

HABITATS DIRECTIVE AND LAND-USE PLANNING – CONSULTATION PAPER

1 SUMMARY

- 1.1 This report seeks Members' views on government proposals to introduce new legislation to place a specific obligation on local planning authorities to satisfy the requirements of the Directive with respect to European protected species and for derogation to be issued as part of the planning process.

2 INTRODUCTION

- 2.1 At present, the land-use planning regime and the legislation protecting rare species operate independently, but there is an overlap between the two where protected species are affected by development activities.
- 2.2 Where protected species will be affected by development proposals, they must be taken into account as material planning considerations. However, for those species protected under the Habitats Directive a further regulatory regime is in place and a separate licence must be obtained following grant of planning permission.
- 2.3 The Government has concluded that it would be desirable for local planning authorities to have the responsibility of judging whether derogations which arise from activities related to the grant of planning permission meet the tests laid down in the Regulations (note: the Article 16 test) to accept that a protected species should be destroyed or moved to allow development to take place.

3 NEW ARRANGEMENTS PROPOSED

- 3.1 In summary, the new proposals are:
- Local Planning Authorities will be given power to authorise derogations from the protection afforded to European protected species in respect of development proposals as part of the planning permission granted under the Town and Country Planning Act 1990
 - To introduce a new defence against offences in respect of European protected species to the effect that activities had been carried out in accordance with an approved planning consent
 - The introduction of a statutory obligation for LPAs to consult English Nature for advice on whether a proposed derogation would be acceptable

- A statutory requirement for LPAs to consult the ODPM where they propose to grant consent against the advice of English Nature
- A statutory obligation for LPAs to notify DEFRA of all derogations granted

4 DISCUSSION

- 4.1 The key change proposed by the Government is to link the processes involved in determining a planning application with the issue of a licence granting a variation in the protection afforded to European designated species. This means that a developer will no longer require to obtain a licence from DEFRA following the grant of planning permission since all necessary consents will have been granted at the same time.
- 4.2 Where planning consent is granted for development subject to conditions, which can relate directly to the requirements to be fulfilled by a developer in dealing with, for example, mitigation measures, the developer would then benefit from the appeals regime available under the land-use planning system.
- 4.3 Further legislative changes are proposed to provide developers with a defence to cover activities undertaken in accordance with the planning consent, including compliance with planning conditions.
- 4.4 There is one situation where the new legislation would not apply. In rare cases it may be that a protected species is discovered on a site after planning permission has already been granted. In such a situation, the developer will be required to submit an application to the Secretary of State (DEFRA).
- 4.5 There is no doubt that the current arrangement that involves a two-handed process of planning consent followed by the issue of a licence is far from being the most effective way of dealing with protected species on development sites. The proposal to transfer the derogation powers to LPAs so that it becomes part of the planning process makes sense and will allow developers to appeal decisions if they so wish.
- 4.6 A combined process will introduce new clarity to the procedures and ensure that full and proper consideration can be taken of the implications of the development proposals, including the application of appropriate conditions.
- 4.7 However, it is essential that LPAs do have the expertise available to analyse the implications of development proposals on protected species, notwithstanding the requirement to consult with English

Nature. Some LPAs will certainly not have such expertise in-house and this is an issue that could have resource implications for the planning process

5 ENVIRONMENTAL IMPLICATIONS

- 5.1 The assessment of the implications of development proposals on protected species is a key part of the planning process.

6 RESOURCE IMPLICATIONS

- 6.1 Given that the LPA would be responsible for determining planning applications and derogations under the Habitats Directive, there may be implications for the Council's in-house specialist advisor. English Nature though will continue to provide specialist advice.

7 RECOMMENDATION

It is proposed that the Committee **RESOLVES**

That, subject to comments from Members, the ODPM be advised that this Council supports the proposals to bring together land-use planning and the issue of licences under the provisions of the Habitats Directive. (HPS)

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Background Papers: None

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