

# Pre-Application Environmental Advice & Guidance



**middle level**  
commissioners

## Points to Note:

### Introduction

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| 1 | A number of plant and animal species that are commonly found in and around drainage channels are protected by law. It would be an offence for anyone to <b><i>intentionally and/or recklessly</i></b> disturb many of these species, harm them or damage their habitats. The legislation relating to some of these protected species can be found overleaf and much more information is available on line. These laws apply to everyone, including home owners, public bodies, farmers, developers and members of the public.                                                                                                                            |
| 2 | It is the Applicants' responsibility to ensure that all work is assessed and progressed compliantly with all environmental Legislation and Regulation.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 3 | The <b>Environment Act 2021</b> strengthened the <b>Natural Environment and Rural Communities (NERC) Act 2006</b> which places a duty on internal drainage boards (IDBs) to " <i>have regard, so far as is consistent with the proper exercise of those functions, to the purpose of <b>conserving and enhancing biodiversity</b></i> ". Such a function includes consenting the work of others in and around drainage channels. Biodiversity, in terms of this duty, is not confined to protected species, the duty also particularly extends to habitats and species of principal importance (Section 41 species) but ultimately includes all species. |
| 4 | You may wish to pass this advice note onto any ecologist you engage to assist you with your application as it contains some information that may help them to provide you with the most appropriate advice and guidance.                                                                                                                                                                                                                                                                                                                                                                                                                                 |

### General Advice

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| 5 | Applications for culverts will be assessed strictly in line with our culverting policy which is available from the Middle Level Commissioners' website.                                                                                                            |
| 6 | You should never try to clear or "tidy up" a site prior to any surveys or work being undertaken as this carries a high risk of disturbing or harming a protected species or their habitat, which would be a criminal offence.                                      |
| 7 | A clear margin of 9m for IDB drains and 20m for main drains <b><i>must</i></b> be maintained to enable channel maintenance activities. No obstruction will be accepted within these areas, including riparian tree and shrub planting, pond creation, fencing etc. |
| 8 | We encourage the use of green approaches to channel engineering over more traditional hard-engineered solutions where possible. Guidance on this can be found online, search "Green approaches in river engineering".                                              |

### Securing Appropriate Ecological Advice

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| 9  | The proposed work, as outlined in the consent application must be assessed and, if necessary, supervised, by a suitably qualified and experienced ecologist. These assessments would be required before a consent application is considered to be complete. This is to ensure that any protected species in the area of works, such as water voles, otters, bats, great crested newts, plants etc. and priority species/habitats are identified and suitable mitigations are put in place to ensure that they are properly protected. All works must be compliant with all relevant wildlife and environmental law, including protected species licences secured where applicable prior to works proceeding. |
| 10 | If only a small area of a drainage ditch is to be impacted or disturbed by the proposed work, such as the installation of a short culvert, outfall headwall or posts/scaffolding etc. you may wish to request that your ecologist undertake a suitable but proportionate ecological survey focussing on determining the likely presence/absence of protected/priority species in and around the area of works, such as water voles, nesting birds, badgers, otters, bats, great crested newts, plants etc.                                                                                                                                                                                                   |

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| 11                                                        | Some small works, such as the installation of agricultural field drains may be able to be undertaken under the guidance of a qualified ecologist using a method statement, where there are known environmental sensitivities and the area of works is flexible and small. Your ecologist will be able to advise you on this.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 12                                                        | It can be efficient to ask any potential ecological consultant if they have any relevant protected species licences before you engage them to undertake initial surveys. If licenced mitigation work is then required, you may not then have to engage a different licenced ecologist to undertake the work, who may wish to redo some of the surveys. However, this is may not be possible and if you do have the opportunity to compare a number of quotes, it is advisable to do so.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 13                                                        | There are specific times within a year that ecological mitigations and surveys can take place so we recommend that you contact an ecologist ASAP to discuss your proposed work, as some work may need to be planned in months ahead. An ecological calendar is attached overleaf to help you understand when surveys and mitigations can take place.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 14                                                        | We are unfortunately not able to recommend any particular ecologists, but an internet search for ecologists in your area should help you. There is also a register of professional ecologists available from the CIEEM website: <a href="http://www.CIEEM.net">www.CIEEM.net</a>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 15                                                        | The submission of an ecological report is not always sufficient to secure consent. The report must be read carefully as it may recommend that other work takes place before works can proceed compliantly.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Biodiversity Enhancement vs. Biodiversity Net Gain</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 16                                                        | Applicants for drainage consent are not required to deliver formal biodiversity net gain (BNG) like applications for planning permission are. However, due to the IDBs statutory duty to <b>conserve &amp; enhance biodiversity</b> , the applicant will be required to demonstrate how biodiversity will be conserved and enhanced by the works. A qualified ecologist will be able to assist you on what enhancements will be appropriate and some further brief guidance is provided below.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 17                                                        | <p>Whilst the “duty to enhance” is not formally quantified like BNG is at 10%, we will follow many of the key principles of BNG to assess whether the proposed enhancements are appropriate and sufficient. For example:</p> <ul style="list-style-type: none"> <li>• The same type of habitat has to be enhanced/created as the habitat which is lost/impacted. It would not be acceptable to plant a hedge to replace the loss of a ditch as different species live in different habitats.</li> <li>• If a 10m length of open ditch is to be lost, an 11m length of ditch (i.e. <b>10% greater length</b>) of the <b>same quality</b> as that which has been lost, should be created as close as possible to the point of loss, and connected to the same system.</li> <li>• Otherwise, the <b>same length</b> of ditch should be created of a <b>better quality</b> than that which is to be lost, as close as possible to the point of loss, and connected to the same system.</li> </ul> |
| 18                                                        | <p>Examples of channel quality improvements that the IDB may accept could include:</p> <ul style="list-style-type: none"> <li>• Improvement of marginal vegetation with plug planting or pre-planted coir roll with native species</li> <li>• Creation of 2-stage channel to allow more room for wildlife, maintain a depth of open water and improve system capacity</li> <li>• Improving water level control for ditches that become seasonally dry</li> <li>• Improving the diversity of bankside vegetation</li> </ul> <p>These improvements must only be undertaken under the guidance of an ecologist so that no other species are negatively affected by the improvements.</p> <p>Your ecologist will be able to help you propose these improvements in your application but the IDB will always have to assess whether such improvements are compatible with local flood risk and water level management.</p>                                                                         |

| Water Quality & Discharges |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| 19                         | An IDB has a duty to consider the objectives of the <b>Water Framework Directive</b> , which is concerned with the health of our water courses and water quality. The IDB must consider whether any proposed discharge is likely to have a negative impact on water quality of the immediately receiving channel, as well as any other hydraulically linked channel further downstream, particularly any that are linked to designated sites. The water quality of any proposed discharge will be expected to ideally exceed but at least align to national standards and best practice for the development type.                      |
| 20                         | For most developments where land is to be sealed, such as residential and industrial developments, surface water will need to be attenuated and filtrated (i.e. through reedbed filtration/settlement ponds for example) prior to it being discharged into a drainage channel at an acceptable rate. The design of such SUDS (Sustainable Drainage Systems) will likely need to be larger in size to provide this water quality function, and will need at least 6m left undeveloped around them to ensure the facility can be properly maintained to retain this function. A management plan for such features will also be required. |

| Key Wildlife Legislation |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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| Water Voles              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|                          | <p>It is an offence under the <b>Wildlife &amp; Countryside Act 1981</b> in relation to water voles to:</p> <ul style="list-style-type: none"> <li>• Intentionally kill, injure or take any wild animal</li> <li>• Possess or control any live or dead wild animal or part derived from it</li> <li>• Recklessly destroy, damage, or obstruct access to any structure or place which any wild animal uses for shelter or protection</li> <li>• Recklessly disturb any such animal while it is occupying a structure or place which it uses for shelter or protection</li> <li>• Sell or advertise for sale, possess or transport for the purpose of sale, any live or dead wild animal or any part derived from it</li> </ul> <p><b>Offences carry a maximum penalty of imprisonment of up to 6 months or a fine up to £5,000, or both.</b></p>                                                                                                                                                                                                                                                                                                |
| Birds                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|                          | <p>It is an offence under the <b>Wildlife &amp; Countryside Act 1981</b> in England in relation to all bird species to intentionally:</p> <ul style="list-style-type: none"> <li>• kill, injure or take wild birds</li> <li>• take, damage or destroy a wild bird's nest while it's being used or built</li> <li>• take or destroy a wild bird's egg</li> <li>• possess, control or transport live or dead wild birds, or parts of them, or their eggs</li> <li>• sell wild birds or put them on display for sale</li> <li>• use prohibited methods to kill or take wild birds</li> </ul> <p>Some birds are given extra legal protection. These are known as Schedule 1 birds and include barn owl and kingfisher (a full list is overleaf). For these bird species it's also an offence to intentionally or recklessly:</p> <ul style="list-style-type: none"> <li>• disturb them while they're nesting, building a nest, in or near a nest that contains their young</li> <li>• disturb their dependent young</li> </ul> <p><b>You could get an unlimited fine and up to 6 months in prison for each offence if you're found guilty.</b></p> |

| Otters  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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|         | <p>Otters are protected under the <b>Conservation of Habitats and Species Regulations 2017</b>. It is an offence to:</p> <ul style="list-style-type: none"> <li>deliberately kill, injure, disturb or capture them</li> <li>damage or destroy their breeding sites and resting places - even if otters are not present</li> <li>possess, control or transport them (alive or dead)</li> </ul> <p>It is also an offence under the <b>Wildlife and Countryside Act 1981</b> to intentionally or recklessly:</p> <ul style="list-style-type: none"> <li>disturb otters while they occupy a structure or place used for shelter or protection</li> <li>obstruct access to a place of shelter or protection</li> </ul> <p>Otters are also offered some protection through the <b>Natural Environment and Rural Communities Act (2006)</b> and IDBs must have regard for their conservation.</p> <p><b>Offences could lead to a £5,000 fine or imprisonment for up to six months</b></p>                                                                                 |
| Bats    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|         | <p>Bats are protected via the <b>Conservation of Habitats and Species Regulations (2017) (as amended)</b>, <b>Wildlife and Countryside Act (WCA) (1981) Schedule 5 (as amended)</b> and <b>Wild Mammals Act (1996)</b>. It is an offence to:</p> <ul style="list-style-type: none"> <li>Deliberately capture, kill or injure any bat</li> <li>Damage or destroy a breeding site or resting place used by bats (whether bats are in it at the time or not)</li> <li>Deliberately disturb bats in a way that is likely to impair their ability to migrate, hibernate, survive or reproduce or in a way that is likely to affect significantly their local distribution or abundance</li> <li>Intentionally or recklessly disturb bats while they are occupying a place of shelter or protection, or attempt to do so</li> <li>Intentionally or recklessly obstruct access to any place of shelter or protection, or attempt to do so.</li> </ul> <p><b>You could get an unlimited fine and up to 6 months in prison for each offence if you're found guilty.</b></p> |
| Badgers |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|         | <p><b>Protection of Badgers Act 1992</b> makes it an offence to:</p> <ul style="list-style-type: none"> <li>Wilfully kill, injure or take, or attempt to kill, injure or take, a badger.</li> <li>Cruelly ill-treat a badger, dig for badgers, use badger tongs, use a firearm other than the type specified under the exceptions within the Act.</li> <li>Interfere with a badger sett by damaging, destroying, obstructing, causing dog a dog to enter a sett, disturbing an occupied sett - either by intent or by negligence.</li> <li>Sell or offer for sale a live badger, have possession or control of a live badger.</li> <li>Mark a badger or attach any ring, tag, or other marking device to a badger.</li> </ul> <p>Also, under the <b>Wildlife &amp; Countryside Act 1981</b> badgers are protected from certain methods of taking and killing.</p> <p><b>Offences could lead to a prison sentence for up to 6 months and an unlimited fine.</b></p>                                                                                                 |

| Reptiles |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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|          | <p>All reptiles are protected under the <b>Wildlife and Countryside Act 1981</b> which makes it an offence to intentionally kill or injure a reptile. Smooth snakes and sand lizards have additional protection which makes it an offence to intentionally or recklessly:</p> <ul style="list-style-type: none"> <li>• disturb them while they occupy a structure or place used for shelter or protection</li> <li>• obstruct access to a place of shelter or protection</li> </ul> <p>Also, under the <b>Conservation of Habitats and Species Regulations 2007</b> in relation to smooth snakes and sand lizards, it is an offence to:</p> <ul style="list-style-type: none"> <li>• deliberately kill, injure, disturb or capture them</li> <li>• deliberately take or destroy their eggs</li> <li>• damage or destroy their breeding sites and resting places</li> <li>• possess, control or transport them (alive or dead)</li> </ul> <p><b>Breaching these laws can result in fines up to £5000 per offence and/or a prison sentence.</b></p> |

## Ecological Calendar

|                    |            |                  | Winter                                                                                             |                | Spring                                                                                      |                                                                                                                     | Summer                                                                                                                        |                                       |                                                                                               | Autumn |                                                     |                            |                      |            |
|--------------------|------------|------------------|----------------------------------------------------------------------------------------------------|----------------|---------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|-----------------------------------------------------------------------------------------------|--------|-----------------------------------------------------|----------------------------|----------------------|------------|
| Species            | Item       | Licence          | Jan                                                                                                | Feb            | Mar                                                                                         | Apr                                                                                                                 | May                                                                                                                           | June                                  | July                                                                                          | Aug    | Sept                                                | Oct                        | Nov                  | Dec        |
| Habitats           | Surveys    | N                | Phase 1 Habitat only                                                                               |                |                                                                                             | Phase 1 Habitat Surveys, detailed community surveys e.g. NVC and other specialist surveys (e.g. mosses and lichens) |                                                                                                                               |                                       |                                                                                               |        |                                                     | Phase 1 Habitat only       |                      |            |
|                    | Mitigation | N                | Planting and Translocation                                                                         |                |                                                                                             | No mitigation for majority of species                                                                               |                                                                                                                               |                                       |                                                                                               |        |                                                     | Planting and Translocation |                      |            |
| Bats               | Surveys    | N/Y <sup>3</sup> | Inspection of hibernation, tree and building roosts                                                |                |                                                                                             |                                                                                                                     | Activity surveys and emergence counts, bat box checks (Aug). Continued inspection of potential roosts in trees and buildings. |                                       |                                                                                               |        | Inspection of hibernation, tree and building roosts |                            |                      |            |
|                    | Mitigation | Y <sup>4</sup>   | Works on maternity roosts                                                                          |                | Works on maternity roosts and hibernation roosts                                            |                                                                                                                     | Works on hibernation roosts only                                                                                              |                                       | Hibernation roost & maternity roost                                                           |        | Maternity roost work only                           |                            |                      |            |
| Birds              | Surveys    | N/Y <sup>1</sup> | Wintering Birds                                                                                    |                | Breeding/migrant species                                                                    |                                                                                                                     | Breeding birds                                                                                                                |                                       | Breeding/migrant species                                                                      |        | Wintering Birds                                     |                            |                      |            |
|                    | Mitigation | N                | Clearance may proceed with care                                                                    |                | No clearance works during breeding season – except where closely supervised by an ecologist |                                                                                                                     |                                                                                                                               |                                       |                                                                                               |        | Clearance may proceed with care                     |                            |                      |            |
| Badgers            | Surveys    | N                | All survey methods – spring and autumn optimal for activity surveys                                |                |                                                                                             |                                                                                                                     |                                                                                                                               |                                       |                                                                                               |        |                                                     |                            |                      |            |
|                    | Mitigation | Y <sup>2</sup>   | No disturbance of setts due to breeding - artificial sett constructions may take place             |                |                                                                                             |                                                                                                                     |                                                                                                                               |                                       | Closure of setts, works close by under relevant licence (e.g. development or land management) |        |                                                     |                            | See Jan to June      |            |
| Dormice            | Surveys    | N/Y <sup>5</sup> | Nut searches (sub-optimal)                                                                         |                | Nest searches (sub-optimal)                                                                 | Nest tube and box checks, nut searches and nest searches                                                            |                                                                                                                               |                                       |                                                                                               |        |                                                     | Nut and Nest searches      |                      |            |
|                    | Mitigation | Y <sup>4</sup>   | Generally no clearance work – sensitive coppicing work permissible                                 |                |                                                                                             |                                                                                                                     |                                                                                                                               |                                       | No clearance works                                                                            |        |                                                     | See Jan to May             |                      |            |
| Great Crested Newt | Surveys    | N/Y <sup>6</sup> | No Surveys                                                                                         |                | Ponds surveys for adults (min 4 visits)                                                     |                                                                                                                     |                                                                                                                               | Terrestrial habitat surveys (limited) |                                                                                               |        |                                                     | No Surveys                 |                      |            |
|                    | Mitigation | Y <sup>4</sup>   | No trapping works                                                                                  |                | Newt trapping in ponds and on land                                                          |                                                                                                                     |                                                                                                                               | Newt trapping on land only            |                                                                                               |        |                                                     | No trapping works          |                      |            |
| Reptiles           | Surveys    | N                | No Surveys                                                                                         |                | Activity surveys – key periods March to June and September                                  |                                                                                                                     |                                                                                                                               |                                       |                                                                                               |        |                                                     |                            | No Surveys           |            |
|                    | Mitigation | N                | Scrub clearance only                                                                               |                | Trapping and capture works ahead of clearance/ground disturbance                            |                                                                                                                     |                                                                                                                               |                                       |                                                                                               |        |                                                     |                            | Scrub clearance only |            |
| Water vole         | Surveys    | N                | No Surveys                                                                                         | Habitat survey | All survey methods - Detailed field survey inc. searches for prints/feeding remains         |                                                                                                                     |                                                                                                                               |                                       |                                                                                               |        |                                                     |                            | Habitat survey       | No Surveys |
|                    | Mitigation | Y                | Habitat disturbance to be avoided.                                                                 |                | Trapping/exclusion                                                                          | Works to be avoided except in exclusion zones                                                                       |                                                                                                                               |                                       | Trapping/exclusion                                                                            |        | Habitat disturbance to be avoided.                  |                            |                      |            |
| Otter              | Surveys    | N                | All survey methods - searches for holts, resting places and field signs (e.g. spraint, footprints) |                |                                                                                             |                                                                                                                     |                                                                                                                               |                                       |                                                                                               |        |                                                     |                            |                      |            |
|                    | Mitigation | Y <sup>4</sup>   | Restrictions only apply to works in areas close to known holts or resting places                   |                |                                                                                             |                                                                                                                     |                                                                                                                               |                                       |                                                                                               |        |                                                     |                            |                      |            |

[1] Survey of schedule 1 species (e.g. Red Kite) may require licence from Natural England if disturbance is likely to occur during breeding season

[2] Licences required to interfere with an active sett

[3] If bats are known to be present then a Natural England Survey licence will be required, e.g. inspecting roof void with known roost, or bat box inspections

[4] Natural England licences may be required where proposed works may result in harm to protected species (e.g. for development, mineral extraction, forestry etc)

[5] A Natural England survey licence is required to install and monitor nest tubes/dormouse boxes

[6] A Natural England survey licence is required to conduct presence/absence surveys if disturbing methods as used (e.g. bottle traps)

[7] A Natural England licence may be required if water vole, or their habitat are likely to be damaged or disturbed.