

Development control, local authorities
and protected species surveys
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Development control, local authorities and protected species surveys

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English Nature covering note

This Research Report is based on a contract undertaken during 2002 by Baker Shepherd Gillespie for English Nature. The contract report was written by Jim Gillespie (BSG) and Alison Rasey (The Bat Conservation Trust). Baker Shepherd Gillespie can be contacted at: Wye House, Water Street, Bakewell, Derbyshire DE4 1EW. The project officer for the contract was Jim Foster (Terrestrial Wildlife Team, English Nature, Northminster House, Peterborough PE1 1UA.)

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English Nature covering note

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1. Introduction

1.1 Background

The significance of legally protected species to the land use planning process is gaining widespread acceptance. Recent legal rulings emphasise the importance of prior knowledge of protected species and suggest that in many instances protected species data should be gathered in advance of the determination of planning applications. However, clear and unequivocal guidance on these matters is very limited, with little national guidance for local planning authorities.

There is incomplete knowledge of up to date species distributions at the local level, and this data is often fragmented and difficult to access. In addition, the predictability of species occurrence on particular sites varies greatly. These basic problems often lead to the need for field surveys in order to address protected species questions. Whilst local authorities can require an applicant to undertake such surveys, the decision on when this becomes necessary seems to be a matter of informed judgement and without clear guidance such decisions are likely to vary from one planning authority to the next. This is compounded by the likelihood of extra expenditure and delays caused by the requirement for survey, which can prove controversial for local planning authorities.

This contract was let because of a perception among English Nature staff and others that local planning authorities approach their consideration of protected species issues in a range of different ways, but no evidence for this has yet been collated. English Nature is seeking to gain a better understanding of current local planning authority policy and practice on deciding when protected species surveys are required to inform the development control process. It is hoped that the result of this research will assist with the production by English Nature of future guidance for local planning authority planners.

1.2 Research objective

The main objective of this research is stated in the contract brief as follows:

- To assess current local planning authority policy and practice on deciding when protected species surveys are required to inform the development control process.

In order to make this assessment, English Nature posed a series of questions to be addressed by a questionnaire survey:

1. Does the Local Planning Authority have access to existing information on protected species? If so, who holds it and how is this accessed?
2. Does the Local Planning Authority routinely ask for information on protected species within the planning application form?
3. Does the Local Planning Authority have criteria for deciding when to ask an applicant to undertake a protected species survey? If so, what are they?

4. Approximately how often in the last year has the Local Planning Authority requested a protected species survey?
5. Does the Local Planning Authority employ an ecologist (or similar) who assists with protected species and planning?
6. Does the Local Planning Authority feel that current arrangements are adequate to fulfil its role?
7. Are there protected species policies in the Local Plan (or equivalent) relating to development control?
8. In your view, how could PPG9 be modified to assist Local Planning Authorities with their role in protected species and planning?
9. In your view, what else could be done to improve the assessment of protected species in development control?

2. Approach and methodology

343 local planning authorities in England were sent a questionnaire designed to address the questions of the brief. The questionnaire was drafted with comments from the Project Manager for English Nature and this draft was circulated to members of the Association of Local Government Ecologists (ALGE) for comments principally on its usability. Comments were received from ten members of ALGE and these were considered “in the round” and changes to the questionnaire made as appropriate. The final questionnaire was then prepared and sent out with a covering letter from English Nature, the text of which is reproduced in Appendix 1.

The questionnaire was designed for completion by development control officers and this was stressed to recipients in the letter from English Nature.

3. Results

151 questionnaires (44% of those sent out) were completed and returned. Questionnaires were returned in various states of completion, but were mostly completed in their entirety.

The questionnaire is reproduced in the following pages, along with the results which are shown alongside each question. A comment on the results of each question is also presented. Comments relating to specific questions are also summarised or quoted directly. In addition many general comments were made and these are summarised in Appendix 2.

3.1 Section one: existing data and its use by the LPA

The objective of this part of the questionnaire is to establish how LPAs currently operate in their management and use of **existing** protected species information, and to seek your views on the current situation.

1. Does your local planning authority (LPA) have access to any existing information on protected species? Please tick

- Yes 132
- No 13 (go to question 2)
- Don't know 6 (go to question 2)

Comment:

87.4% of planners indicate access to existing information and 8.6% suggest that they have no such access. A small number of respondents (3.9%) do not know whether access is available. The latter two categories of respondent total almost 1 in 8 planning authorities.

**1(a) If you answered “yes” to question 1, who holds this data and, if you know, in what format is it available?
(tick as many boxes as appropriate and specify its format if known):**

- | | | | |
|--|----|----------|------------------|
| • Wildlife Trust | 90 | paper 50 | electronically 3 |
| • Local specialist groups or natural history societies | 64 | paper 31 | electronically 1 |
| • Individuals | 26 | paper 17 | electronically 0 |
| • LPA | 65 | paper 31 | electronically 3 |
| • Biological records centre | 40 | paper 11 | electronically 8 |
| • English Nature | 83 | paper 37 | electronically 2 |
| • Don't know | 2 | | |
| • Other (please specify below) | 24 | | |

Comment:

130 answers to this question were received and almost all of those who answered are aware of the source of protected species data. The Wildlife Trusts are known by development control officers to be holders of data in 69% of cases, English Nature in 64% of cases, LPAs themselves in 50% of cases, and local specialists groups in 49% of cases. 31% of responses noted the biological records centres as a source of data and 20% noted individuals.

The majority of known data on protected species is understood by development control officers to be held in paper form.

1(b) How is this data interpreted by you and your planning colleagues? (tick as many as appropriate):

- | | | |
|---|-----------|---|
| • Initially by consultant acting for applicant: | 6 | solely |
| | 40 | in conjunction with other sources: |
| • Directly by planners: | 26 | solely |
| | 41 | in conjunction with other sources: |
| • Through an LPA ecologist or similar: | 41 | solely |
| | 4 | in conjunction with other sources: |
| • Other (please specify below): | 5 | |

Comment:

130 responses to this question were made. Where an LPA ecologist or similar is involved in the interpretation of data, the use of other sources of assistance appears to be less prevalent. Overall, however, the use of LPA ecologists is the least common source of assistance with interpretation among the three main categories of answer available (45 of the 163 possible responses – 27.6%). This may be a reflection of the proportion of local authorities that were noted as having access to an ecologist or similar (79 of the total 151 respondents – 52.3%: see question 3).

The most common means of interpretation of protected species data is directly by planners (41%) but in 25% of cases this is in conjunction with other data sources.

The use of interpretation provided initially by consultants is most often in conjunction with other sources of interpretation, and rarely relied upon in isolation (3.6% of the time).

2. As a planner, how do you feel about the state of data for the following groups of protected species within your administrative area? Please tick the relevant boxes below and leave blank any species not relevant to your area, or about which you have no experience in a planning context.

	Recording			Availability to planners		Usability of data when provided to planners: YOUR impressions		
	Up to date and accurate	Needs some validation	Could be improved	Readily available	Difficult to access	Good	Good but need help interpreting	Poor
Plants	11	9	53	23	45	16	45	13
Great crested newts	13	13	62	33	46	26	43	14
Sand lizards	1	2	30	5	25	6	15	11
Slow worms	1	2	45	9	32	7	22	15
Other reptiles	2	4	47	10	35	10	21	16
Bats	15	22	57	44	39	33	42	15
Badgers	17	23	47	38	43	26	44	12
Water voles	11	17	43	27	37	16	37	10
Dormouse	2	3	41	6	33	4	22	15
Other mammals	1	3	46	7	36	5	24	16
Crayfish	7	1	43	11	31	7	21	16
Other invertebrates	3	4	47	11	36	7	26	17
Birds (generally)	16	16	48	27	40	19	35	17
Others:	1	1	11	4	8	4	5	4
	12%	14%	74%	34%	66%	24%	52%	25%

Comment:

Taking all the species (including “others”) into account, recording was felt on 74% of occasions to be in need of improvement. Data was generally felt to be difficult to access (66%) and the usability of data was felt to be good but in need of help with interpretation on 52% of occasions.

3. Does your LPA employ or contract an ecologist (or similar) to assist with protected species and planning, in particular advising on what information should be requested from the applicant?

- Yes 79
- No (go to question 3(c)) 70
- No response 2

Comment:

Just over half (52.3%) of respondents indicated that they have ecological support.

3(a) If you answered yes to question 3, what is their job title?

- Ecologist 37
- Environmental Manager 1
- Countryside Officer 18
- Other 20

Comment:

Of the 37 “Ecologist” responses, four were “ecologist plus another source”.

3(b) In which department is this person; or does this expertise come from an external resource (eg a Wildlife Trust, advisory service, or consultant), excluding those that are consulted as a matter of course over planning applications. Please specify below:

Comment:

71 responses were made to this question and the results are summarised below:

	frequency	in-house	external
• Planning	28	✓	
• Environment / similar	6	✓	
• Leisure Services / similar	6	✓	
• Wildlife Trust	6		✓
• Countryside / similar	4	✓	
• Out-sourced Ecology Units	4		✓
• County Council	6		✓
• Landscape / similar	2	✓	
• Conservation / similar	2	✓	
• Wildlife Trust / CC	2		✓
• Museum / Wildlife Trust	2		✓
• Community Services	1	✓	
• Strategic Policy [Planning?]	1	✓	
• Green Spaces	1	✓	

Comment/continued

Of the 71 responses to this question, 71.8% of protected species advice comes from in-house sources.

3(c) Do you seek advice from English Nature with respect to the requirement for protected species surveys:

- As well as from other sources **130**
- In place of other sources **15**
- Never **6**

Comment:

This question was answered by all respondents and 86% indicated that they seek advice from English Nature as well as from other sources. It is worth noting that a small number of respondents (almost 4%) indicated that they never seek the advice of English Nature, despite English Nature's statutory consultee status. In addition, 10% of development control officers who answered this question suggested that their sole source of advice in the matter of protected species surveys is from English Nature.

3.2 Section two: basic processes of gathering and requesting data

Section two is about the basic process of gathering information as part of your consideration of planning applications.

4. Do any of your planning application forms ask for basic existing information (*i.e.* desk study) on protected species?

- Yes (go to question 4(b)) **9**
- No **122**

Comment:

Approximately 6% of respondents indicated that they formally request the applicant to consider basic information on protected species at the outset of the planning application process. It should be noted that this question does not consider the possibility of such data being requested in a less formal manner, for instance through pre-planning application discussions.

4(a) If you answered “no” to question 4, when do you request existing information on the presence of protected species? (please tick all that apply.)

The possible answers were:

- Never (go to question 5)
- Following informal consultation / discussions with the applicant
- Following consideration of an initial submission of the planning application
- Following wider consultation – wait to hear from consultees
- Based on planning officers’ personal experience

The results are presented in the table below:

	Total responses	Sole responses
Never	<0.01%	<0.01%
Following informal discussion with applicant	52.5%	4.1%
Following initial submission of application	50.0%	4.1%
Following wider consultation	87.7%	22.1%
Based on Planning Officer's experience	49.2%	0.0%
29/122 (23.77%) of respondents to this question indicated that all four methods were employed.		

Comments:

122 responses to this question were made. Many respondents (68.8%) selected more than one answer and 31.2% selected only one answer. Of these “sole” responses, requests for information appear to be made most commonly following wider consultation. The “following wider consultation” response was also the most common answer to this question overall.

Several general comments were received suggesting that the determination period cannot be complied with in many instances where protected species appear to be an issue (due to seasonal difficulties and the time required to complete adequate surveys). By leaving the question of protected species to the consultation period, instead of encouraging an applicant to provide basic protected species data “up front”, planning authorities will increasingly find themselves being forced to extend the determination period, as even basic desk study data can be time consuming to gather and analyse.

4(b) How co-operative do you find applicants in providing basic existing information on protected species? (please tick relevant box).

- Generally willing to provide information 46
- Generally reasonable, but depends on likelihood of delays that might be caused as a result 85
- Generally unwilling 11

Comment:

Of the 142 respondents that answered this question, 92.3% indicated that applicants are generally co-operative when it comes to providing basic information on protected species. This suggests that lack of co-operation should not generally be cited as a reason for not pursuing protected species information (however 59.8% noted that co-operation is dependent on whether or not this would cause a delay).

5. These questions are more to do with requesting original or updated surveys rather than desk study.

5(a) Do you ever ask applicants to undertake protected species surveys?

- Yes 139
- No (go to question 6) 12

Comment:

92% of respondents have experience of requesting protected species surveys at some stage in the process of dealing with a planning application.

5(b) When you ask an applicant to undertake a protected species survey, are your considerations:

(122 replies to this question as a whole, 29 made no reply at all)

- **Related to the type of development (for instance barn conversions)?**
 - Yes **101**
 - No **15**
 - No response **6**

- **Related to the location of the development (for instance within a given distance of a known great crested newt site)?**
 - Yes **117**
 - No **4**
 - No response **1**

- **Related to the size of the development?**
 - Yes **50**
 - No **64**
 - No response **8**

Comment:

The responses to this question suggest that some consideration of context is made in many cases by planning authorities, particularly related to location and type of development. Future guidance would refine the thinking on these issues in relation to particular species or species groups.

5(c) In addition to anything in 5(b), do you use any of the following as a guide in deciding when to request protected species surveys? (Please tick all that apply):

- Guidance from internal consultation (e.g. with LPA Ecologist) **79**
- Information provided by the applicant (e.g. results of desk study) **92**
- Public consultation **98**
- Presence of certain types of semi-natural vegetation / habitats **71**
- No criteria, protected species surveys requested for all planning applications **0**
- Other (please give brief details below) **16**

The 16 “other” responses are summarised below:

- Access to Wildlife Trust surveys
- Advice from biodiversity partnership
- Consultation of the biodiversity audit
- Environmental assessment
- English Nature
- Existing survey data
- External advice
- Local Ecology Unit
- Guidance from consultees
- County Council and Wildlife Trust
- Protected Site details
- Specialist groups and English Nature
- Presence of Unitary Development Plan “Wildlife Zones”
- Wildlife Trust x 3

Comment:

Guidance on when to decide that protected species surveys are required is most commonly left to the public consultation stage. This suggests that planning authorities are relying in large part on the public or other interested parties raising an issue to stimulate a request for further data. However, a high proportion of planning authorities do rely on basic information provided by the applicant, which may be provided earlier in the process than information from the public.

Comments were received regarding the effect of protected species considerations on the determination period for planning applications and it is likely that both of these situations would give rise to delays in determination.

5(d) How co-operative do you find developers when they are asked to undertake or commission protected species surveys?

- | | |
|--|-----------|
| • Generally willing to provide further information | 35 |
| • Generally reasonable, but depends on likelihood of delays that might be caused as a result | 78 |
| • Generally unwilling | 5 |

5(e) When further protected species surveys have been requested, is the information provided generally adequate for the LPA to properly consider protected species, in its role of determining planning applications?

- Yes 107
- No 7
- No response 37

Comment:

93% of planning authorities that responded to this question indicated that they feel that the quality of survey data provided by applicants is adequate. Almost 30% of the total number of respondents did not answer this question.

6. Do you issue published guidance to applicants relating to protected species and the planning system? (either your own or from other organisations)

- Yes 46
- No (go to question 6(b)) 105

6(a) If you answered “yes” to question 6, is this information issued with your standard planning application forms?

(48 people responded to this question, although only 46 answered ‘yes’ to Q6)

- Yes 3 (now go to question 7)
- No 45 (now go to question 7)

6(b) If you answered “no” to question 6, do you feel that if such information were provided to you, then you could easily pass it on to applicants?

(116 people responded to this question, although only 105 answered ‘no’ to Q6)

- Yes 111
- No 5
- No response 35

Comment:

There appears to be great scope for dissemination of information on protected species, although it does not appear that the existing literature is being fully utilised, particularly at the outset of the planning process (only 6.5% issue their guidance alongside their planning application forms).

7. Approximately how often in the last year has your LPA requested a protected species survey in relation to a planning application? (please tick)

- | | |
|----------------|------------|
| • 1-10 times | 101 |
| • 10-50 times | 42 |
| • 50-100 times | 3 |
| • >100 times | 1 |
| • Never | 4 |

Comment:

151 answers were given. This question was difficult to frame without being too lengthy and involved because it cannot allow for the widely varying case loads of the different planning authorities. In addition, certain types of development are rarely likely to give rise to protected species issues (shop frontages, domestic house extensions, etc.) whilst others are. Likewise, some authorities will have a large proportion of smaller applications, whereas others (mainly County Councils) tend to deal with larger applications which involve more land disturbance, which are more likely to involve consideration of protected species at some point.

8. Has your LPA experienced cases where a protected species has been discovered on a site by a third party following submission of a planning application, but before determination of the application?

- | | | |
|-------|------------|-----------------------|
| • Yes | 116 | (go to question 8(a)) |
| • No | 35 | (go to question 9) |

Comment:

A large proportion of respondents (almost 76.8%) have experienced “late discovery” of protected species, which has implications for determination and determination timescales.

8(a) If you answered “yes” to question 8 then, in those cases, had a protected species survey been undertaken prior to submission?

- Always 9
- Sometimes 59
- Never 47

Comment:

From the answers of the 115 respondents who went on to question 8(a), in a high proportion of “late discovery” cases, no protected species survey had been undertaken prior to submission of the planning application. In other words, the chances of protected species becoming an issue at a late stage in the determination process seem to be markedly lower if a protected species survey has already been undertaken prior to submission of a planning application. The responses to Questions 4(a) and 5(c) are also discussed in the context of potential impacts on the period of time required to determine an application.

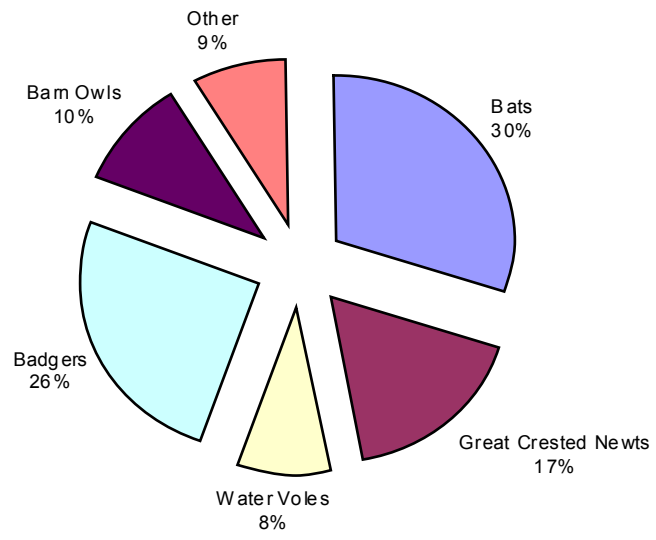
8(b) Were any of the following species involved? :

- Bats 86
- Badgers 74
- Great crested newts 49
- Barn owls 29
- Other 25
- Water voles 24

The responses in the “other” category are shown in table form below. A graphical representation of the overall results is shown overleaf.

1 “Orchid”
1 “Red squirrel”
1 “Toad”
1 “Grass snake”
1 “Reptile”
2 “Otter”
2 “Sand lizards”
4 “Birds” (including 1 birds generally, 1 black redstart and 2 little ringed plover)
8 “Slow worms”
1 “Slow worm, crab beetle, orchid, solitary wasps”
1 “Slow worm, lizard”

Q8b Protected Species discovered during Planning Process



3.3 Section three: policy and guidance for LPAs

Section three is about current policy, the guidance you receive as a planner and as a Local Planning Authority, and ways in which these can be improved.

9. When protected species are believed to exist on an application site, does the available guidance to planners give you the confidence to request further surveys?

- Yes 109
- No 38
- No response 4

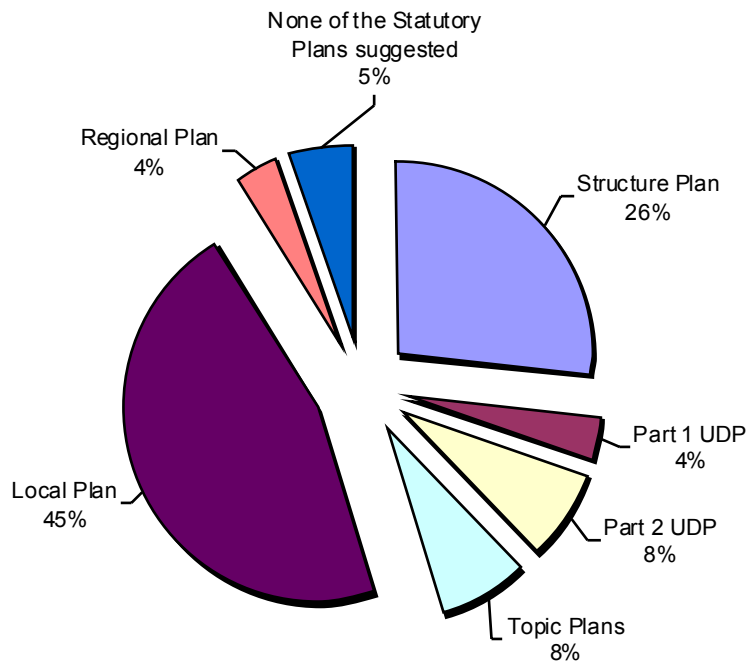
9(a) Do you feel that your LPA would benefit from clearer guidance on when to request protected species surveys?

- Yes 138
- No 9
- No response 4

10. Which of the following within your administrative area contain protected species policies? (please tick all that apply):

- Structure Plan (County Councils only) 60
- Part 1 UDPs (Met. Borough Councils only) 8
- Part 2 UDPs (Met. Borough Councils only) 17
- Topic plans (eg. waste, minerals, transport:
relevant plan producing LPA only) 17
- Local Plan (Borough or District Councils only) 103
- Regional or sub-regional plans 8
- None of the above 12 (go to question 11)

Q10 Location of Protected Species Policies



10(a) Do any of the plans that you selected in question 10 specify or consider the need for protected species surveys?

- Yes **66**
- No **60**
- No response **25**

Comment:

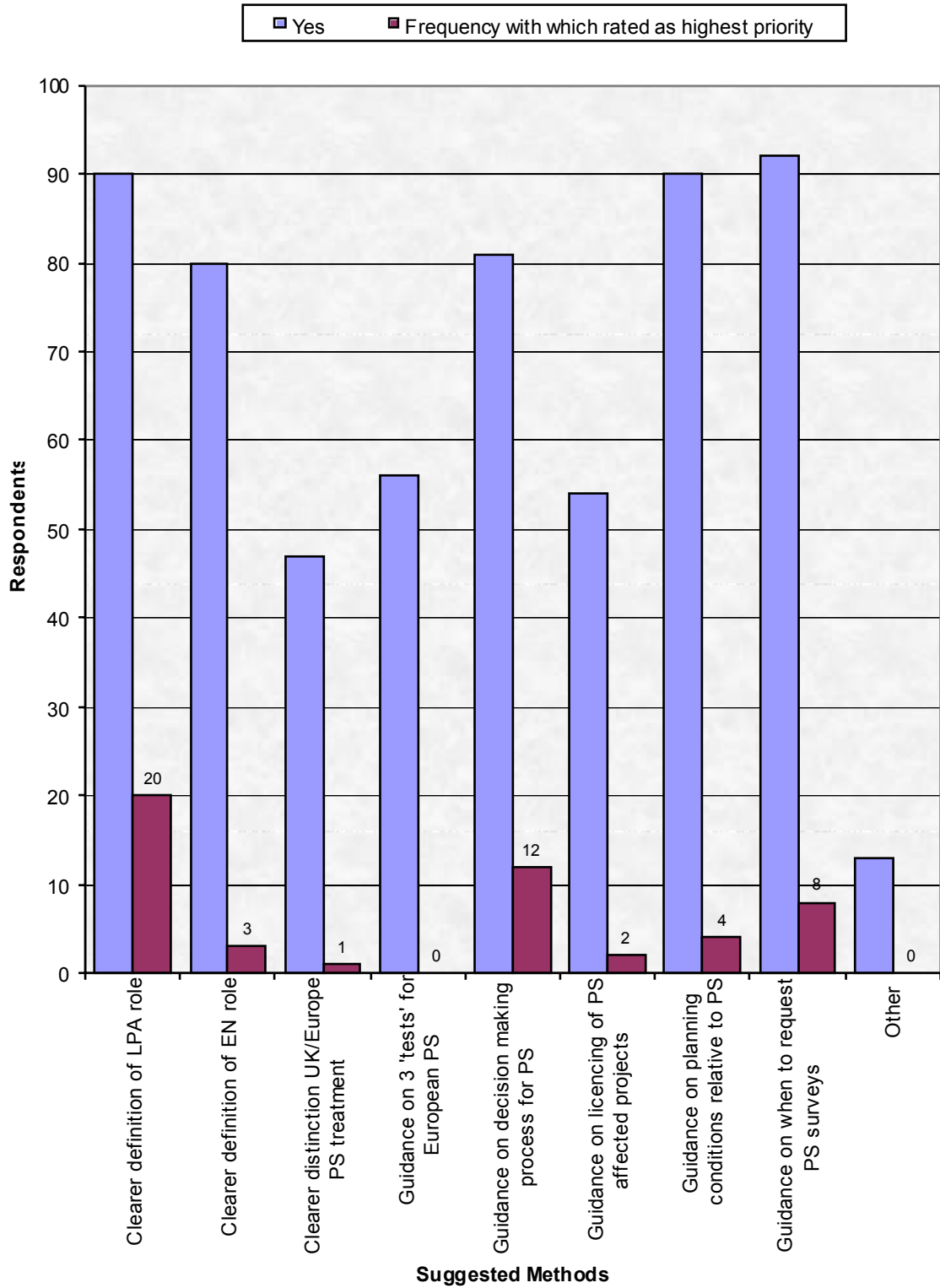
Whilst 225 instances of protected species policies were identified from within statutory plans, only 66 (29.3%) of these were known to go as far as considering the provision of protected species surveys. As some of the principal planning guidance documents available to most local authority planners, this may go some way to explaining some of the findings of other questions that suggest that protected species surveys are not requested as often as they could be.

11. **PPG9 Nature Conservation is due to be reviewed. How do you think PPG9 could be modified to better assist LPAs with protected species and planning? Please tick those that apply to you and add other suggestions where necessary. If you wish to rank your answers in order of importance, then please do so, starting with “1” as very important:**

Total	Occurrences ranked “1”	
130	20	A clearer definition of the role of LPAs in relation to protected species.
115	3	A clearer definition of the role of English Nature in the planning process relating to protected species.
79	1	A clearer distinction between the treatment of UK protected species and European protected species in planning.
87	0	Guidance on the application of the three “tests” for European protected species as required under the Habitats Directive.
119	12	Clearer guidance on the decision making process for protected species, for instance when it is appropriate to allow further consideration of protected species to be put to reserved matters, and when not.
89	2	Guidance on licensing of projects affecting protected species, and its relation to planning.
130	4	Guidance on planning conditions and agreements relating to protected species matters.
131	8	Guidance on when protected species surveys should be requested.
13		Others – these are summarised below: <ul style="list-style-type: none"> • Checklist of protected species • Consideration of protected species should not be a reserved matter • LPAs need more help from English Nature • Importance of timing of surveys should be recognised • Mandatory protected species surveys • Minimum requirements for survey • Planning and protected species law should be linked • Relationship between BAPs, sites and protected species needs clarification relating to protected species matters.

The results of question 11 are presented graphically below:

Q11: How to modify PPG9

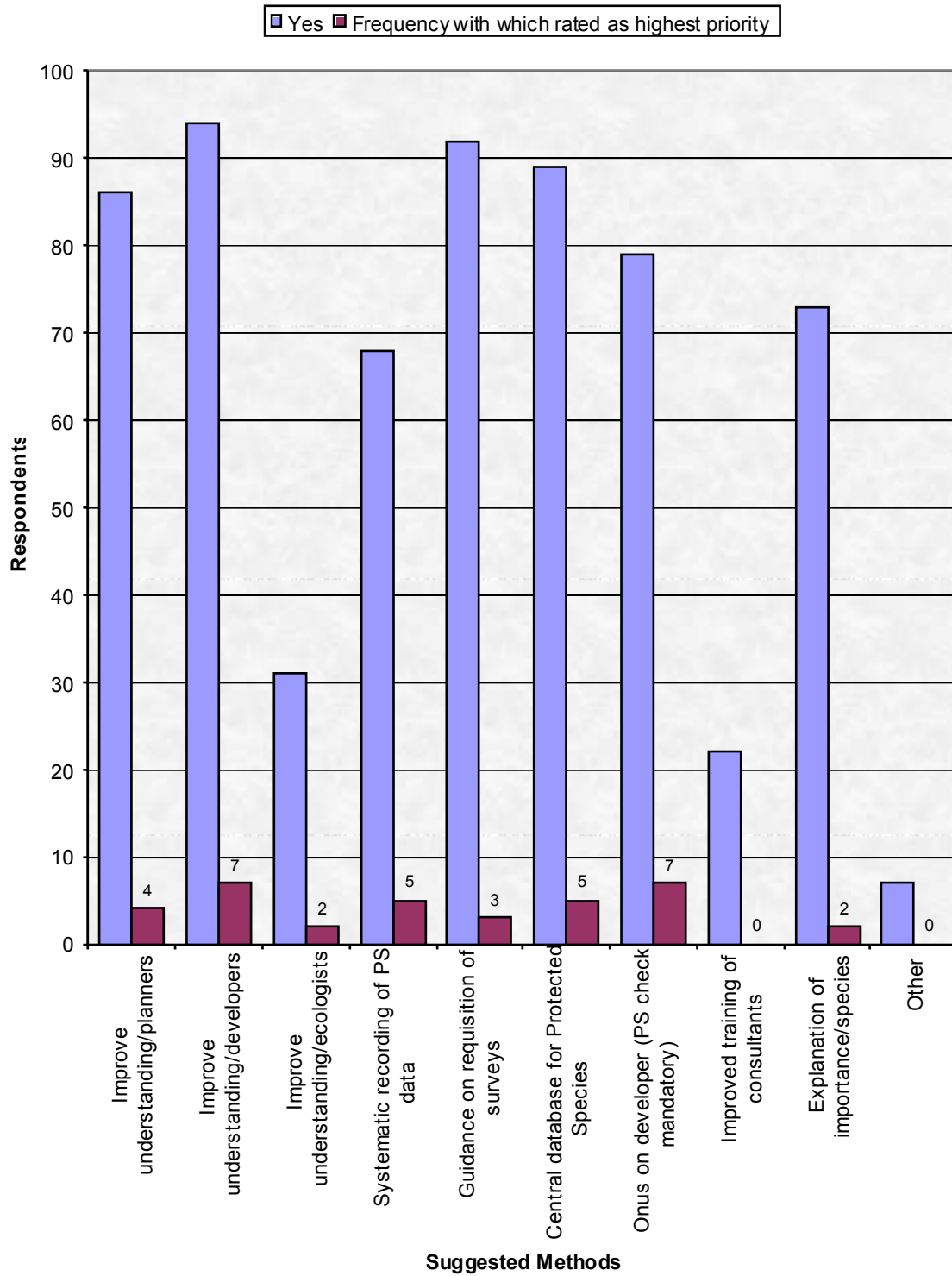


12. What else could be done to improve the assessment of protected species in development control? Please tick any of the following that you feel could help the process. Again, if you wish to rank your answers in order of importance, then please do so:

Total	Occurrences ranked "1"	Question
102	4	Improved understanding of EIA and protected species legislation by planners and by LPA ecologists.
115	7	Improved understanding of EIA and protected species legislation by developers.
41	2	Improved understanding of EIA and protected species legislation by consultant ecologists.
87	5	More systematic recording of protected species data.
109	3	Better guidance on when further surveys can be requested and why.
107	5	An easily accessible "one stop shop" for protected species data requirements, for instance the development of central databases for protected species.
99	7 [two respondents said "No" to this suggestion]	Greater onus on the developer right from the start – make a protected species check a standard requirement on the planning application form.
32	0	Improved training / expertise of environmental consultants.
86	2	Explanation of the relative weight of importance to attach to different species.
7		Others – these are summarised below: <ul style="list-style-type: none"> • Consultees should understand the planning system more • English Nature should help to improve understanding of relevant legislation • Development of GIS based alert systems • Improved training in wildlife awareness and legislation • More resources for database operation • Role of Wildlife Trusts needs considering – they are selective in their responses • Advisory notes to developers

The results of question 12 are presented graphically, below:

Q12: Ways to improve Protected Species Assessment in Development Control



13. Do you have any other comments to make on the subject of protected species surveys in relation to the planning system? If so please feel free to comment below.

36 comments were made and these are summarised in Appendix 2, along with the general comments that were made throughout the responses.

4. Discussion

4.1 Representativeness of the results

The results of this survey are derived from the responses of 44% of the local planning authorities in England. The questionnaire was addressed to the Development Control Manager in each case, but in some cases the questionnaire has been passed on to other members of the Development Control team to complete. It is possible that some answers to some questions would have been answered differently had other members of the same team filled in the questionnaire. For instance some Development Control Officers may be more conversant with the local biological recording situation than others, or may have dealt with more protected species situations than his or her colleagues. This should be kept in mind when considering the results, but for the purposes of this study it has to be assumed that the answers provided do broadly reflect the experiences of the local authority.

4.2 Addressing the questions in the brief

This section addresses the questions that were initially posed in the brief set by English Nature.

Does the Local Planning Authority have access to existing information on protected species? If so, who holds it and how is this accessed?

87.4% of development control officers indicated that their LPA has access to existing information on protected species. Most development control officers are aware of the sources of protected species data. The details of who holds the data are shown in Questions 1 and 2, along with an indication of the respondents' views on the state of the data for different biotic groups.

The reason that 12.6% of respondents indicated that they have no access to protected species information is not known, but it may reflect the experience of individual officers, rather than their local authority as a whole.

Does the Local Planning Authority routinely ask for information on protected species within the planning application form?

Only 6% of development control officers indicated that their planning application forms ask for basic information on protected species. Questions 4 and 5 expand on this issue and explore the triggers that are used by LPAs to request such information, either as basic desk study information, or resulting from original surveys. Generally, the question of protected species is left to the post-submission period, which has implications for delays in the determination of applications. Question 8 indicates that LPAs are experiencing a large number of cases in which protected species are discovered at a late stage, which is likely to compound this problem.

Most respondents have experience of requesting protected species surveys from developers, and when requested, almost three-quarters of respondents felt that the information provided is adequate. In addition, the responses to Question 4(b) suggest that developers are generally

willing to provide further information when requested to do so, depending on the likelihood of delays that might be caused as a result.

Does the Local Planning Authority have criteria for deciding when to ask an applicant to undertake a protected species survey? If so, what are they?

Location and type of development are the most commonly used physical criteria. In addition, development control officers use a range of other criteria. Most commonly employed are responses at the public consultation stage, information provided by the applicant, and internal guidance (for instance from the LPA Ecologist or similar). Answers to Questions 5(b) and 5(c) relate to this question.

Approximately how often in the last year has the Local Planning Authority requested a protected species survey?

This question (Question 7 of the questionnaire) was difficult to frame without being too lengthy and involved because, amongst other factors, it cannot allow for the widely varying caseloads of the different planning authorities. This question requires further, more detailed consideration.

Does the Local Planning Authority employ an ecologist (or similar) who assists with protected species and planning?

Just over half of the respondents indicated that this facility is available to them. What advice the remaining authorities do get has not been established. Question 3 provides further information on the way that support and advice is provided, and Question 3(b) indicates that in 92% of cases where advice and assistance is available, it is provided in-house.

Does the Local Planning Authority feel that current arrangements are adequate to fulfil its role?

Question 6 of the questionnaire considers the provision of guidance to planning applicants. A little less than a quarter of the development control officers that responded indicated that published guidance on protected species is issued to applicants. However, only a very small proportion indicated that the guidance is issued with standard planning application forms. 111 of the 151 respondents indicated that if published guidance were provided to them, then they felt that it could be readily passed on to applicants.

With regard to the adequacy of current arrangements for dealing with the issue of protected species in development control, Question 9 indicates that 72% of development control officers feel that available guidance gives them the confidence to request further surveys of protected species. However, 91% felt that their LPA would benefit from clearer guidance.

In addition, the answers to Questions 11 and 12 indicate that there are a number of ways in which this could be improved.

Are there protected species policies in the Local Plan (or equivalent) relating to development control?

This issue was addressed in Question 10, where it was found protected species policies are represented in all of the major statutory plans. However, approximately 8% of respondents indicated that protected species policies were absent from all of the major statutory plans that impact on their administrative area.

Less than one third of the protected species policies that were identified in Question 10 were known to go on to consider the provision of protected species surveys. This will affect the degree of confidence that development control officers are likely to feel when they are considering requesting more information on protected species.

In your view, how could PPG9 be modified to assist Local Planning Authorities with their role in protected species and planning?

The most common responses to this question were:

- Improved guidance on when to request protected species surveys.
- Improved guidance on planning conditions and agreements relating to protected species matters.
- A clearer definition of the role of LPAs in relation to protected species.

The last of these three was most commonly ranked as the most important modification that could be brought forward in a review of PPG9.

In your view, what else could be done to improve the assessment of protected species in development control?

The most common responses to this question were:

- Improved understanding of Environmental Impact Assessment and protected species legislation by developers.
- Better guidance on when further surveys can be requested and why.
- Development of a “one stop shop” for protected species data requirements.

4.3 General findings and conclusions

- The research seems to bear out the perception that Local Planning Authority approaches to protected species issues within development control vary considerably. The manner in which LPAs address protected species issues may be affected by resources (such as funding levels and access to advice), the outlook of their planners, as well as the type of authority (urban, rural, etc.). The pressure on LPAs to determine applications within certain time periods may also have a bearing on an authority’s view of protected species.
- Very few LPAs request protected species data on their standard planning application forms or similar. Once an application has been submitted, the application of location-

sensitive criteria to trigger a request for protected species information, such as the known presence nearby of a protected species, are being used by LPAs whether formally or informally. There is likely to be scope for development and formalisation of basic criteria for determining when to request surveys. These could be produced for general application by LPAs, with local variations being developed by the LPAs themselves.

- Between LPAs there is variable application of other criteria for deciding when to request surveys, but requests generally follow consultation with the wider public. However, in many instances the applicants' own initial findings provide the impetus for a request for further information, which suggests that those making the planning applications (the developers) are responding to their own obligations regarding protected species. It is not clear whether the criteria for deciding when to request surveys are formally applied across individual planning authorities, or whether they are dependent on the officer involved and their own judgement, which may differ from that of his or her colleagues.
- A high proportion of LPAs have encountered protected species at a late stage in the development control process. In most of these cases, no protected species survey had been undertaken prior to submission of the planning application. By leaving the question of protected species to the consultation period, instead of encouraging an applicant to provide basic protected species data "up front", planning authorities will increasingly find themselves being forced to extend the determination period, as even basic desk study data can be time consuming to gather and analyse. The implications of late discoveries are important, costing time and money for LPA and applicant.
- Information on protected species, particularly on badgers and great crested newts, has been available for around eight years from the statutory conservation agencies. However, the dissemination of this information through the LPAs is poor. With regard to guidance for the LPAs themselves, a high proportion felt that they would benefit if it was made clearer. A number of other suggestions were made about what would improve protected species assessment in development control. The most common suggestions include:
 - Improving the understanding of environmental impact assessment and protected species legislation by developers.
 - Provision of better guidance on when further surveys can be requested and why.
 - The development of "one stop shops" for providing protected species data.
- At the time of writing, the planning system is under major review. It may be an appropriate time to consider the findings of this study and how some of the problems that have come to light can be dealt with through the planning review. For instance more guidance on dealing with problems of appropriate survey timing and the scope of protected species surveys, and the way that these can impact on determination periods is likely to be of use. Under the review, Planning Policy Guidance Notes (PPGs) may be replaced with more streamlined guidance documents, in which case the way forward for many of the suggestions made about improvements to PPG9 - *Nature Conservation* may have to be through other structures.
- Defra and the Office of the Deputy Prime Minister have recently published a consultation paper on proposals that could more clearly place a requirement on LPAs

to consider European protected species when determining planning applications¹. If the proposals are adopted this is likely to give rise to a requirement to see that information on those species that are protected under European legislation is gathered in a timely manner. In practice, this would require, in many cases, appropriate surveys to be undertaken prior to determination of an application. These proposals will not directly affect species that are protected under domestic legislation only, but the principle of pre-determination surveys should become more firmly established.

- Other themes for improvement include better training, better data management, and improved funding of biological record centres, all of which require enhanced funding. In the long term, however, a more structured and consistent approach to dealing with protected species in development control is likely to lead to financial and time savings for both applicant and local authority, as well as better conservation of protected species and their habitats.

¹ Defra / ODP. October 2002. *Consultation paper on legislative proposals for integration of the Habitats Directive provisions on conservation of European protected species into the land-use planning regime.*

Appendix 1: Text of covering letter from English Nature

To: The Development Control Manager April 2002

Dear Sir/Madam

Important research into the use of protected species data in development control

The enclosed questionnaire is for the development control team of your local planning authority. Please take a few moments to fill it in – its findings will help English Nature to better formulate its advice to planners in the future.

As you may know, no comprehensive national guidance exists on how Local Planning Authorities should best use data relating to legally protected species when deliberating planning applications, or making local plan allocations. This is an important and rapidly developing area of planning work, and we are keen to seek your views on the current situation. With the revision of PPG9 *Nature Conservation*, as well as several recent landmark rulings, the use of protected species data will play an increasingly significant role.

English Nature is seeking to assess current LPA policy and practice in deciding when protected species surveys are requested, with a view to working with planners to produce guidance in the future. In addition, by getting a better understanding of the problems associated with the availability and use of protected species data, and the sort of ecological advice resources available to LPAs, English Nature can ensure that the guidance it gives is meaningful and practical.

Ecological consultancy Baker Shepherd Gillespie have been commissioned to undertake this research and have enclosed a brief questionnaire. Your co-operation in completing this questionnaire would be greatly appreciated.

Please note that the questionnaire has been designed for rapid completion, as we recognise that you are busy. It should take about 20 minutes for you or one of your colleagues to complete.

If you require further information on the research, please contact James Gillespie at Baker Shepherd Gillespie on 01629-815544.

Many thanks for your co-operation.

Yours faithfully
Jim Foster
Vertebrate Ecologist

Appendix 2: A selection of responses and comments from LPAs

“Accessible data and systematic recording needed. LPAs come across criticism from English Nature and conservation bodies if they are not ‘up to speed’ yet there is nowhere to access this information”.

“Developer should be aware of protected species from start and what mitigation is necessary”.

“It’s an impenetrable fog”.

“Who should the LPA contact when a survey needs doing? Perhaps have a list of local consultants”.

“Advice required on the extent to which planning legislation overlaps with other protected species requirements”.

“One-stop-shop needs to be FREE, constantly updated as habitats change and extremely accurate”. Another LPA suggested “putting it on GIS on the www”.

“No weight is given to cases where protected species is common to a particular location”.

“The costs involved mean the applicant is unwilling to find out about protected species or commission surveys especially a minor development such as a house extension. English Nature should provide a recommended condition in their consultee response”.

“Role of Wildlife Trust is not great. They are selective and patchy in their responses”

“Third parties delay development by claiming to have seen a protected species. This devalues the species to developers who carry on thinking it isn’t on site at all. (e.g. the residents cry wolf too much)”

“All conservation bodies need to hold the same point of view and not conflicting ones (e.g. English Nature vs. Wildlife Trust)”

“Advice needs to be together and not disparate”

“Newts get a bad press because many see them as a bar to development”

“Legal requirements and legal protection need clarifying”

“Recording of protected species needs to be systematic because it is difficult to find out if a protected species is on site already”

“Should it be that certain habitats have to be surveyed for certain species (e.g. barns for owls, ponds for newts)?”.

“A protected species survey should be a planning condition”

“Eight week determination deadline causes problems when requesting surveys and expecting the results back. Some species need surveying at certain times of year and applications come in at all times of the year.”

“8 week determination needs extending because an application form cannot be sent back if no protected species info is on it.”

“Prison sentences and stronger fines should be implemented to deter developers from ignoring protected species.”

“A very grey area for me and my colleagues in planning”

“English Nature’s position needs to be clarified when it comes to helping LPAs”

“There is an over-reliance on voluntary groups and private individuals to provide protected species information”

“English Nature needs to give valid reasons for refusal (e.g. newt surveys only March – July)”

“English Nature too prescriptive or too vague (e.g. requirements to survey ground water for 12/24 months will kill a project)”

“It is difficult and expensive to carry out protected species surveys borough-wide. Protected species can pop up unexpectedly and inconveniently”

“Shouldn’t we be seeking habitat protection rather than species protection?”

“Improved training in wildlife legislation is needed for LPA staff”

“Explanation of link between protected species legal requirements and the planning system”

“Better resources needed (e.g. more English Nature staff to deal with better database)”

“Main difficulty is the assessment of the importance of the impact on the protected species. English Nature are little or no help whatsoever”

“Clear guidance on the role/designation of SINCS [non-statutory wildlife sites]”

“There needs to be a balanced approach to this – only request protected species surveys when there is a strong suspicion of one occurring on the site”

“Are protected species details regarding a site confidential? If not they are open to abuse once the public gets their eyes on it and if there is a central database, who will police it from suffering such abuse”

“Developers can’t be trusted to have the onus placed on them from the start”

“Guidance for developers regarding the importance of seasons, eg spring for reptiles. We need a simple, coherent guideline which developers can understand and implement.”

“One problem is that the protected tree or species disappears off the site once someone knows its there. We had a case where there were old trees on site and we were about to put a TPO on them and they were felled”.

“English Nature needs more staff, better resources and the ability to behave pro-actively to take the initiative. Slow responses to consultees and inconsistency of answers is a sign of stress in English Nature’s system. There needs to be one central point of consultation. Why should our tax-payers consult many different conservation groups separately?”

“At the moment mitigation costs can greatly outweigh the cost of a fine for destroying the protected species or its habitat”.



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