



**Powys Unitary Development Plan**  
**Interim Development Control Guidance**  
**Biodiversity Conservation and Enhancement in**  
**Development Proposals**  
**April 2009**



## 1. What is 'Biodiversity' and why is it important?

"Biodiversity" is the term applied to the variety of life on earth and is short for biological diversity. It describes the richness and variety of all living things, from the tiniest microscopic organism to the largest tree.

"Loss of biodiversity not only means a loss of species for us to study or from which to gain enjoyment, but also the loss of a potentially valuable source of drugs or some other commercial products, a reservoir of genetic diversity for the future, and, most profoundly, some of the biological building blocks of the planet. Take too many of these blocks away and the global ecosystem becomes in danger of collapsing." (Working with wildlife, compliance and beyond in construction, 2004, CIRA C587).

## 2. Biodiversity and planning

2.1 Local Planning Authorities have a statutory duty to have regard for the conservation of biodiversity under the Natural Environment and Rural Communities (NERC) Act 2006. The Planning System works in parallel with legislation to ensure that development proposals conserve and enhance biodiversity interest. The Joint Nature Conservation Committee website <http://www.jncc.gov.uk> provides an excellent source of information on all of Britain's wildlife legislation and designations. Planning Policy Wales 2002, (as amended) and Technical Advice Note 5 provide the National Planning Policy approach. <http://new.wales.gov.uk>

2.2 This Interim Development Control Guidance (IDCG) should be read alongside the Powys Unitary Development Plan (UDP) <http://www.powys.gov.uk> and other guidance notes approved for development control use in Powys. Having undergone consultation and been approved by the County Council, the guidance contained within the document is material to the determination of planning applications.

### Box 1

#### **General Principles for Biodiversity in Planning and Development**

- 1) **Anticipating all potential impacts of a development proposal at the earliest stage of the planning process**
- 2) **Affording designated sites the level of protection consistent with legislative and policy provisions**
- 3) **Ensuring development maintains and, where possible, enhances biodiversity**
- 4) **Identify and facilitate practical measures for new developments to make a positive contribution to the environment and biodiversity**
- 5) **Reversing habitat fragmentation, species isolation and decline**
- 6) **Taking account of indirect and cumulative impacts in assessing the potential effects of a development**
- 7) **Recognising that many landscape features are crucial for the migration, dispersal and genetic exchange of wild species. These important "stepping stones" and corridors should be protected and managed sympathetically and extended wherever possible**

### **3. Local planning policy approach**

3.1 Powys UDP Policy SP3 (Natural, Historic and Built Heritage) and ENV 3 (Safeguarding Biodiversity and Natural Habitats) set out protection measures for natural habitats and landscape features. The importance of conserving and enhancing important sites and species is reflected in UDP policies ENV 4 -7.

3.2 Applicants must provide sufficient information indicating how their scheme conserves and enhances: a) their site's natural interest; and b) the species using their site. This information must be included within the planning statement accompanying the application. (Please refer to sections 7, 8 & 9 on adequate information).

3.3 Where an ecological survey is not included as part of the planning statement the reasons for this must be clearly explained in the statement. If, once the application is submitted it becomes clear that an ecological survey is necessary to be able to properly determine the application and this cannot be the subject of a planning condition, the applicant will be asked to either submit information within a specified time period or to withdraw their application and re-submit it once the necessary survey and re-design work has been undertaken or face refusal on grounds of a lack of adequate information on which to determine the application.

### **4. UDP Policy ENV 4 - Internationally important sites & compliance with the Habitats Directive**

4.1 UDP Policy ENV4 provides strong policy protection for European Sites in accordance with that afforded to them by the Conservation (Natural Habitats &c.) Regulations 1994 (as amended) (known as the 'Habitats Regulations') which transpose the requirements of the Habitats Directive (European law) into UK law.

4.2 Before granting planning permission for a proposal that is likely to affect a European site or Ramsar site, the County Council is required to undertake a test of likely significance to assess whether the proposal is likely to have a significant effect on the site, either alone, or in combination with other plans and projects

4.3 Where development proposals are likely to have a significant effect on a designated or proposed European site, and they are not directly connected with or necessary to the management of the site, the County Council, must undertake an 'appropriate assessment' of the implications of the development proposal for the site in view of the site's conservation objectives' in accordance with Regulation 48 of the 'Habitats Regulations'.

4.4 Management plans and conservation objectives for European Sites in Powys are contained on the CCW's website [www.ccw.gov.uk](http://www.ccw.gov.uk) further information and maps of the European Sites are contained on the Joint Nature Conservation Committee's website <http://www.jncc.gov.uk>. In Powys the European Sites are as follows:

#### **Special Areas of Conservation (SAC)**

- Berwyn a Mynyddoedd De Clwyd/ Berwyn and South Clwyd Mountains
- Coedydd Llawr-y-glyn
- Coetiroedd Cwm Elan/ Elan Valley Woodlands
- Drostre Bank
- Elenydd

- Granllyn
- Montgomery Canal
- Mynydd Epynt
- Pen Llyn a'r Sarnau/ Lleyn Peninsula and the Sarnau
- Rhos Goch
- River Usk/ Afon Wysg
- River Wye/ Afon Gwy
- Tanat and Vyrnwy Bat Sites/ Safleoedd Ystlumod Tanat ac Efyrnwy

#### **Special Protection Areas (SPA)**

- Berwyn
- Elenydd – Mallaen
- Dyfi Estuary

#### **RAMSAR site**

- Cors Fochno and Dyfi

4.5 For the County Council to complete the appropriate assessment, the applicant will be required to provide detailed information and predictions relating to the potential impacts of the development on the conservation objectives of the European Site(s) and or Ramsar site(s).

4.6 The County Council must consult the CCW for the purposes of appropriate assessment and have regard to CCW's comments. The County Council may also consult the general public. Planning permission cannot be granted until the appropriate assessment is concluded and only then if it is found that the proposed development will not adversely affect the integrity of the European Site, taking into account the scope to apply conditions to any permission that will ensure this.

4.7 Where it is uncertain whether a proposal will adversely affect the integrity of a site, or it is found that a proposal will adversely affect the integrity of a site, planning permission may be granted in exceptional circumstances if the work is for imperative reasons of over-riding public interest and where there are no alternative solutions. In such cases, the County Council must have the approval of the Secretary of State and the Welsh Assembly Government (WAG) if it intends to grant permission. Other pollution control consent may also need to be obtained from the Environment Agency.

### **5. UDP Policy ENV7 - Protected Species**

- 5.1 UDP Policy ENV7 provides policy protection for species. Species afforded protection are identified by:
- the 'Habitats Regulations'
  - the Wildlife and Countryside Act 1981 (as amended by the Countryside and Rights of Way (CRoW) Act 2000),
  - the 'List of Species and Habitats of Principal Importance for Conservation of Biological Diversity in Wales' (December 2007) (as specified by the NERC Act 2006)
  - the UK Biodiversity Action Plan (UK BAP) and
  - the Powys Local Biodiversity Action Plan (LBAP) entitled "*Our Partnership with Nature – a Local Biodiversity Action Plan for Powys*".  
<http://biodiversity.powys.org.uk>.

5.2 Applicants must provide information to show how their proposal seeks to avoid impacts on protected species and where impacts are unavoidable mitigation and compensation proposals. Appropriate measures to enhance populations of protected species are welcomed.

5.3 Separate to the planning process, development proposals that would contravene the protection afforded to European Protected Species (EPS) require a licence from the WAG. A licence permits an authorised departure from the strict system of legal protection, known as a 'derogation'. To grant a licence the WAG needs to be satisfied that the following tests are satisfied.

1. That the derogation is "for preserving public health and/or public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment.
2. That there is no satisfactory alternative
3. That the derogation "will not be detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range".

5.4 As advised by paragraph 5.5.12 of Planning Policy Wales, March 2002, the County Council will have regard to the three tests above when determining planning applications that would result in a derogation for a species afforded protection by EU legislation. Therefore any mitigation measures should be detailed in the development proposal so that these may be considered in line with the above tests.

5.5 When an application for a development licence is received by the WAG, it will write to the local planning authority and request a copy of the relevant planning report and committee minutes where applicable. Details of any mitigation plans and planning agreements or conditions will also be requested.

5.6 When considering a licence application, the WAG will also seek advice from the CCW on the scheme's implications for the favourable conservation status of the EPS' populations. This will include whether any mitigation proposals are sufficient to maintain the population of the species concerned at a favourable conservation status within its natural range.

5.7 Proceeding with the development, without obtaining the necessary licence, even when planning permission has been granted could result in an offence liable to criminal prosecution.

## **6. UDP Policies ENV5 & ENV6 - Sites of National, Regional and Local Importance**

6.1 UDP Policy ENV 5 sets the presumption against permitting development proposals that are likely to damage the nature conservation interest of National Nature Reserves or Sites of Special Scientific Interest. These are marked on the inset maps of the UDP.

6.2 UDP Policy ENV 6 ensures that where a site has the characteristics of a local wildlife site, proposals must safeguard the nature conservation interest unless compensatory or mitigation measures are secured to offset the impact of the

proposals. Applicants should refer to 'Wildlife Sites Guidance Wales: A Guide to develop Local Wildlife Systems in Wales' (Wales Biodiversity Partnership, 2008) <http://www.biodiversitywales.org.uk> and Powys Wildlife Sites criteria. Evaluation against LWS criteria will also often highlight whether a UK BAP or Powys LBAP habitat will be affected. This is important as the location of all BAP habitat areas within Powys is unknown.

6.3 The Local Biodiversity Action Plan identifies priorities for the protection of locally distinct habitats through its habitat action plans.

## **7. Biodiversity and Design Proposals.**

7.1 When considering planning applications a wide range of factors will be assessed, one of which is the impact of the proposed development on the natural interest of the site and its surrounding area. To meet the policy considerations outlined earlier in this document those preparing schemes will need to carefully consider the impacts of their development proposals on the site's natural interest by following the five point approach outlined in box 2 below. This may require the input of an ecological advisor.

### **Box 2**

#### **A Five Point Approach to Planning Decisions for Biodiversity**

1. Adequate information (including ecological survey where necessary)
2. Avoidance of harm
3. Mitigation to minimise unavoidable harm
4. Compensation to offset residual harm
5. New benefits

7.2 The steps taken to ensure that proposals address the 5-point approach outlined in box 2 above should be explained in the design and access statement accompanying the planning application.

7.3 Design and access statements are a policy requirement of UDP policy GP3 which states:  
“...A design statement shall accompany all detailed applications and will describe the actions taken to design and adapt the development to fit its location...”

7.4 The Council's planning application validation protocol, available from development control, sets out the information requirements that need to be submitted with planning applications. The validation protocol includes provisions requiring ecological information. The County Council encourages prospective applicants to discuss their proposals and information requirements at the pre-application stage.

## **8. Adequate information**

8.1 The pre-application site appraisal stage is of utmost importance when considering biodiversity in relation to a potential development site. This stage is an opportunity to research and discuss the potential of a site to accommodate development with a qualified ecologist and organisations such as the CCW, Environment Agency Wales, and the Local Wildlife Trust. Trigger lists, available from

development control, are used to determine when a study is necessary to inform decisions on proposals involving rural buildings. If required, it is advisable that an initial ecological appraisal of the site is undertaken by a qualified ecological consultant. The ecological appraisal should identify whether any specific survey work is required. It is important to note that most protected species survey work can usually only be undertaken at specific times of the year. Therefore it is important to ensure the advice of an ecological consultant, the CCW or Powys County Ecologist is sought as early as possible to ensure that the planning application is not unnecessarily delayed. **The advice gained will indicate whether an ecological survey is necessary to inform a planning application, these findings must be detailed in the planning statement.**

**8.2 Given the buyer beware principle it is prudent that speculative developers consider the biodiversity interest of any land before they purchase it as this will impact on the amount of development that the site is capable of accommodating.**

8.3 Any ecological surveys that are necessary must be undertaken before concept plans are prepared to ensure that schemes are tailored to take into account the individual interest features of each site. It is fundamental that site investigations influence the consideration of site layout and design.

8.4 Activities including survey work, trapping and marking, photography and the management of habitats for protected species may need to be carried out under licence, it is therefore important that the ecological consultant undertaking the survey work is suitably qualified. This is also important since, due to its sensitivity, some ecological information will only be available to 'trusted users'.

8.5 Where ecological surveys are undertaken, they should follow the format suggested in appendix A and this information should be copied to the Biodiversity Information Service for Powys and the Brecon Beacons National Park. <http://www.b-i-s.org>

8.6 Where it is suspected that a site has deliberately been cleared of its habitats and features prior to survey work / a planning application, the local planning authority may refer the facts to both the Countryside Council for Wales and the Police for investigation.

## **9. Concept Plan & Design / Planning Statement**

9.1 Concept plans are derived from the contextual information gathered at the site appraisal and analysis stage of the design process. Concept plans must protect key habitats and species and identify a site's surrounding 'Green infrastructure' (please see box 3 below). If it is not possible to avoid harm to existing species and habitats at the concept plan stage the reasons for this must be explained in the planning statement. In such instances it may be possible to minimise potentially damaging impacts through mitigation measures. If loss is unavoidable despite mitigation then consideration should be given to whether compensating for any loss to biodiversity by the provision of new / additional habitat of existing similar or greater biodiversity value would be appropriate.

9.2 On all potential development sites applicants should look towards opportunities to enhance biodiversity appropriate to the local environment. Concept

designs should avoid isolating existing habitats and species within the development and should link them with adjacent habitats via wildlife corridors and “stepping stones”.

**Box 3**

Green Infrastructure is the sub regional network of protected sites, nature reserves, green spaces and green linkages. These include river corridors, hedgerows, woods, floodplains, footpaths, linear routes or other features of the landscape that are of importance as corridors or stepping stones for wildlife. Green Infrastructure can provide for multi-functional uses i.e. wildlife, recreational and cultural experience, as well as delivering ecological services such as flood plain protection and microclimate control. It can operate at all spatial scales and in all areas from urban centres to open countryside. Further guidance is available from the Town and Country Planning Association (TCPA) in its publication “Biodiversity by Design – a guide for sustainable communities.” See [www.tcpa.org.uk](http://www.tcpa.org.uk)

9.3 The planning statement must detail the provision that has been made for the aftercare of the site. Applicants will be expected to secure the management of enhancement and any mitigation and compensatory measures proposed by means of a planning / legal agreement with the County Council. The management plan should incorporate the following:

- A description of features to be managed;
- The aims and objectives of management;
- A five year detailed work plan and a description of the long term measures that will ensure the management of measures proposed;
- The organisation and personnel responsible for implementing the plan;
- Monitoring measures and success criteria.

## Appendix A

### Ecological surveys are to include the following information:

- A grid reference and site location plan showing the application site. Supporting information such as photographs may be submitted.
- The experience and qualifications of the ecological consultant/s providing advice.
- A desktop survey to establish if any existing biological information is available from relevant sources for the site proposed for development and adjoining areas. Such resources may be held by individuals or organisations which might include the Biodiversity Information Service (BIS) for Powys and the Brecon Beacons National Park, local recorders or the relevant Wildlife Trust.
- Results from any field surveys undertaken, in tabular form to include the Species' scientific name/ recorder name/ 6fig grid reference and date recorded and a description of any constraints that caused limitations to the survey.
- The methodology used for undertaking ecological surveys with a justification for their selection. For vegetation surveys in most instances a National Vegetation Classification (NVC) survey or Phase 1 survey will be required. In the case of species surveys, the standard survey methodology should be used. If the methodology used is different to the standard methodology, this must be agreed with either the CCW or the County Ecologist.
- An objective evaluation of the site and the habitats and species of concern that it contains according to their status in legislation, the UK BAP, Powys LBAP, the LWS system and any other relevant documentation.
- An assessment of the impact of the development on the site, land surrounding the site or habitats or species dependent, linked or reliant on the site or site processes, both during the construction and operational phases. The impact may be direct or indirect, negative or positive. The impact may be temporary or permanent in duration. In some cases it may be possible to quantify the magnitude of the impact, for example, as a measurable area of the site that would be lost or adversely affected.
- An appropriate ecological mitigation strategy will need to be prepared by an ecological consultant and agreed with CCW and Powys County Ecologist. This will need to be submitted with the planning application and will detail appropriate mitigation measures for the scale of any potential impacts for protected and/or notable species or BAP species and habitats affected by the proposals.
- Biodiversity enhancement opportunities and recommendations in relation to the retention and protection of 'Green Infrastructure' habitats and species including enhancement, mitigation, compensation and aftercare management and monitoring proposals. There will always be enhancement possibilities.

**Note: The timings of surveys are dependent on various factors such as the species / habitat being surveyed and the weather conditions. For further details please consult an ecological consultant / Working with Wildlife – compliance and beyond in construction 2004, DTI. CIRIA C587\* – [www.ciria.org](http://www.ciria.org)**

\*Please note that legislation and standard survey methodologies are continually being updated so you should consult an ecologist to ensure that any information is accurate.