

# Timing is everything

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**Carrying out ecological surveys at the right time of year can be crucial to avoid costly and frustrating development delays, says John Newton**

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It could be argued that environmental legislation in the UK started when King John drew up laws to protect the New Forest as a hunting ground. More recently, the *Wild Birds Protection Act 1880* came into force in response to the fashion industry's penchant for putting feathers from birds such as great crested grebes in hats.

Perhaps the biggest step forward in protecting the biodiversity of England and Wales, though, was the [Wildlife and Countryside Act 1981](#), with equivalent legislation in Scotland and Northern Ireland. This act and its various amendments provide protection for [Sites of Special Scientific Interest \(SSSIs\)](#), and also for a number of species considered to be under threat of extinction, including all reptiles, bats and water voles; and, with some exceptions, birds, especially when they are nesting.

Two pieces of European legislation followed – the [Birds Directive](#) and the [Habitats Directive](#), the latter subsequently transposed into the [UK Habitat Regulations](#). Broadly speaking, these give greater protection to habitats and to larger areas comprising a variety of important habitats, such as [Special Protection Areas \(SPAs\)](#) under the Birds Directive, or [Special Areas of Conservation \(SACs\)](#) under the Habitats Regulations.

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Normally these are all already protected as SSSIs, and the European legislation adds another layer of defence. Some of these habitats may also be designated as Ramsar sites – that is, wetlands deemed to be of international importance, and named after a convention that was signed by the UK in Ramsar, Iran, in 1971. Some developers will already have experienced constraints on development resulting from these designations, with 5km buffer zones being established around SPAs and SACs. Proceeding with development where it may have a damaging impact on these sites can be virtually impossible.

The Habitats Directive also defines a number of [European Protected Species \(EPS\)](#). These include, among other creatures and plants, all bats, dormice and great crested newts, which cannot be put at risk of injury or death by human activity, or disturbed or moved without permission from the [Statutory Nature Conservation Programme](#).

## Tread softly

Given that these animals are difficult to find, are only evident in certain seasons of the year,

require particular conditions to survive and are difficult, if not impossible, to move, then the potential constraints on any development, irrespective of whether it is in protected habitat or not, are immense.

Famously, thousands of pounds have been spent on dealing with great crested newts ? identifying their existence and numbers, finding or possibly creating new habitat to which to move them, and then actually transporting them there. Infrastructure schemes in particular often come across such creatures; in some areas they occur in reasonable numbers, but are completely absent from other places. Add to this list the protection of badgers and the legal constraints around invasive plants such as Japanese knotweed and the developer?s lot is not an enviable one. However, there are many instances in which EPSs, species protected under the 1981 act, badgers and invasive plants being successfully dealt with, enabling development to proceed while conserving species of concern or eradicating the troublesome ones.

## All in the timing

Why is it that the industry still struggles with these issues? The key element is one of timing ? in particular of surveys but also the timing of impacts on wildlife and any mitigation necessary. Wild animals may only be active at certain times of year, so surveys have to be undertaken accordingly.

For example, reptiles ? slow-worms, snakes and lizards ? are active between March and September, but may not be evident during the other half of the year. So surveys for reptiles in the middle of winter will count for nothing in the impact assessment process.

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Similarly, birds nest between March and August, and so removing any nesting habitat in this period risks destroying nests themselves, and thus infringing the 1981 act. Bats, which hide themselves in the smallest of crevices, will move roost sites throughout the year and can be particularly difficult to track down. Finding no evidence of their presence is not necessarily sufficient to satisfy the legislators. More surveys may be necessary to confirm that they are not present, and a careful demolition of roofs and buildings may be required if this cannot be established with certainty. This can be particularly frustrating for developers, as consultants must often revise fee quotes and extend survey schedules.

When these animals are found, population estimates may be necessary. In some cases, especially in regard to EPSs, applications will have to be made to the [Statutory Nature Conservation Organisation](#) for licences to allow derogation from the law and, potentially, suitable areas identified and prepared to which to move species. Finally, the species are translocated or encouraged to move on their own. Again, this is a very time-consuming and imprecise process that cannot be made to conform to project timescales or to the developer?s expectations.

However, ignore the issues or advice given and the consequences can be severe. Breaching the legislation is a criminal act and the police will get involved. A number of developers have been successfully prosecuted, and, although the fines are by no means extortionate, the stress, delays and potential for acquiring a bad reputation all mount up.

## Lessons from nature

The need to conserve wildlife is not an issue that is going to go away, and although successive governments may mutter about excessive red tape, the more time goes on the greater the constraints are going to be. So, as soon as you have an idea for a project, you should commission someone ? ideally a member of the [Chartered Institute of Ecology and Environmental Management](#) ? to carry out a study of the chosen site and its context.

A desk study will highlight whether there are any protected habitats or species nearby, and a preliminary ecological appraisal will be the next step to take. This will identify any valuable habitats on the site and flag up the potential for protected species to be present. Further surveys for protected species may be necessary, but if it is the wrong time of year for those surveys to take place then significant delays could be experienced.

Do not go to an ecologist at the last minute before submitting a planning application ? if their report flags up the need for further surveys, the application is bound to fail. The larger the project the more likely it is that protected species will be encountered. The usual suspects in terms of protected species are, in no particular order, nesting birds, bats, reptiles, great crested newts, water voles, badgers and dormice. These are all found throughout the UK.

The same issues apply to urban as to rural development. Indeed, in some urban areas wildlife can be more diverse than it is in, say, the monocultural agricultural plains of East Anglia. Animals such as bats prosper in built-up areas and can turn up in the most unlikely places. In 2015, a developer was fined ?4,500 plus costs and victim surcharge for knowingly destroying a pipistrelle bat roost in Kilburn, London. But industry schemes such as the [Building Research Establishment Environment Assessment Method \(BREEAM\)](#) and [Civil Engineering Environmental Quality Assessment and Award Scheme \(CEEQUAL\)](#) also provide opportunities to make a positive contribution to wildlife protection.

## Positive conservation

Globally speaking, we need to promote the need for positive conservation if the loss of biodiversity is to be halted, let alone reversed. In the UK, the development industry should look to make positive contributions. Already there is at least one large housing developer that is producing a strategy to enhance biodiversity through its projects, for instance. Perhaps the best example of how development can work for conservation are Thames Water?s reservoirs in Barnes, south-west London. In the 1990s, these were deemed surplus to requirements. However, they were also designated as an SSSI ? although their continued status as such was in danger of being lost since the qualifying bird species, the smew, was becoming an increasingly rare winter visitor.

So the [Wildfowl and Wetlands Trust](#) under Sir Peter Scott formed a partnership with Thames Water to create a [wetland centre](#) . Berkeley Homes joined them and developed 10ha of the site, which helped fund a 40ha wetland centre. The centre is again an SSSI, albeit on the basis of different qualifying features to the original, and is an internationally recognised example of what can be achieved in an urban area.

Turning round projects so their contribution to conservation gets full billing alongside the development opportunities provides a win?win situation for all parties, and for the biodiversity that helps sustain our life on earth.

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## Further information

- Related competencies include: [Environmental assessment](#) , [Environmental audit \(and monitoring\)](#) , [Sustainability](#)
- This feature was taken from the [RICS Land journal](#) (February/March 2018)
- Related categories include: [Sustainability](#) , [Environmental management and planning](#) , [Environmental impact assessment](#)