

## 5 Protected Species

### Introduction

Many species of animals and plants and their habitat are afforded special protection in law, contravention of which may result in fines or imprisonment. The level of protection varies according to legislation covering a particular species but in all cases 'the presence of a protected species is a material consideration' in determining planning applications.

**Wildlife and Countryside Act 1981:** Certain plant and animal species are scheduled in the Act, and in addition all wild birds are protected during nesting (Schedule 1 Birds, Schedule 5 other animals, Schedule 8 plants). It is an offence to ill treat any animal; to kill, injure, sell or take protected species (with certain exceptions); or intentionally to damage destroy or obstruct their places of shelter. Bats and their roosts enjoy additional protection including when found in a dwelling house, and their discovery must be reported to English Nature.

**Protection of Badgers Act 1992:** Protection is afforded to badgers and their setts, requiring developers to obtain a licence from English Nature to carry out any works within 30 metres of a badgers' sett.

**The Conservation (Natural Habitats, etc.) Regulations 1994 (the Habitat Regulations):** This Act implements the requirements of the European Habitats Directive and affords additional protection to animals and plants listed in Annex IV of the Directive. It is an offence to deliberately kill, injure, take or disturb listed animal species; to destroy their resting places or breeding sites; or to pick, collect, cut, uproot or otherwise destroy listed plant species.

**Countryside and Rights of Way Act 2000:** Part III of the Act strengthens the protection of SSSIs and the enforcement of the Wildlife and Countryside Act. It also supports the growing importance of Biodiversity Action Plans and the role of local wildlife sites in contributing toward Biodiversity Action Plans.

Where proposals affect Sites of Special Scientific Interest (SSSI) consultation with English Nature is compulsory and the proposals may require an Environmental Impact Assessment which would include impacts on protected species. Where Sites of Nature Conservation Interest (SNCI) are affected then the Kent Wildlife Trust should be consulted. As mentioned in the introduction to this document, protected species are not restricted to designated nature conservation sites but occur throughout the countryside.

It is seldom an easy task to ascertain what species are present or frequent a particular site and the absence of a recorded siting should not automatically be assumed as conclusive evidence as to the absence of a particular species. Birds, for instance, are highly mobile species and may use different habitats for feeding, nesting and over-wintering and visits may be sporadic or unpredictable.

However, expert assessment of habitats and species-specific surveys will determine the likelihood of the presence and extent of protected species to a reasonable level of certainty in most circumstances. Such information, where carried out by an appropriate expert, will help in determining what impact a proposal is likely to have and what mitigation might be suitable. Timing of the survey and any mitigation is crucial if it is to be effective and this will affect development programmes.

**Table of Protected Species**

Species	Legislative Protection	Kent BAP Priority Species
<b>Flora</b>		
Bluebells <i>It is illegal to sell bluebells taken from the wild</i>	1	
<b>Birds</b>		
Barn Owl <i>Typically nest in rural buildings and large trees. Conversion of rural buildings and barns in particular poses a significant threat.</i>	1	
Crossbill	1	
Dartford Warbler	1	
Fieldfare	1	4
Firecrest	1	
Hobby	1	
Honey Buzzard	1	
Kingfisher	1	
Marsh Warbler	1	
Nightingale <i>Numbers affected by decline in coppicing.</i>		4
Redwing	1	
Skylark <i>A species that, although abundant in coastal areas across Kent, has significantly reduced in population across the Borough in recent years.</i>		UK BAP Priority Species
<b>Mammals</b>		
Bats (all Species) <i>Can occur in almost any building or tree. Roosts remain protected even when unoccupied.</i>	1 & 3	(some species) 4
Dormouse <i>Prefers species rich deciduous woodland and hedgerows.</i>	1 & 3	4
Otter <i>Subject of a major programme to assist natural recolonisation.</i>	1 & 3	4
Badger <i>Widespread across the Borough commonly in and around suburban gardens.</i>	1 & 2	
Water Vole <i>Subject of a major programme to assist natural recolonisation.</i>	1	4
<b>Amphibians &amp; Reptiles</b>		
Great Crested Newt <i>Breeds in ponds but terrestrial habitat extends up to 1km from breeding site.</i>	1 & 3	4
Common lizard		
Slow Worm	1	
Grass Snake	1	
Adder	1	
<b>Invertebrates</b>		
Heath Fritillary (butterfly)	1	4
Medicinal Leech (worm)	1	

Legislative protection;

1. Wildlife and Countryside Act 1981
2. Protection of Badgers Act 1992
3. The Habitats Regulations 1994

For protected species of flora refer to Schedule 8 of the Wildlife and Countryside Act 1981 and the Conservation (Natural Habitats, etc.) Regulations 1994 (the Habitats Regulations).

Note should also be taken of species that appear in the following schedules and publications;

The Kent Red Data Book – rare and threatened flora and fauna in Kent. (Kent Wildlife Trust)

Birds of Conservation Concern – Red List (RSPB/English Nature)

UK Biodiversity Group Tranche 2 Action Plans

Checklist of Protected British Species – Betts Second Edition

English Nature recommends that where protected species may be present on a site which is the subject of a planning application, developers should appoint a suitable qualified consultant to undertake a detailed survey, to include the following details:

- the species concerned;
- the population level;
- the likely impact of the development on the species;
- whether the impact is acceptable and/or licensable;
- what can be done to mitigate against this impact.

Set out opposite is a table of the protected species of fauna likely to occur within the Borough. The table includes some further guidance notes on particular species and details on the level of protection covering each species. This list is not exhaustive and advice should always be sought from a recognised professional or body such as Kent Wildlife Trust or English Nature. It should be remembered that all development should respect the natural environment and promote biodiversity regardless of the presence or not of protected species.

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*Guidance Notes for Applicants*

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Landscape and  
Nature Conservation

Protected  
Species

Part 5

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