- Sell, offer or expose for sale, or have in one's possession or transport for the purpose of sale, any live or dead water voles, or any part of a water vole or anything derived from a water vole;
- Publish any advertisement, or cause any advertisement to be published, which is likely to be understood as conveying that a person buys or sells, or intends to buy or sell, any of the above things.

8.6.19 Offences under Section 9 carry a maximum penalty of a fine up to £5000, imprisonment for up to six months, or both, for each animal in respect of which an offence is committed. No offence will be committed if the activity which would otherwise result in the commission of an offence is carried out under (and in accordance with) a licence granted by NRW or the Welsh Government under section 16 (3) of the Wildlife and Countryside Act 1981.

8.6.20 Licences are available from NRW under section 16(3) for the following purposes:

- Scientific or educational purposes;
- The ringing or marking of, or the examination of any ring or mark on, wild animals;
- The conservation of wild animals or wild plants or introducing them to particular areas;
- Protection of any zoological or botanical collection;
- Photography.

8.6.21 Licences are available from Welsh Government under section 16(3) for the following purposes:

- Preserving public health or public safety;
- Preventing the spread of disease;
- Preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property or to fisheries.

8.6.22 There is no provision under the Wildlife and Countryside Act 1981 for licences to be issued for the purpose of development, maintenance or land management, unless such activities are to be carried out for one of the purposes in section 16(3) of the Wildlife and Countryside Act 1981. Development should therefore only be carried out after agreeing Reasonable Avoidance Measures (RAMs) with NRW and with the Planning Authority.

8.6.23 **Development Works affecting Water Voles**

When development or maintenance work is proposed in or near an area which is either known to contain water voles or is likely to do so, the following course of action is recommended:

- Establish whether water voles are present in or adjacent to the area by a combination of field surveys and consultation with Cofnod. Further guidance on undertaking a water vole survey is given in the Water Vole Conservation Handbook (2nd edition).
- If water voles are present in the area then consider whether proposals can be amended to ensure that the work does not result in the commission of an offence, e.g. does not result in disturbance to water voles or result in

loss of water vole burrows etc. If this is not possible then consideration is needed as to how the impacts on water voles can be minimised and whether action could be taken to remedy any adverse effects. If possible actions are identified, then those actions should be taken.

8.6.24 If a decision is taken to proceed with development or maintenance work in these circumstances, the fact that a person has taken the above steps may help him to establish, in the event of a prosecution, that any act of his which is made unlawful by section 9 of the Wildlife and Countryside Act 1981 was the incidental result of a lawful operation which could not reasonably have been avoided. If he is able to establish this to a court's satisfaction, he will not be guilty of any offence under that section.

8.6.25 Any person intending to carry out development or maintenance work in these circumstances will need to make their own judgement as to whether the steps they have taken are likely to be sufficient to enable them to establish - in the event of a prosecution - that their acts were the incidental result of a lawful operation and could not reasonably have been avoided. Ultimately, however, this will be a matter for a court to determine on the basis of the particular facts and for that reason neither the Welsh Government or NRW can provide legal advice on this issue.

8.6.26 **Badgers**

Badgers are protected under the Protection of Badger Act 1992. They are not an endangered species but have suffered from a long history of persecution. This is only a guide to the main provisions of the law. The LPAs do not provide legal advice to developers and the text of the Act should be consulted and professional legal advice sought for exact interpretations of offences and defences. The Act is based primarily on the need to protect badgers from baiting and deliberate harm or injury. It also contains restrictions that apply more widely and it is important for developers to know how this may affect their work. All the following are criminal offences:

- to wilfully kill, injure, take, possess or cruelly ill-treat a badger;
- to attempt to do so; or to intentionally or recklessly interfere with a sett.

8.6.27 Sett interference includes damaging or destroying a sett, obstructing access to a sett and disturbing a badger whilst it is occupying a sett. It is not illegal, and therefore a licence is not required, to carry out disturbing activities in the vicinity of a sett if no badger is disturbed and the sett is not damaged or obstructed. Where interference with a sett showing signs of use cannot be avoided during the development, a licence should be sought from NRW or the National Assembly for Wales authorising actions that would otherwise amount to an offence.

8.6.28 More guidance is available in the NRW publication "Badgers: a guide for developers", available at: www.naturalresourceswales.gov.uk

8.6.29 **Wetlands and watercourses**

Ponds, lakes, rivers and streams, and wetlands are all important for biodiversity and species movement. Development should result in an increase in the area of open water or of marshy areas around water bodies and water courses, or of reedbeds or the creation of temporary and seasonally wet areas. A long history of agricultural and urban drainage has resulted in the loss of many ponds, the drainage of land and the straightening or culverting of watercourses. New development should contribute to restoring past losses, re-instating river meanders and removing culverts, for example, and should protect the integrity of river and stream corridors.

8.6.30 Sustainable drainage features can provide vital services such as flood risk management / attenuation, diffuse pollution remediation, carbon sequestration, recreation and wildlife benefits, improved quality of life, and enhanced property values. Flood plains also provide unique opportunities in the landscape for the creation of wet woodland and grazing marsh, both of which are priority habitats.

8.6.31 Managed buffer zones or managed feature expansion may be needed for managed buffer zones between development and such features. They are important features for priority species such as bats, otters and water vole.

8.7 Appendix 7- Monitoring and Management

8.7.1 Planning Mechanisms to Help Biodiversity – Conditions and Planning Obligations

Planning conditions and section 106 planning obligations are the main mechanisms used in development control for conserving and enhancing biodiversity. Developers can be required to undertake or contribute to works necessary to protect or enhance the nature conservation value of the environment related to the development. This might include surveys, impact assessment, mitigation, compensation or management plans (with associated method statements) and monitoring. It is possible that, where appropriate, improved access to wildlife-rich areas may be required as part of a range of measures, which can improve the quality of life for local communities.

8.7.2 Conditions

Measures included in planning conditions can contribute significantly to biodiversity conservation, for example they can help avoid adverse impacts or to remove the likelihood of adverse impacts occurring and mitigate or reduce adverse impacts where they are unavoidable. These measures can also compensate for losses or impacts that could not be avoided or mitigated, and they can be used to enhance aspects of the natural environment and its enjoyment.

8.7.3 Planning Obligations

Planning obligations are agreements between the planning authority and the developer. They may also be made unilaterally by the developer, where the obligation becomes enforceable by the planning authority under a Section 106 agreement. Examples of planning obligations include:

- provision of access and interpretation facilities for a habitat
- provision of new habitats
- off-site monitoring of any hydrological effects of development
- management of a particular feature (for example on-site or off-site habitat) for a specified period
- financial provisions for establishment or management.

8.7.4 Control of Permitted Development

TAN5 draws attention to the potential effects of permitted development on sites of nature conservation value. Many forms of permitted development, particularly those relating to recreation, temporary uses of land and some of the activities of statutory undertakers can have a significant effect on biodiversity and could affect some geological or geomorphological features or natural processes. In many cases harm could be avoided by controlling the development, for example by seasonal restrictions, exclusion of sensitive areas or limiting the scale or intensity of development. Article 4 of the ***Town and Country Planning (General Permitted Development) Order*** 1995 provides an important mechanism for controlling permitted development where necessary. Article 1 (5) of this order lists

AONBs as one of a number of designations where permitted development is more restricted.

8.7.5 Development that requires environmental assessment under the ***Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations1999***, which would normally be permitted by the Development Order, cannot proceed without a full planning application being made. ***The Habitats Regulations*** 1994 also impose restrictions on permitted development likely to have a significant effect on a European Site, which may be a Special Protection Area for wild birds or a Special Area of Conservation for animals, plants or natural habitats.

8.7.6 Permitted development rights for the temporary use of land for war games, motor sports and clay pigeon shooting do not apply in a Site of Special Scientific Interest (SSSI), so planning permission is required for all such uses of land within an SSSI.

8.7.7 Where biodiversity management has been incorporated into planning permission a developer should monitor the success of any such works.

8.7.8 **The monitoring might include:**

- the establishment of new or enhanced habitat – success criteria can be set
- the effectiveness of relevant mitigation and compensation measures – success criteria can be set complying with wildlife law after planning permission has been granted; this responsibility is shared between the developer (who ensures that the work carried out is according to the planning permission and expert advice), the local planning authority (who ensures that the conditions/obligations are complied with), Welsh Government (who ensures that the conditions of any licence are complied with) and NRW (who advises on protected species).

8.7.9 Where site management is required (for example of habitats), this will need to be for a suitable period of time to ensure that planning conditions/obligations are discharged effectively. To achieve this, developers might need to submit a management plan or method statement with the planning application or as a condition of planning permission. Ideally a management plan should contain:

- a description of features to be managed
- the aims and objectives of management
- a [five] year detailed work plan and a longer term plan if appropriate
- the organisation and personnel responsible for implementing the plan
- success criteria and monitoring measures.

8.7.10 As an integral part of a successful development biodiversity must feature as a key theme within a design or masterplan, particularly in terms of the conservation of

existing habitats, the creation of new habitats, and how these will be designed and programmed in alongside development. Guidance should be provided by the developer for new development owners on the management of their site (and other outside space, such as balconies, green roofs, etc.) to encourage biodiversity. Where a management plan is needed, or new habitats created, developers should provide information and guidance to encourage engagement in protecting the biodiversity assets of the site.

9 References

9.1 CLG (2009) *Planning Policy Statement: Eco-towns – A Supplement to Planning Policy Statement 1*. Department for Communities and Local Government: London. http://www.communities.gov.uk/documents/planningandbuilding/pdf/ppsecotowns.pdf

9.2 ODPM (2005) *Planning Policy Statement 9: Biodiversity and Geological Conservation*. Office of the Deputy Prime Minister: London. http://www.communities.gov.uk/documents/planningandbuilding/pdf/147408.pdf

9.3 CLG (2007) *Planning Policy Statement: Planning and Climate Change – Supplement to Planning Policy Statement 1*. Department for Communities and Local Government: London.

9.4 CIWEM (2004) *Habitats Guide*. Chartered Institution of Water and Environmental Management: London. http://www.ciwem.org/

9.5 UK GBC Biodiversity Task Group (2009) *Biodiversity and the Built Environment*. UK Green Building Council: London. http://www.ukgbc.org/resources/publication/uk-gbc-task-group-report-biodiversity-and-built-environment

9.6 Defra on behalf of the UK Biodiversity Partnership (2007) *Conserving Biodiversity in a Changing Climate: Guidance on Building Capacity to Adapt*. Department for Environment, Food and Rural Affairs: London. http://www.ukbap.org.uk/Library/BRIG/CBCCGuidance.pdf

9.7 TCPA (2004) *Biodiversity by Design*: *A Guide for Sustainable Communities*. Town and Country Planning Association: London. http://www.tcpa.org.uk/pages/biodiversity-by-design.html

9.8 Best Practice in Biodiversity and Geological Conservation in Planning and Development. Brecon Beacons National Park, 2008. D. Tyldesley and Associates

9.9 Best Practice in Biodiversity Conservation in Planning and Development, D. Tyldesley and Associates, May 2010, Gwyndedd Council.

10 Useful Links

- Action for swifts www.actionforswifts.blogspot.com/
- Bat Conservation Trust www.bats.org.uk
- Barn Owl Trust www.barnowltrust.org.uk
- Black Redstarts - http://www.blackredstarts.org.uk
- British Standard Institute - http://www.bsigroup.co.uk
- British Trust of Ornithology http://www.bto.org
- Buglife http://www.buglife.org.uk
- Building Research Establishment (BRE) www.bre.co.uk/sustainable
- The Butterfly Conservation www.butterfly-conservation.org
- Centre for Alternative Technology www.cat.org.uk
- CIRIA http://www.ciria.org
- COFNOD www.cofnod.org.uk
- Conwy County Borough Council www.conwy.gov.uk
- Conwy BAP http://www.conwy.gov.uk/sectionextra.asp?cat=1361&Language=1an
- Denbighshire County Borough Council www.denbighshire.gov.uk
- Denbighshire County Borough Council Biodiversity http://www.biodiversityindenbighshire.co.uk
- Energy Efficiency Best Practice Programme http://www.direct.gov.uk/en/environmentandgreenerliving/energyandwatersaving/index.htm
- Joint Nature Conservation Committee www.jncc.gov.uk
- Living Roofs www.livingroofs.org
- London's Swifts http://www.londons-swifts.org.uk
- National Trust www.nationaltrust.org.uk
- Natural Resources Wales http://naturalresourceswales.gov.uk
- North Wales Wildlife Trust www.northwaleswildlifetrust.org.uk
  376 High St, Bangor, Gwynedd LL571YE. Tel 01248 351541
- Planning Policy Wales http://wales.gov.uk/docs/desh/publications/110228ppwedition4en.pdf
- Renewable Energy SPG, Energy Savings Trust www.est.org.uk
- Renewable Energy http://www.decc.gov.uk/
- RSPB www.rspb.org.uk
- Sustain http://www.sustainweb.org
- Sustainable Homes www.sustainablehomes.co.uk
- Town and Country Planning Association (TCPA) http://www.tcpa.org.uk
- Trees and Design Action Group http://www.forestry.gov.uk/tdag
- UK BAP www.ukbap.org.uk
- Welsh Government www.wales.gov.uk
- Wildfowl and Wetlands Trust http://www.wwt.org.uk
- The Wildlife Trusts (TWT) http://www.wildlifetrusts.org
- Woodland Trust http://www.woodlandtrust.org.uk