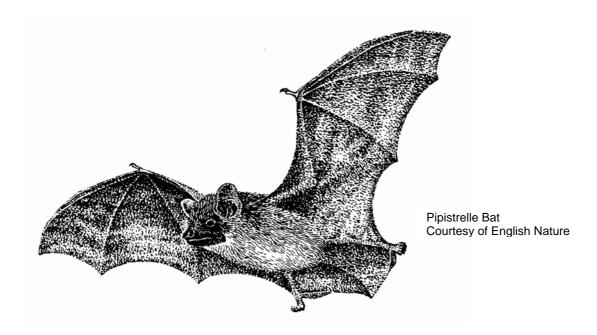


Conservation and Development Practice note

Protected Species and Development in the Peak District National Park



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Preface

Purpose and status of Practice note

The National Park Authority has a statutory duty to conserve and enhance the natural beauty and wildlife of the Peak District National Park. Many people value the biodiversity of this area and the Authority is keen for everyone to care for and pay special regard to these special characteristics when undertaking any development proposals. This is your chance to aid the conservation of the National Park.

Legislation protects threatened species and their habitats and all are a material consideration in the planning decision making process. Application of the Countryside and Rights of Way (CRoW) Act 2000 necessitates, where appropriate, submission of Protected species surveys prior to the determination of planning applications. The Practice note offers a procedure that targets likely habitats but also protects them if they are found elsewhere. It should give applicants and developers greater certainty and avoid delays in processing applications. The Authority's Practice note was adopted by the Authority's Planning Committee on 20 May 2005 but it does not have the legal status of a Development Plan or Supplementary Planning Document.

A high standard of development is easier to achieve if planning applications are of a high standard including detailed plans and background information. The Local Plan (www.peakdistrict.org) (sections 2.11 and 2.12) sets out the Authority's requirements with regard to the standard of planning applications. Existing planning policies already guide applicants to the need to consider particular wildlife characteristics on a given site. This note explains the process of survey and analysis that will be required where important species are identified. Where these matters have not been adequately considered within the submitted planning application the Authority may require further details to be submitted before the application can be formally registered.

Key aims of the new procedures

- To ensure that measures are taken to conserve Protected species through the planning process.
- To help ensure that applicants do not breach Protected species legislation by addressing this
 as part of the planning process and to prevent unexpected interruptions to building works due
 to Protected species being found once applications have been approved.
- To minimise the cost of surveys to applicants by ensuring only the most likely cases require surveys.
- To speed up the application process for applicants.

Part 1 – Protected Species and the Planning Process within the Peak District National Park

1.1 Introduction

The Peak District's wildlife is a valued characteristic that is important to local people and visitors alike and one of the statutory duties of the National Park Authority is to conserve this natural heritage for future generations to enjoy.

A number of plant and animal species present within the National Park are afforded Protected species status by virtue of several different pieces of UK national and European legislation. Within the National Park animals that enjoy statutory protection include bats, all breeding birds, great crested newts, water voles, otters and badgers. All, and in particular bats, may be affected by new development and the presence of a Protected species is a material consideration in the decision making process. Consequently the planning system has an important role in their conservation.

This note explains how the National Park Authority is acting to comply with the legislation regarding Protected species and their habitats within the planning process. Relevant protected animal species are listed, the legislation is reviewed and the need for species surveys explained. The note sets out the procedure, which must be followed as a pre requisite for validation of a planning or other application. This procedure is shown in the flow diagram on page 5.

Please note that the underlying principle is to seek species surveys only where the Authority believes that a Protected species is likely to be affected. It is therefore, a pragmatic interpretation of relevant legislation for the purposes of the planning system. If a Protected species is found in other circumstances then those involved must contact English Nature irrespective of whether planning, listed building or Conservation Area consent has been granted.

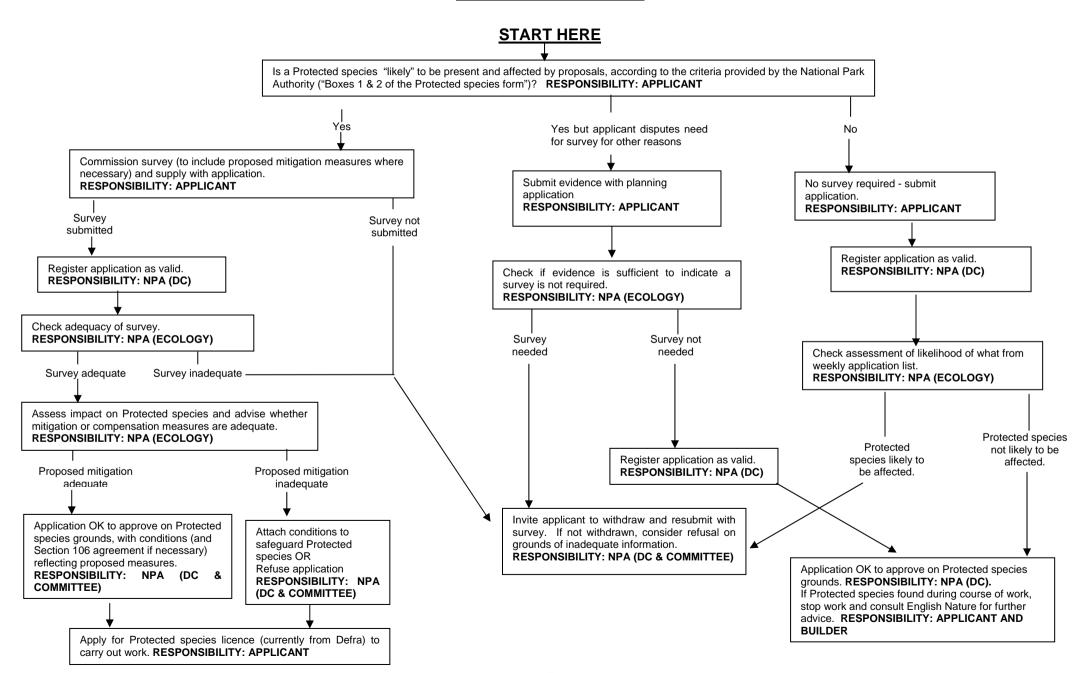
Most colonies of protected plant species lie within conserved sites (for example nature reserves) or have been recorded by the National Park Authority. Development proposals that may affect protected plant species are checked against records and taken into account when considering proposals, so they are not described in this note.

1.2 Applications for development and Protected species

The full procedure which the Authority has adopted, for considering Protected species in the planning process is shown in the flow diagram on the following page. It is explained, along with a simplified flow diagram, in the Protected species form (Appendix 1). Applicants will need to carefully follow the instructions on this form, which accompanies the planning application form.

Applications for Planning, listed building and conservation area consent will not be registered unless the Protected species form (Appendix 1) is received fully completed and signed by the applicant or agent.

PEAK DISTRICT NATIONAL PARK AUTHORITY – FULL PROCEDURE FOR CONSIDERING THE PROTECTED SPECIES AND PLANNING PROPOSALS



Part 2 – Background information

2.1 Protected species legislation

European protected species

Several animal and plant species have European protected species status as a result of being listed in Annex IV to EC Directive 92/43/EEC ('the Habitats Directive'). **The Peak District species concerned are:**

- All bats
- Otters
- Great Crested Newts

They are protected by the Conservation (Natural Habitats &c.) Regulations 1994 which transposes the Habitats Directive into UK law. In addition they are also protected by the Wildlife and Countryside Act 1981 (as amended). It is an offence to deliberately capture, kill or disturb a European protected species, or to recklessly damage or destroy the breeding site or resting place of such an animal.

There are now strict licensing procedures in place nationally for any development proposal which is likely to result in the disturbance or killing of individuals or the destruction of the places that they use for shelter.

Species protected by the Wildlife and Countryside Act

Wild Birds

Under the Wildlife & Countryside Act 1981 **all** wild birds, with the exception of those defined as quarry or pest species, are protected from:

- (a) intentional or reckless killing, injuring or taking.
- (b) taking, damaging or destroying eggs or the nest (whilst being built or in use).

If the act is an incidental result of a lawful operation (eg development which has planning permission) and could not reasonably been avoided it is not an offence.

For example, if a developer is granted planning permission but needs to clear scrub before beginning building works but finds nesting birds, they would not be guilty of an offence provided reasonable measures had been taken to:

- (a) determine their presence, i.e. a technically competent survey.
- (b) avoid harm.

If this work was undertaken without proper consideration of the risk to birds, or indeed any other Protected species, then this action could be interpreted as being reckless which would then mean that an offence had in fact been committed. This is a major change to the way in which the legislation operated prior to the enactment of the Countryside and Rights of Way Act (2000) where intent had to be proved. It is English Nature's view that a failure to complete adequate surveys prior to the commencement of any such work would constitute a failure to recognise an obvious risk.

Birds listed on Schedule 1 of the 1981 Wildlife and Countryside Act (as amended) are afforded additional protection and it is also an offence to disturb Schedule 1 birds or their dependent young when nesting. Schedule 1 birds occurring in the Peak District are listed in table 1. The only species on this list likely to be affected by building developments is the barn owl. Other species may be affected by other types of development.

Table 1 Schedule 1 birds occurring regularly in the Peak District

Common Name	Usual Breeding Habitat			
Barn Owl	Barns / mature trees			
Crossbill		Woodland		
Goshawk		Woodland		
Hen Harrier		Moorland		
Hobby		Woodland /trees		
Kingfisher		Riverbanks		
Little Ringed Plover		Lagoons / reservoirs / ponds / pools		
Merlin		Moorland		
Peregrine		Rock faces		
Quail		Tall grassland		

Badgers

Both badgers and their setts are protected by law. The Protection of Badgers Act 1992 brings together all the previous legislation specific to badgers (except their inclusion on Schedule 6 of the 1981 Wildlife and Countryside Act as amended). The legislation is largely aimed at protecting badgers from deliberate persecution and harm but it also covers development. Killing or harming badgers, disturbing badgers in their setts and damaging or destroying a sett are all offences under the Act.

Bats in the Peak District

Bats are found throughout the National Park. They are found in urban areas as well as in the wider countryside although they tend to be associated with more sheltered environments such as river valleys and woodland edges.

Bat numbers are declining and this is due in part to the loss of their roosts. The preferred roost sites of a bat depends on the species and generally falls into one of the following categories:

- (a) buildings, e.g. roof spaces, cavity walls and cellars of houses, mortice joints of barns & churches
- (b) trees both living and dead
- (c) underground sites, e.g. tunnels, caves, mines, mine shafts, ice-houses & culverts
- (d) other structures, e.g. bridges, cooling towers, quarry faces & follies

Bats feed at night on insects. In winter, when there is a lack of available food, bats hibernate in roosts to save energy. In spring they leave the hibernation sites and from late May until October the females congregate in maternity roosts to rear their young. Bats use a variety of roost sites throughout the year as they require different conditions for hibernating and breeding. However, they tend to return to the same roost sites each year if conditions remain suitable. The location of a roost is often indicated by the presence of their droppings even if the bats themselves are not present.



Pipistrelle Bat Courtesy of English Nature

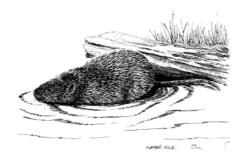
Other Animals

The species offered protection in Schedule 5 of the Wildlife and Countryside Act 1981 are also listed in table 2. For those with full protection it is an offence for anyone to:

- (a) intentionally or recklessly kill, injure or take wild animals
- (b) intentionally or recklessly damage destroy or obstruct places used for shelter or protection

Table 2 Animals protected under Schedule 5 of the Wildlife and Countryside Act 1981 which occur in Peak District National Park					
Common Name	Scientific Name	Level of Protection			
Mammals					
Water vole	Arvicola terrestris	Damage/destruction of place of shelter/ protection S.9(4)(a) and disturbance while in a place of shelter (S.9(4)(b)) only			
Otter	Lutra lutra	Full protection			
All bats	Vespertilionidae and Rhinolophidae	Full protection			
Reptiles					
Slow worm	Anguis fragilis	Killing, injuring, S.9(1) (part) and sale S.9(5) only			
Grass snake	Natrix natrix	Killing, injuring, S.9(1) (part) and sale S.9(5) only			
Adder	Vipera berus	Killing, injuring, S.9(1) (part) and sale S.9(5) only			
Common lizard	Lacerta vivipara	Killing, injuring, S.9(1) (part) and sale S.9(5) only			
Amphibians					
Great crested (warty) newt	Triturus cristatus	Full protection			

(N.B. species protected only by virtue of selling or taking them are not included)



Water Vole Courtesy of English Nature

2.2 Protected species & the Role of Planning Authorities

The new Government Circular on Biodiversity and Geological Conservation ODPM Circular 06/2005 – Defra Circular 01/2005 paragraph 98 states that "The presence of a Protected species is a material consideration when a planning authority is considering a development proposal that if carried out, would be likely to result in harm to the species or its habitat". It also indicates that further strict provisions apply where a European protected species is concerned.

The protection offered by the legislation is additional to that offered by the planning system. Developments have the potential to destroy or degrade the habitats of Protected species. Most species covered by the legislation are protected because they are subject to declines in their populations. Changes in land use that have failed to take account of Protected species have contributed to that decline. The planning system has, therefore, an important role to play in the conservation of Protected species. It should be noted that even where planning permission is granted, Protected species legislation still applies and developers must be able to demonstrate that they have taken reasonable measures to avoid harm.

In considering planning applications that may affect European protected species, local planning authorities are bound by Regulation 3(4) of the Conservation (Natural Habitats, &c.) Regulations 1994 to have regard to the Habitats Directive when exercising their functions.

Proposals affecting European protected species <u>must pass three tests</u> before they may derogate from the protection afforded by the Habitats Directive and the Conservation Regulations 1994. The three tests are:

- That the development is 'in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment' (Regulation 44(2)(e));
- That there is 'no satisfactory alternative' (Regulation 44(3)(a));
- That the derogation is 'not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range' (Regulation 44(3)(b)). Favourable conservation status is defined by Article 1(I) of the Habitats Directive, which is reproduced in Annex G of PPG9.

For developments affecting European protected species, a licence (currently from Defra) may be needed as well as planning permission. This applies when the proposal affects non-domestic or derelict structures. The licence allows the developer to disturb a known roost, but planning permission must be granted before the licence application is made. A licence must be gained before any work can proceed and in order to grant a licence Defra will seek mitigation assurances. These will normally be proposed by the ecological consultant who carries out the Protected species survey and they may also be a condition of planning permission being granted. It is not necessary to consult with English Nature in relation to such proposals as they are consulted by Defra as part of the licensing process.

2.3 Determining when Protected species surveys are required

English Nature strongly recommend that the Planning Authority routinely request further information from applicants to determine the status of any European protected species within an application area. It recommends that, as a minimum, this information should include a detailed survey, method statement and mitigation strategy for any impacts that will either affect the species directly or the areas that they use for shelter. The case of R v Cornwall County Council ex parte Jill Hardy made it clear that surveys for Protected species should be undertaken prior to determination of a planning application, rather than deferred to conditions following the granting of planning permission.



Swallow skimming water Illustration by Dan Powell Courtesv of the RSPB

The majority of planning cases in the Peak District where a Protected species survey is likely to be needed relate to bats. In determining when a Protected species survey is required the Authority has been mindful of the need to balance likelihood of Protected species being present against reasonable costs to the applicant. The English Nature guidelines on when a Protected species survey is required were taken and refined as a result of extensive surveys by NPA staff during 2003-4. In the Peak District bats were found to be most likely inhabiting pre 1939 non–industrial buildings, especially near water and mature trees. This resulted in the criteria set out in Box 1 of the Protected species form (Appendix 1).

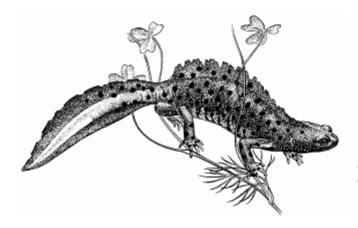
During 2004 these criteria were applied to all planning applications received by the authority (over 1300) and 61 Protected species surveys were requested (only 4.5% of all applications). Of these 61 surveys 57% found bats present and 43% did not. Analysis of the results suggests that any further refinement of the criteria to increase the percentage of positive results would not be possible without overlooking a significant amount of sites with bats present. The overall results of the requested surveys will however be periodically reviewed in order to asses for any future change.

In order to reduce the burden on applicants and enable the Authority to process applications more quickly, surveys (including proposed mitigation measures where necessary) will be a prerequisite for registration of applications where bats are likely to be affected by the proposed development (development types as listed in Box1 of the Protected species form).

The Authority's ecologist considers that the same measures apply for barn owls. For great crested newts, otters, breeding birds and water voles the requirement for applicants will be limited to a pre-application survey where developments will disturb rivers, streams, canals, ditches, lakes, ponds or other aquatic habitats, hedgerows, scrub (10 or more bushes) or woodland.

The National Park Ecology team will check the adequacy of surveys once applications are registered. The minimum survey requirements are listed on the Protected species form. The Ecology Team will also continue to check the weekly lists of applications for potential Protected species and other ecological implications. It should be noted that where a survey is required but has not been provided, the application will not be registered. In addition, if subsequent to the registration of an application it becomes apparent that a survey is required, it would be reasonable to refuse the application if an appropriate survey is not then submitted.

It should be noted that the Authority will not see mitigation as justification for development but merely as a way of preventing, reducing and offsetting adverse impacts if planning permission is granted (having applied the three tests specified in the Habitats Directive and the Conservation Regulations 1994 where relevant).



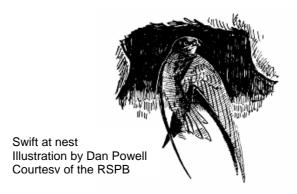
Great Crested Newt Courtesy of English Nature

2.4 Discovery of Protected species During Development

The procedure described above is seen as the most efficient way of dealing with Protected species. However, it is possible that a Protected species may be found after planning permission has been granted. If this does occur the landowner/tenant/developer should stop work and contact English Nature for further advice.



Courtesv of the RSPB



Part 3 – Positive measures for the long-term protection of endangered species

PDNPA Development Control and Ecology teams are working together to explore future ways in which the planning system can be used to create and enhance wildlife habitats within the National Park; thus helping to help achieve the objectives of the Peak District Local Biodiversity Action Plan (LBAP).

This plan provides a structured partnership framework for the conservation of both species and habitats within the Peak District. It identifies priorities and helps to guide policy and actions of all those who influence the wildlife within the area, including the National Park Authority. Both Water Voles and White-Clawed Crayfish have species action plans in the LBAP. The new NPA procedures for developments affecting these Protected species are guided by the objectives and targets outlined in the species action plans. Currently there is no bat LBAP, but the Peak District Biodiversity Action Partnership is considering proposals to create a new Villages, Buildings and Gardens Habitat Action Plan. This would be designed to include all bat species as well as birds such as swifts swallows, house martins and barn owls as well as ponds and other garden habitats. This habitat plan would recognise the wildlife value of buildings, villages and gardens in the National Park and be a positive step forward in wildlife conservation. As the LBAP provides a framework for conservation action this new Habitat Action Plan would give direction and impetus to the current movement towards using the planning system to create and enhance wildlife habitats.



Long-eared bat Courtesy of English Nature

The wildlife potential of new buildings is currently under-exploited. The use of positive mitigation measures for example is only required where bats are known to be using a building. If the inclusion of wildlife features such as bat roosts and bird nesting sites within the design of developments was more widespread the current trend towards the loss of available habitat could be reversed. Much could be achieved for example through encouraging the use of special materials and features such as bat bricks and roost slates in new developments where appropriate.

The options for positive enhancement are not limited to bats and birds, other habitats such as wetlands and grasslands could also be created or enhanced through the planning system. The use of natural sewerage treatment systems is just one example of many. The methods and materials used in species mitigation and habitat enhancement are discussed in detail in English Nature's Bat mitigation Guidelines and other publications listed at the end of this document.



Protected species form Page 1

Peak District National Park Protected Species Form

The Peak District's wildlife is a valued characteristic that is important to local people and visitors alike. One of the statutory duties of the National Park Authority is to conserve this natural heritage for future generations to enjoy. The Protected species form will both speed up the planning process for applicants and assist in wildlife conservation.

Applications for Planning and Listed Building Consent will not be registered unless 4 copies of the form are received fully completed and signed by the applicant or agent. Only 1 completed set of forms is required for applications involving both Planning and Listed Building Consent.

Please include 4 copies of the completed form with your planning application using the notes (page 2) and the flow diagram (page 3) to help you.

Name of Applicant:	Name of Agent:				
Address of Applicant:	Address of Agent:				
Address of Proposed Develo	oment:				
Brief Description of Nature of	Proposed Development				
blief bescription of Nature of	Troposed Development.				
Planning Portal Reference Number (if applicable): PP					
Tick Boxes that apply					
I have read the information survey is required for the app	in this document on Protected species and do not believe a Protected species lication				
(i) the proposed	the proposed development is not a type listed in Box 1 or 2.				
documents e	other reasons - Please specify and attach supporting information (photographs, historical documents etc). Please note if you tick this box the registration of your application will be delayed while confirmation checks are made.				
OR I have read the enclosed guidance and the proposed development is listed in Box 1 and/or 2 as one which may have an impact on a Protected species.					
(iii) I enclose 4 presence is o	copies of a relevant Protected species survey and mitigation report (where confirmed).				
Signature of applicant or ag	gent:				
Date:					
Davidonment Central Service	o: National Bark Office Poology Bood, Bakayyall DE45 1AE				

Development Control Services: National Park Office, Baslow Road, Bakewell DE45 1AE. Tel 01629 816200

Protected species form accompanying notes

A high standard of development is easier to achieve if planning applications are of a high standard including background information and detailed plans. The Local Plan (www.peakdistrict.org) (sections 2.11 and 2.12) sets out the Authority's requirements with regard to the standard of planning applications. Existing planning policies already guide applicants to the need to consider particular wildlife characteristics on a given site. This note explains the process of survey and analysis that will be required where important species are identified. Where these matters have not been adequately considered within the submitted planning application the Authority will require further details to be submitted before the application can be formally registered.

Within the National Park certain species (see Boxes 1 and 2 on page 4) enjoy statutory Protected species status under UK National and European legislation. All, and in particular bats, may be affected by new development. The presence of a Protected species is a material consideration in the decision making process and therefore the planning system has an important role in their conservation.

The underlying principle of the Peak District National Park's process is to seek Protected species surveys only where the Authority believes that a Protected species is likely to be affected.

1. Key aims of the new procedures

- To ensure that measures to conserve Protected species are taken through the planning process.
- To help ensure that applicants do not breach Protected species legislation by addressing this as part of the
 planning process and to prevent unexpected interruptions to building works due to Protected species being
 found once applications have been approved.
- To minimise the cost of surveys to applicants by ensuring only the most likely cases require surveys.
- To speed up the application process for applicants.

2. What you need to do

The first step is deciding if a proposed development will affect any Protected species or their habitats. In most cases there will be no impact, but bats and other Protected species can be present in certain properties and not evident without the use of specialised survey techniques.

For all the developments listed in Box 1 an appropriate Protected species survey by a suitably qualified ecologist <u>will normally be required</u>. This is because the Park Authority needs to be aware of the possible impact of the work on any Protected species. A list of ecological consultants able to undertake such work is available from the PDNPA (there may also be others in the area). The PDNPA will need to be satisfied that the survey is adequate. All surveys will therefore need:

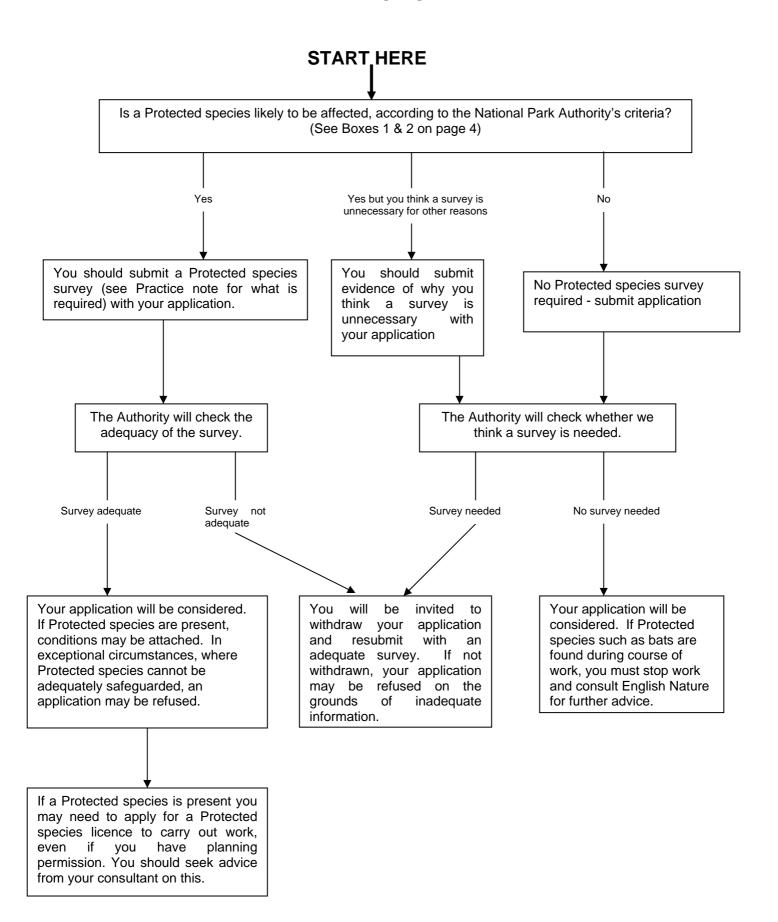
- Evidence that they have been carried out by a competent and suitably qualified person (generally someone holding a Protected species licence) and that appropriate techniques, time and care has been taken to determine the presence of Protected species and signs of their use.
- If Protected species are found, the location within the site, a description of the nature of their use, the likely impact of the proposed development and an appropriate mitigation plan.

Do not attempt to exclude or remove Protected species - you may be breaking the law. Experienced surveyors can often tell if a Protected species has been present.

Four copies of the survey should be submitted with the application forms.

For all developments listed in Box 2 a Protected species survey may also be required. You are advised to contact the PDNPA Ecology Team for further advice.

PROTECTED SPECIES AND PLANNING PROPOSALS - WHAT YOU NEED TO DO



Box 1 Developments with a possible impact on bats or barn owls

- (A) Houses built before 1939 Changes affecting the roof (e.g. house extensions, loft conversions, reroofing, etc) or demolitions
- (B) Barns and other traditional buildings Changes to or demolition of other buildings built before 1939.
- **(C) Buildings with complex roof structures of any age** Changes or demolitions to buildings such as schools, offices, hostels, pubs and hotels, hospitals etc.
- (D) Developments to listed buildings affecting walls or roof
- (E) Developments involving the loss of mature trees
- (F) Developments affecting buildings where bats and owls are known to be present

Exceptions to A -D only (where a Protected species survey is not required)

Isolated upland buildings or those more than 200m from the nearest trees

Buildings with missing or metal/prefabricated sheet roofs

Recently re-roofed buildings (last 10 years)

Porches or other minor structure applications and minor changes to existing roofs

Active industrial premises

Box 2 Developments with a possible impact on great crested newts, otters, breeding birds and water voles

- (A) All disturbances to rivers, streams, canals, ditches, lakes, ponds and other aquatic habitats.
- (B) All disturbances to hedgerows, scrub (10 or more bushes) or woodland.

3. What if a Protected species is found?

If Protected species are found by your ecological surveyor they must include details of MEASURES TO AVOID, MITIGATE OR COMPENSATE FOR POTENTIAL HARM TO THESE SPECIES with the report. This depends on the species found and extent of use but generally it will include recommendations on the timing of operations, the methods used and additional recommendations on how wildlife habitats can be incorporated into the final design.

The presence of a Protected species need not detrimentally affect the potential to gain planning permission. The PDNPA planning officers will consider the surveyors recommendations in assessing your application. You may have to make some changes to your initial plans and/or apply for a DEFRA Licence to allow works to proceed. In the majority of cases, however, Protected species can be accommodated within development proposals.

Please note that the species listed and their roosts/breeding sites are protected from destruction or disturbance by the law, irrespective of planning permission. This includes intentional and reckless disturbance (reckless disturbance includes the failure to follow advice regarding known roosts). Only licensed workers are allowed to disturb or handle bats and great crested newts and a licence is required from Defra to enter a known bat roost. Breeding birds are also protected by law.

For further information on the need for Protected species surveys and booklets on bats, badgers or great crested newts, telephone 01629 816383

Appendix 2: Useful contacts

Local and national contacts

English Nature Peak District & Derbyshire Team, Endcliffe, Deepdale Business Park, Ashford Road, Bakewell DE45 1GT Tel 01629 816640; e mail peak.derbys@english-nature.org.uk

The PDNPA Ecology Team and Development Control Services: National Park Office, Baslow Road, Bakewell DE45 1AE. Tel 01629 816200.

Web site: www.peakdistrict.org for application forms and other information

Derbyshire Bat Group www.batsinderbyshire.org.uk

Bat Conservation Trust, 15 Cloisters house, 8 Battersea Park Road, London SW8 4BG Tel 0845 1300228 www.bats.org.uk

Appendix 3: Essential reading

English Natures Bat Mitigation guidelines. Downloadable from www.english-nature.org.uk or for paper copies phone 01733 455101

Bat workers Manual, JNCC 2004 A.J. Mitchell Jones and A.P. Mcleish

Habitat management for bats, JNCC, 2001

Bat Conservation Trust, 2002, Bats and Buildings in the UK

Peak District National Park Local Plan, Adopted March 2001

Peak District National Park Protected Species Practice Note, August 2005

Peak District National Park Structure Plan, Adopted 1994

Planning Policy Statement 9: Biodiversity and Geological Conservation, ODPM August 2005

Government Circular: Biodiversity and Geological Conservation – Statutory obligations and their impact within the planning system, ODPM circular 06/2005 – Defra circular 01/2005

Acknowledgements

The Peak District National Park Authority is very grateful to English Nature and the RSPB for granting permission for the use of line drawings in the production of the Practice note. The Peak District National Park Authority would also like to thank English Nature and Derbyshire Bat Group for their help and advice.

Produced by the Peak District National Park Authority August 2005