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## Getting involved in planning in Northern Ireland: Protecting Birds from Development

This leaflet explains what can and cannot be done to protect birds, their nests and habitat from development proposals and other threats.

### Key points are:

- The presence of nesting birds can generally only delay development, not prevent it. There are exceptions to this.
- The local council must consider wildlife when making planning decisions. Do contribute to the decision making process with your evidence of the wildlife on the site, but be realistic.
- A wildlife designation on a site weighs far more heavily than the simple fact that wildlife is present; find out what designations exist locally, or consider whether it is possible to demonstrate that a site should be designated based on accepted criteria.
- If you think development may go ahead despite your concerns, tell your local council how they could use planning conditions to reduce or avoid harm to wildlife, or compensate for lost habitats by creating new areas nearby.

### The Wildlife Order

The Wildlife (Northern Ireland) Order 1985 (as amended) is the main piece of legislation that protects all wild birds in Northern Ireland. It is illegal to intentionally or recklessly take, injure or kill any wild bird, or to take, damage or destroy an active nest or its contents.

More than 60 species of bird, specified on Schedule 1 of the Wildlife Order, are given additional protection either because they have a history of persecution or because they are particularly rare. These birds are protected in exactly the same way as other species but the penalties for anyone convicted of offences concerning them are substantially greater.

Remember that for most birds, the legal protection is on the bird, not on its habitat. Only while a bird is nesting does the nest site receive legal protection. Consequently, the presence of nesting birds can only delay a development, not prevent it. The nest site can be destroyed quite legally (if it does not have any other form of protection) when the bird has finished breeding for that year and is no longer using the nest. Certain birds of prey, listed under Schedule A1, are the exception to this as these birds re-use their nests and so their nests are protected all year.

Birds' breeding seasons vary significantly, depending on the species and on weather conditions. The law does not define a bird's breeding season. The law protects all active nests regardless of the time of year. Since most nesting attempts take place in spring and early summer, we recommend that any work that would risk destruction of active nests, such as tree felling and clearance of scrub, should be avoided between 1 March and 31 August. Work outside this period runs less risk of destroying active nests, but since birds have been recorded nesting in every month of the year, care is needed at all times to avoid committing an offence.

Article 4 of the Wildlife Order states that a person is committing a crime if the damage or disturbance is intentional or reckless. This means someone cannot claim they didn't know the nest was there unless they took reasonable measures to check. If you know that an area to be developed contains an active bird's nest, it is important to immediately inform the people carrying out the work, and most importantly to document that you have informed them of this. If a nest is destroyed as the incidental result of an otherwise legal activity that could not have reasonably been avoided, no crime was committed. However, if you suspect that a crime has been committed, you should contact your local PSNI station immediately on 101. Explain that you believe a crime is taking place, contrary to the Wildlife (NI) Order, and make sure you include details of location, time, date, who you suspect is involved and any other information which could help the police (for example photos). Be sure to ask for the Police 'Command and Control' reference number for your records.

Planning permission does not override the Wildlife Order. Licences for certain works which would affect breeding birds may be obtained from the Northern Ireland Environment Agency (NIEA). These works are defined under article 18 of the Wildlife Order and include reasons for public health and safety. There is no provision in the legislation for nest removal specifically for building work, and therefore a licence may not be granted.

Even minor projects that may or may not require planning permission can risk contravening the Wildlife Order. It is important to take nesting birds into consideration when planning any kind of home improvement work.

### **What are red-listed birds?**

Red-listed birds are species of high conservation concern. Along with Birdwatch Ireland (BWI), we've agreed a list of priority bird species for conservation action in Ireland. The conservation status of each bird is assessed every five years, and each species is assigned to a red, amber or green list depending on how serious their need for conservation action is.

Red-listing does not mean a species is about to become extinct – it means that for a variety of reasons, the bird's future as an Irish species is at risk. This helps us and others decide conservation priorities. Following long-term declines of over 50%, some of our most familiar birds are red listed, such as barn owl, lapwing, curlew and yellowhammer.

You may think a development should be stopped because red-listed birds like these are present. However, being red or amber listed does not afford a bird species any extra legal protection or offer automatic protection to the habitat the birds use.

The importance the planning authority gives to wildlife in the decisions they make about development depends on a realistic assessment of the site's value relative to the general area.

To help them to make an informed decision, it is always worth giving them a list of species present on the site – it may be the only data available.

However, be realistic: records that are decades old or about escaped species are of little relevance. Remember that even if a familiar red-listed bird such as the lapwing is present, the site will hold only a minute fraction of the total Irish population, and similar areas of habitat may have the same species. Our conservation work for red-listed birds focuses on the main cause of their declines, which for many is the way the wider countryside was managed under European agricultural policy, rather than the loss of open land to development.

## **Northern Ireland Biodiversity Strategy**

The Biodiversity Action Plan (BAP) process is the UK's response to the Convention on Biological Diversity, signed in 1992. The Northern Ireland Biodiversity Strategy has been produced in response to this and outlines the objective to halt the loss of biodiversity in Northern Ireland. Under this strategy, Species and Habitat Action Plans (SAPs and HAPs) have been produced as a mechanism to conserve those species and habitats identified as in greatest need of conservation action.

If you are intending to object to a planning application on the grounds of the wildlife interest of the site, it is useful to find out if a particular species has a SAP associated with it. Additionally, Local Biodiversity Action Plan (LBAP), which detail species and habitats the Government or Council have pledged to conserve, and what actions they have committed to carry out, can also be helpful documents. Granting planning permission for a development that would destroy a significant area of the habitat of a SAP species may go against the Government's own biodiversity pledges.

Information on priority species and SAP's can be obtained from the Department of Agriculture, Environment and Rural Affairs website (<https://www.daera-ni.gov.uk>).

## **Local Biodiversity Action Plans**

Some councils in Northern Ireland have employed a local biodiversity officer (LBO) to prepare LBAPs for their Council area. The LBAPs set priorities, actions and targets for animals, plants and habitats felt to be important to the local area.

Often a wide partnership of organisations is involved, including government, local communities and non-government organisations. LBAPs have no statutory significance, but they can help influence decisions about development. LBAPs are public documents which can be viewed on the council's website.

## **Conservation designations**

There are many types of conservation designation, based on a wide range of wildlife, geological, landscape and historical features (see our leaflet "*How important is your wildlife site?*").

If your site is designated, or you can show it should qualify for designation, this may influence planning decisions. So you should check whether the site has a conservation designation and whether the reason for designation includes birds.

## How to get the best for birds in the planning system

You can respond to Local Development Plan consultations (see our leaflet "*How to get involved with Local Development Plans*") or write to NIEA to identify any local sites important for birds which should be designated.

You can object to proposed developments that may damage a site used by birds. However, because the Wildlife Order mostly protects nests only during the breeding season, a condition requiring the developer to schedule works outside the breeding season is a legally acceptable way to overcome an objection based on the presence of breeding birds.

Planning conditions can be used to benefit birds. A common problem is loss of nesting sites for birds such as barn owls as outbuildings or barns are converted. Appropriate planning conditions might include incorporating an owl window into the design or erecting and maintaining owl nesting boxes if there are suitable trees close by.

If you think your objection based on wildlife impacts might not result in the outright refusal of a planning application, think about how the development could be phased, redesigned or operated in a way that reduces the impact, and suggest to the planning authority that they secure this by a 'planning condition'.

If the above options are not appropriate, and wildlife habitat is going to be lost because of the development, the permission could contain a 'condition' that requires the creation of an equal or greater area of the same habitat nearby (see our leaflet "*Getting involved in planning applications*"). Other special tests need to be met regarding damage or risk of this to internationally designated sites before any habitat venture can be contemplated (see our leaflet "*How important is your wildlife site?*").

The presence of certain other animals, such as bats and hares, and many species of plants and invertebrates, gives a higher degree of year-round legal protection to their habitat than birds. An objection to a planning application may be more likely to succeed if one of these species is present (see our leaflet "*Protecting other wildlife from development*").

