



Lincolnshire

Wildlife Trust

Commenting on Planning Applications

The Lincolnshire Wildlife Trust monitors planning applications and comments on them when necessary. As a charity however, we have limited resources and so must prioritise which cases we become involved in. This is done according to where potential wildlife gains or losses are greatest and we will usually focus on applications affecting Local Wildlife Sites and other designated sites. We encourage people to take action to protect their local environment. Local Planning Authority (LPA) planning systems welcome people with an interest in a proposed development to comment on applications. You can help protect and enhance your local environment by influencing planning decisions to ensure that they benefit rather than harm wildlife and protect important habitats and species.

How do you know if a planning application has been submitted?

You may become aware of a planning application in a number of ways:

- You may have received a letter from your LPA notifying you of a nearby development proposal.
- You may see an application notification posted on the site or in the local paper.
- You may have been asked to join an action group.
- Maybe your neighbour has let you know he/she is making a planning application.
- You have seen it listed on your LPA web pages.

What is the process for a planning application?

- The planning application is submitted to the Local Planning Authority (LPA).
- The LPA publicises the application by advertising in the local newspaper and posting planning notices close to the site.
- The public and statutory consultees have 21 days to comment on the application. Statutory consultees with an interest in environmental matters include Natural England, the Environment Agency and the Forestry Commission.
- The application and comments are submitted to the Planning Committee which is comprised of elected members (Councillors) for determination. Small to medium sized applications may be 'delegated' for the case officer to determine, where there is no conflict with council policies and few objections have been received.

Note: While most developments are covered by LPAs it should be noted that nationally significant infrastructure projects (NSIPs), such as new harbours and offshore wind farms, are submitted to and examined by the Planning Inspectorate. For information on proposed NSIPs, the planning process and advice on how you can get involved visit infrastructure.planningportal.gov.uk/.



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What can you do?

Anyone can comment on a planning application but if you wish to make an impact it is good to be prepared and have as much supporting information as possible. If you are concerned that a proposed development will impact on wildlife and you want to get involved, you should:

- Make a note of the planning application number (it may look something like this: x/x/2014/2468/FUL). If you do not know the number ensure you have the address of the property/site.
- Be aware of the deadline for responses - if they arrive late they may not be given due consideration.
- Look at the application documents on the LPA website - if this is not possible contact the case officer to view the application and supporting documentation at the council offices.
- Read through the application to gain more information about the proposed development.
 - What type of permission is being applied for? (E.g. full, outline, reserved matters, discharge of conditions, or Environmental Impact Assessment screening and scoping).
 - Is the development on a site which has been allocated for development within the Local Plan?
 - Has an ecological survey been carried out? LPAs can request developers to carry out surveys if there are sufficient grounds to do so. If no wildlife information accompanies the application you may wish to contact the planning officer to discuss this.
 - Have there been any previous planning applications or proposals for the site? If an application has been refused in the past the reasons may still be valid.
- Contact the Lincolnshire Environmental Records Centre (LERC) at www.glnp.org.uk and request a report detailing species of conservation concern and information on sites and habitats they have for the area. If no records are found for an area it does not automatically mean it is of low ecological value, but simply means that LERC does not hold records for this area. A desk top study, including a data request from LERC, does not negate the need for an ecological survey by the applicant.
- Contact your local Councillor/MP to see if they are prepared to support your objection.
- Talk to other local residents to ensure they are informed about the development.
- Think about any additional information about the site that may assist the decision making process.



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What do I need to think about when I write my response?

Once you have looked at the application, gathered supporting information and decided you want to comment then the following may help you to formulate your response:

- Ensure your letter is addressed to the case officer and clearly states the planning application reference number and address.
- Clearly state whether you are objecting to or supporting an application and the reasoning for this decision.
- Keep the letter brief and polite; avoid using emotive language.
- Include information about important habitats or other wildlife found at the site. Remember to attach any supporting evidence. Photographs may help to illustrate your concerns.
- Ensure your letter is based on planning issues rather than personal opinion (see below for guidance on material planning considerations).
- Include any relevant policies from the Local Plan or national legislation.
- Could the application be changed to address your concerns?
- If possible, suggest how the impact of the development on local wildlife could be reduced and how it could benefit. Could conditions be attached to avoid or reduce harm, e.g. clearing vegetation outside of the bird breeding season, or to bring about benefits for wildlife?
- If you are writing as part of an action group, encourage all members to write individual letters. This will ensure that each one is counted as an individual response. You could offer support to members of the group by providing bullet points of all the issues they need to cover in their letters.
- Writing a letter or email will always be more effective than a telephone call, or many LPAs have online systems for submitting comments.



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Types of Planning Application

There are different types of planning application which may affect the comments you might wish to make:

Outline - outline planning applications establish the scale and nature of a development. Details such as landscaping, drainage or access may be 'reserved' to be dealt with at a later stage. Outline permission on its own does not confer the right to start works.

Full - a full planning application should include all of the information relating to the proposed development necessary for the LPA to make a decision.

EIA Screening - this is an application asking the LPA to determine whether the development requires a full Environmental Impact Assessment. What constitutes EIA development and what should be included in the EIA document are both covered by The Town and Country Planning (Environmental Impact Assessment) Regulations 2011.

Scoping - scoping applications usually include basic details of the proposed development to allow consultees the opportunity to highlight any issues which they feel should be covered in the full or outline application once it is submitted.

Reserved Matters - a reserved matters application follows an outline permission to deal with the details of larger developments omitted from the outline application. Typically these will include access, layout, scale and landscaping.

Discharge of Conditions - planning permissions will often attach conditions which must be satisfied either before development can begin, or during or post-works. Wildlife related conditions may include establishment of landscaping, provision of bird or bat boxes, or additional pre-commencement surveys. Sometimes LPAs will condition ecological surveys: case law has demonstrated (*Woolley v Cheshire East Borough Council*, October 2009) that this is not good practice and LPAs should require protected species surveys prior to determination so that they can make a fully informed decision on any potential impacts.

Listed Building Consent - listed building consent may be applied for independently or sometimes in tandem with a full planning permission. This will be required where a listed building is proposed to be demolished or where alteration or extension of a listed building may affect its character as a building of special architectural or historic interest.



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Legislation, policy and guidance

There is legislation, policy and guidance relating to the protection of wildlife that may be relevant to your submission:

National Policy

The National Planning Policy Framework (NPPF) came into effect March 2012 and replaced most previous planning guidance. It guides local planning authorities in producing their Local Plans. The Framework makes some over-arching statements about the natural environment and some specific points about protecting nature. It says:

- Planning has *an environmental role – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.*
- *Pursuing sustainable development involves...moving from a net loss of bio-diversity to achieving net gains for nature.*
- *Local planning authorities should set out a strategic approach in their Local Plans, planning positively for the creation, protection, enhancement and management of networks of biodiversity and green infrastructure.*
- *Opportunities to incorporate biodiversity in and around developments should be encouraged.*

To take a look at the NPPF visit www.gov.uk.

Guidance

Circular 06/05: Biodiversity and Geological Conservation - Statutory Obligations and Their Impact Within the Planning System

This circular provides administrative guidance on the application of the law relating to planning and nature conservation as it applies in England.

To view Circular 06/05 visit www.gov.uk.

Local Policy

The Local Plan contains policies against which planning applications will be tested and identifies areas for development. Applications for development within sites identified in the Local Plan still need planning permission but if they conform with the plan there is a presumption that they will go ahead. Ensuring strong nature conservation policies in Local Plans is the most important planning work we do and you can be involved too. Your local authority should have a Local Development Scheme which sets out how and when they will produce planning policy documents and issue consultations. Local policy documents should be available on the local authority website, they can usually be found in the Local Plan or Local Development Framework section of the planning pages.

Wildlife Legislation

You may also find the following wildlife legislation relevant to your response:

- Wildlife & Countryside Act 1981 (as amended)
- The Countryside and Rights of Way Act 2000
- Hedgerow Regulations 1997
- The Conservation of Habitats and Species Regulations 2010
- Badger Protection Act 1992

Visit ncc.defra.gov.uk for further information relating to the above legislation. Original legal documents should be consulted for definitive information.



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When wildlife concerns may affect a planning application

Some sites, habitats and species have specific protection under the law which can influence a planning application and the presence of any of these means that an ecological survey can be required before the planning application is considered. The survey should clearly state what methodology was used, what was found and how the planning application will affect the important features. If necessary, it should also suggest compensation or mitigation measures.

Habitats

European protection

Some UK sites are designated as sites of European significance and are called Special Protection Areas and/or Special Areas of Conservation. Together, these sites are referred to as the Natura 2000 network. These are some of the most important sites for wildlife in the country and receive very strong protection under the law. Detailed ecological information must be gathered if a proposed development is considered to have a likely significant effect on the site. Planning permission should only be given if the development will not adversely affect the integrity of the site, or if there are imperative reasons of overriding public interest, including those of a social or economic nature. Impacts must be compensated in order to maintain the overall integrity of the Natura 2000 network.

Sites of Special Scientific Interest (SSSIs)

SSSIs are nationally important sites and are protected under the Wildlife and Countryside Act 1981, the Countryside and Rights of Way (CROW) Act 2000 and the Natural Environment and Rural Communities (NERC) Act 2006. Natural England must be consulted on any application which may impact on a SSSI or before carrying out any operations which may damage a SSSI. This applies whether the operations are to take place within a SSSI boundary or outside it. You can find out where there are protected sites close to you by visiting the Defra's MAGIC website at magic.defra.gov.uk/. Alternatively the Lincolnshire Environmental Records Centre (LERC) can provide this information as part of a data request (see page 2).

Local Wildlife Sites (LWSs)

A Local Wildlife Site (LWS) is a non-statutory designation used to identify areas of substantive nature conservation value at a county level. Recognition as a LWS does not confer legal protection on the site, or right of access, however for any significant change of land use the planning authorities will expect the wildlife interest to be taken into account alongside other normal planning considerations. LWSs are selected by the Greater Lincolnshire Nature Partnership; for more information visit www.glnp.org.uk. LERC can provide information on LWSs as part of a data request (see page 2).

Undesignated sites

Most land has no specific designation. Planning applications on undesignated land are unlikely to be turned down on nature conservation grounds. They may be found to contain species protected by law (see below), however the presence of protected species such as bats or great-crested newts will usually only affect when and how the development takes place, not whether it takes place.

Tree Preservation Orders

These are made by the local authority and can only be issued on trees or groups of trees, that have historical, landscape or amenity value. In most cases consent from the LPA must be applied for to permit works to a tree covered by a TPO, including felling or pruning.

Hedgerow Regulations 1997

These protect certain 'important' hedgerows meeting a list of criteria from being removed or destroyed without permission from the local planning authority.



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Species

Protected species

Some species of plants and animals are given special legal protection by the following legislation:

- The Conservation of Habitats and Species Regulations 2010
- The Wildlife & Countryside Act 1981 (as amended)
- The Protection of Badgers Act 1992

This must be taken into account before planning permission can be granted. The presence of a protected species is unlikely to prevent a development taking place, however it will mean that the developer will have to take special measures to ensure that the species is protected. Mitigation often involves timing of works to avoid sensitive periods or employing techniques to reduce the risk of harm. Compensation or enhancement may be required to ensure that the site (or wider area) remains suitable for use by the species. The aim should be to retain the species on the site wherever possible, translocation to another suitable location should be a last resort. Where works are likely to affect a protected species, a licence may be required from Natural England to permit works.

Natural England has produced standing advice for local authorities on protected species to help them decide when there is a 'reasonable likelihood' of protected species being present, as well as advice on survey and mitigation. The standing advice is a material consideration in the determination of planning applications. The standing advice for protected species can be viewed on the Government's gov.uk website.

Lists of legally protected species are available on the UK's Joint Nature Conservation Committee's website jncc.defra.gov.uk/ and include amongst others:

Bats

Badgers

Barn owls

Otters

Water voles

Reptiles

Great crested newts

Breeding birds - It should be noted that all birds, their nest and eggs are protected by the Wildlife & Countryside Act 1981, and it is an offence to damage or destroy an active nest or prevent parent birds access to their nests.

In the case of birds such as the barn owl that are listed on Schedule 1 of the Act, it is an offence even to disturb the birds when at or near the nest.

If you believe a protected species to be under direct threat, contact your local Wildlife Crime Officer or call the Lincolnshire Police (Force Control and Command Centre) on 101 and obtain an incident number.

- If the threat is as a result of a proposed development, contact the planning officer dealing with the application at your local authority to ensure adequate procedures have been followed.
- You may also wish to contact Natural England who are the statutory authority for protected species.
- Some species have local action groups, such as the Lincolnshire Badger Group and Lincolnshire Bat Group, who may also be able to provide you with advice.

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Other species

While all species are important in maintaining a healthy, functioning ecosystem and may be of value to local residents, the majority of species such as rabbits, foxes and deer are not protected and as such they carry very limited weight in the planning process. You may wish to mention any significant populations which may be present on a development site, as mitigation may be possible, however there is no requirement for the LPA to take them into consideration in making their decision.

Biodiversity Action Plan habitats and species

The UK Biodiversity Action Plan (BAP) was the UK Government's response to the Convention on Biological Diversity and identified habitats and species of principle importance for biodiversity. Section 40 of the Natural Environment and Rural Communities (NERC) Act 2006 prescribes that public bodies have to have regard to biodiversity when carrying out their functions (this includes assessing planning applications as well as during their own activities). The UK Post-2010 Biodiversity Framework now succeeds the UK BAP, however, habitats and species that were identified as requiring action in the UK BAP continue to be regarded as conservation priorities in this framework and are included on the NERC Act 2006 section 41 list: Habitats and Species of Principal Importance in England. Inclusion of a habitat or species on the section 41 list confers no specific legal protection, however granting planning permission for a development that would destroy a significant area of a section 41 habitat or the habitat of a section 41 species may go against the Council's duty under section 40 of the NERC Act. Local Biodiversity Action Plans (such as the Lincolnshire BAP) are developed as a local, partnership response to the Convention on Biological Diversity. They describe the local biological resource, local priorities and the action needed to ensure a future for local biodiversity. Action taken contributes to achievement of national targets for biodiversity conservation. Further information can be found at jncc.defra.gov.uk/default.aspx?page=5155 or www.glnp.org.uk. The Lincolnshire Environmental Records Centre can provide information on BAP habitats and species as part of a data request (see page 2).

What happens after I have submitted my response?

After you have submitted your comments you should follow the application:

- Find out when the application will go to the Planning Committee.
- You are entitled to attend Planning Committee meetings to hear the applications being considered.
- Usually members of the public are given the opportunity to speak at committee meetings for 2 minutes. This time is strictly controlled so it is advisable to have a pre-written speech. The exact procedure will vary between councils, so talk to your LPA for more information about how you can get involved.

Decision Time

A decision on the application may be made at the Planning Committee meeting but this is not necessarily the end of the process. If the application is refused permission by the Planning Committee, the applicant has 28 days to decide whether they wish to appeal.

Appeals against a decision

If the applicant appeals against a refusal of planning permission, the application will be considered by the Planning Inspectorate. In England, third parties (e.g. the general public) cannot appeal against a planning decision. If you have made an objection to a planning application, which is then refused and the developer appeals, you have the right to make further representations to this appeal, and if an inquiry is held, to appear at the inquiry to make your case. Do not assume your original objections to the LPA will automatically be represented at this stage - it is best to resubmit your comments. The Planning Inspectorate or Local Planning Authority should get in contact with you, with the details of what you have to do when the appeal is lodged. For more information about the appeals process, see www.planningportal.gov.uk.