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APPENDIX 6: Additional guidance for DEV26

1. Introduction

- 1.1 The below gives further guidance on Policy DEV26, it includes information on:
- Habitat Regulations Assessments (HRA), including details on:
 - The Plymouth Sound and Estuaries European Marine Site Zone of Influence; and,
 - The South Hams SAC Consultation Zone.
 - Requirements for protected species; and,
 - How to consider compensation and Biodiversity Net Gain in planning applications.

2. European Sites and Habitat Regulations Assessments (HRA)

2.1 This guidance expands on guidance at DEV26.1 of the SPD.

Habitats Regulations Assessment (HRA)

2.2 The LPAs are required to ensure that proposed development (alone or in combination with other development) will not have an adverse effect on the integrity of European Sites – this is undertaken through the ‘Habitats Regulations Assessment’ (HRA) process.

2.3 Applications are first subject to ‘Screening’ of the likelihood for significant effects. If there are none then the process ends here.

2.4 If there is a likelihood of significant effects, applications are subject to a more detailed ‘Appropriate Assessment’ after which Natural England will be consulted. Natural England have issued Standing Advice with respect to consultations on recreational impact only within the Plymouth Sound and Estuaries EMS Zone of Influence.

2.5 Development will only be permitted if it will not adversely affect the integrity of a European Site either alone or in combination with other development.

‘Evidence to inform a HRA’

2.6 Where there is potential for a proposed development to significantly effect a European Site (other than where these relate to recreational impacts only within the Plymouth Sound and Estuaries EMS Zone of Influence), the applicant will be expected to provide a document titled ‘Evidence to inform a HRA’.

2.7 This document will identify effects and their significance and the proposed avoidance and/or mitigation measures incorporated in the proposal to ensure it will not adversely affect the integrity of a European Site.

2.8 These measures should carry through to other supporting documents for the planning application and the document will inform the HRA carried out by the LPA.

Plymouth Sound and Estuaries European Marine Sites (EMS) **Recreational pressure**

2.9 The Plymouth Sound and Estuaries SAC and Tamar Estuaries Complex SPA are collectively referred to as the Plymouth Sound and Estuaries European Marine Site (EMS).

2.10 A 12.3km Zone of Influence (ZOI) exists around the EMS which was clarified and confirmed as part of the evidence base informing the Joint Local Plan: [EMS Recreation Study Document 04. Survey of recreational use within the Plymouth Sound and Estuaries European Marine Site: Scoping report and survey results](#)¹.

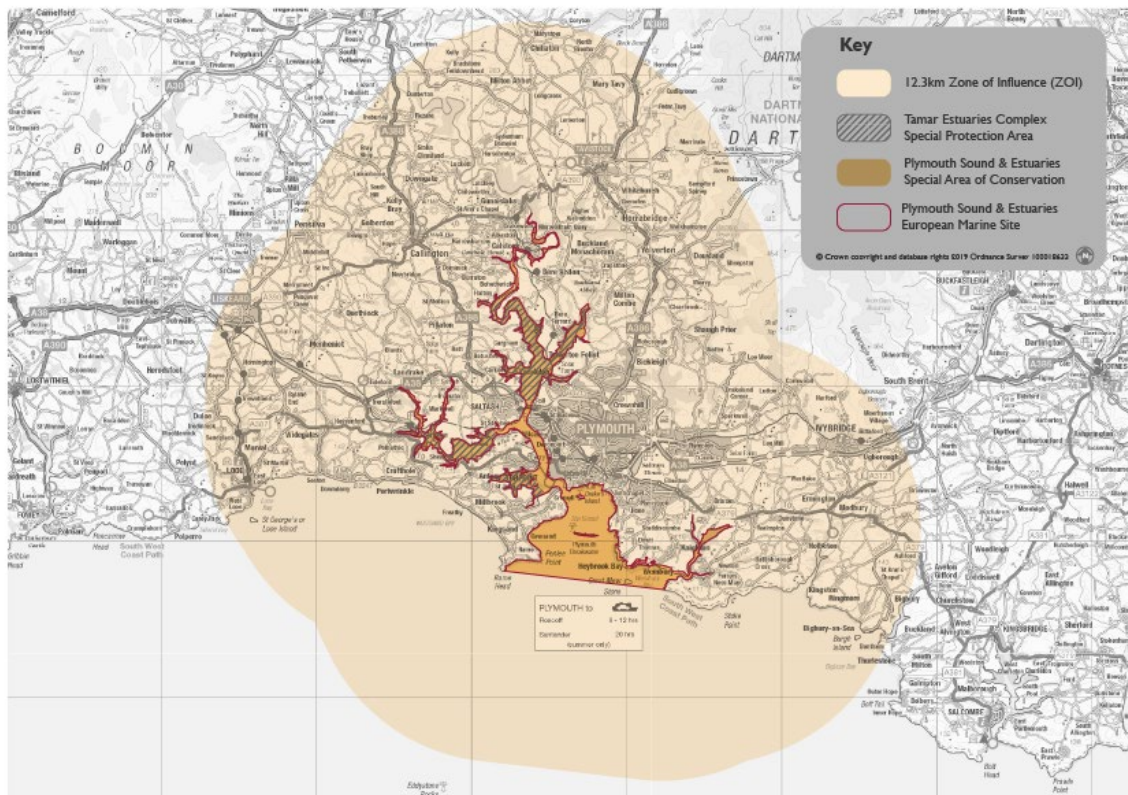


Figure 1: 12.3km ZOI around Plymouth Sound and Estuaries EMS

2.11 Recreational pressure from residents associated with new development within the 12.3km ZOI will require mitigation to ensure that they do not have a significant effect on the Plymouth Sound and Estuaries EMS. Without mitigation new residents, in combination with other development, could have a significant effect.

2.12 A Strategic Access Management and Monitoring Strategy (SAMMS) identifies the management actions that are required to mitigate the potential in-combination of

¹<http://www.plymouth-mpa.uk/wp-content/uploads/2018/06/171207-Rec-Study-04-FINAL-JLP-evidence.pdf>

new housing development including which mitigation sums from development are required to contribute towards mitigation.

2.13 Within the PCC administrative area this mitigation sum will be taken from the CIL contribution, whilst within the WDBC and SHDC administrative areas, the sum will be taken by a scheme secured by condition.

2.14 Where a chargeable development falls within the ZOI but does not have any other potential to effect the Plymouth Sound and Estuaries EMS (other than recreational pressure), applicants are not required to submit an 'Evidence to inform a HRA' document. In these cases the LPA will complete a HRA and Appropriate Assessment making reference to the Standing Advice issued by Natural England with respect to consultations on recreational impact only within the Plymouth Sound and Estuaries EMS Zone of Influence.

2.15 Please see Section 12 for further guidance on planning obligations.

Development below the high water mark

2.16 Developments below the high water mark can have a profound effect on the marine environment which can have a knock-on effect on other aspects of the environment and for other users. Impacts can include:

- Physical loss of habitat area from new structures such as slipways and dredging;
- Fragmentation of habitats;
- Physical damage to the habitat so that it degrades over the long-term e.g. through increased anchoring;
- Biological disturbance e.g. through increased bait collection;
- Pollution of the shore and estuary such as construction sites and oil spills;
- Obstruction of natural currents (hydrodynamics) by built structures such as quays and slipways which can cause erosion of key habitats;
- Contribution to adverse in-combination effects; and/or,
- Disturbance to wintering birds, migratory fish and other species protected under European law.

2.17 The most common concerns and issues raised through the planning process are listed below and details provided under a method statement on how this will be minimised should be provided:

- The disturbance of the sediment during construction and the subsequent mobilisation of any contaminants;
- The placement of pilings and structures on the seabed which can alter the hydrodynamics within the estuary;
- The loss of intertidal and subtidal habitat, where a culmination of small losses can have a major impact on the overall functioning of the estuary;
- Increased runoff which can lead to higher levels of pollutants entering the water; and/or,

- When heavy plant machinery are used on the foreshore.
- The disturbance to migratory birds during construction and as a direct or indirect result of the development.

2.18 Developments which would result in an element of detrimental impact must have regard to the principles of the mitigation hierarchy.

2.19 If a development is deemed necessary then, regardless of which licences are required, the developer will need to demonstrate that they have taken all steps necessary to minimise detrimental impact on biodiversity.

2.20 In addition to the above environmental considerations, proposed development will also need to take into account:

- Economic considerations and the potential impact of any development on those with an interest in using the waters;
- Navigation considerations and the activity of the navy, commercial shipping and recreational vessels, including at night where light pollution can impact the effectiveness of navigational lights;
- Climate change and coastal defences, including rising sea levels and increased adverse weather;
- Ecological considerations through poor working practises during construction (noise and pollution), through loss of habitat or by indirectly changing the way the water functions;
- Recreation considerations, where access both to and into the water is of importance;
- Waterfront development proposals which shut off access to and from the sea, fail to address opportunities to improve access or otherwise impede PCC's vision of being a vibrant waterfront city embracing a Plymouth Sound National Marine Park, will not be supported.

2.21 Any development below the high water mark will also require a 'Marine Consent' from the [Marine Management Organisation \(MMO\)](#)². If the development lies within the intertidal area between high water and low water mark, then both planning permission and marine consents are required. Additional consents may also be required from the harbour authority and the Environment Agency (EA).

South Hams SAC

2.22 The South Hams SAC comprises five distinct and separate significant Greater Horseshoe bat roosts (themselves nationally designated SSSIs).

2.23 Areas surrounding the roosts (Sustenance Zones) have been identified as being of particular importance in supporting the critical feeding and commuting activity of the Greater Horseshoe bats, and the wider landscape (Landscape

²<https://www.gov.uk/topic/planning-development/marine-licences>

Connectivity Zone) has been identified as of importance for the more dispersed activity of the bats further from the roost locations.

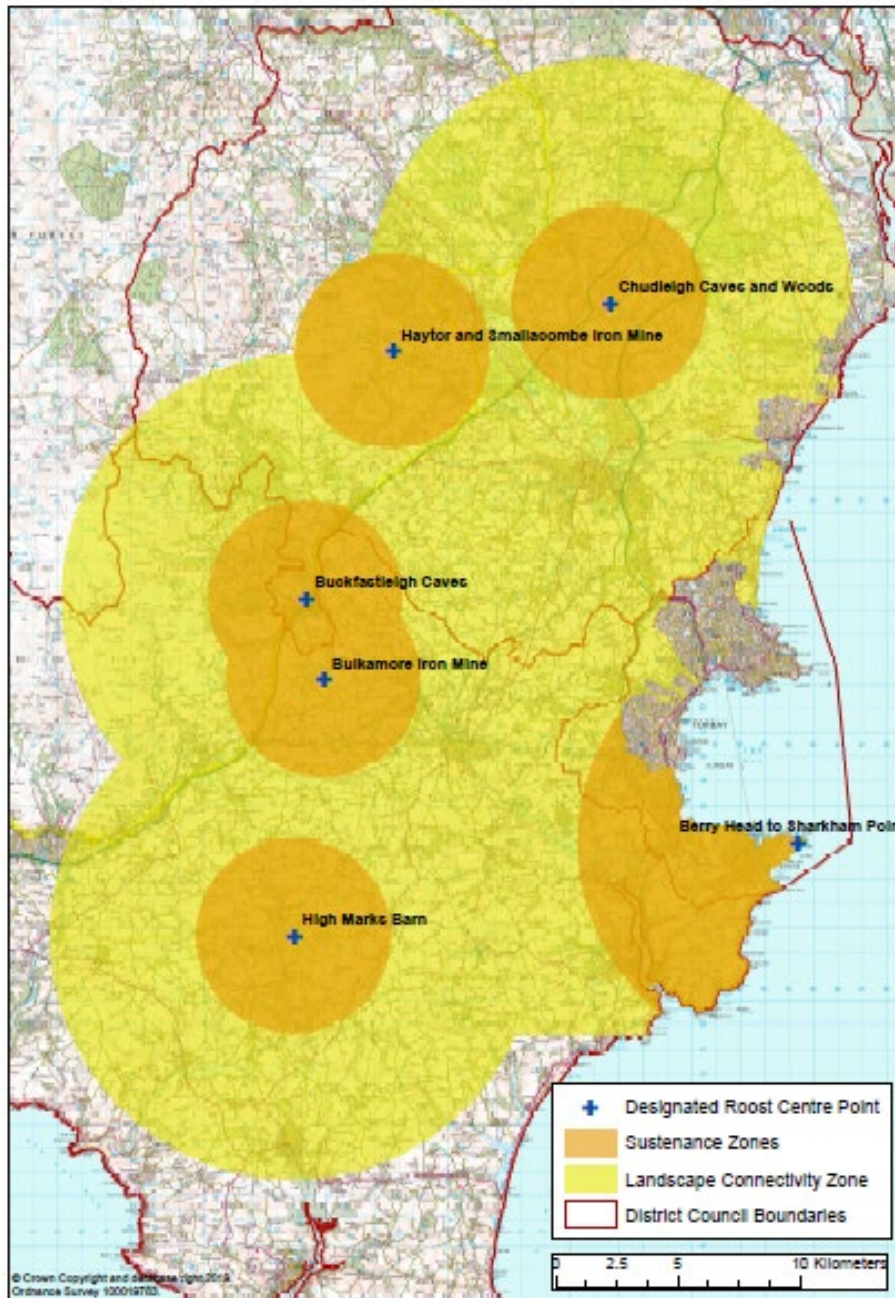


Figure 2: South Hams SAC consultation area

2.24 The roosts and supporting features fall within five LPA administrative boundaries (SHDC, Teignbridge District Council, Devon County Council, Torbay Council and Dartmoor National Park Authority).

2.25 Given the complexities of the South Hams SAC and potential for development a joint [South Hams SAC Guidance Document](#)³ has been adopted across the five LPA areas and should be consulted when undertaking development within the Sustenance Zones or Landscape Connectivity Zone, to understand the likelihood of proposals having significant effects on the South Hams SAC, and whether a HRA is likely to be required.

2.26 The Guidance Note will also be supplemented by a number of Advice Notes giving specific advice on survey effort, mitigation measures and useful information which will assist when considering the impacts of a proposal.

3. European Protected Species

3.1 This guidance expands on guidance at DEV26.4 of the SPD.

3.2 Applicants must avoid impacts on European Protected Species (EPS) wherever possible. EPS may be encountered regularly when undertaking ecological surveys in support of a development proposal, including small scale residential applications, for example, bats roosting within a roofspace, or major development sites for example, dormice nesting in hedgerows or bat foraging/commuting along boundary features.

3.3 EPS that are most likely to be encountered within the JLP area are bats (17 species), dormice, otters and Great Crested Newts.

3.4 To identify when Great Crested Newts (GCN) should be considered within the planning process, see the [GCN Consultation Zones](#)⁴ at which act as a guide as to when it might be reasonable to undertake a GCN assessment following national guidance.

3.5 Where there is presence of EPS, the likely impacts of the proposed development on EPS should be identified. The LPA will consider whether the proposed development is likely to trigger one or more of the offences against EPS as defined by the Habitats Regulations:

- Deliberately capture, injure or kill an EPS;
- Intentionally or recklessly disturb an EPS in its place of rest/ breeding site;
- Intentionally or recklessly damage, destroy or obstruct access to a EPS place of rest/ breeding site (even if the EPS is not occupying the resting / breeding place at the time); and/or
- Possess or sell or exchange an EPS (dead or alive) or part of an EPS.

3.6 Where an offence is considered likely the LPA is required to consider whether the proposal meets the 'three derogation tests' and accordingly whether Natural

³<https://www.devon.gov.uk/planning/planning-policies/other-county-policy-and-guidance/south-hams-sac-guidance>

⁴<http://www.dbr.org.uk/great-crested-newt-consultation-zone-5km-maps/>

England is likely to subsequently grant a EPS Licence for otherwise illegal activities to proceed lawfully.

- 3.7 For a proposal to meet the three derogation tests it must:
- Have an Imperative Reason of Overriding Public Interest (IROPI);
 - No Satisfactory Alternative (that would meet the IROPI); and,
 - Maintain the Favourable Conservation Status of the EPS concerned.
- 3.8 If the LPA is satisfied the three derogation tests are met it may grant planning permission and the applicant can then apply to Natural England for an [EPS Licence](#)⁵.
- 3.9 The applicant will be required to provide evidence to inform the LPA's consideration of the three tests. The first two tests are planning tests, whilst the third is an ecological test. It is noted that the LPA may not require the level of detail subsequently necessary for Natural England to conclude their consideration of the third test, but nonetheless sufficient information is required to give the LPA confidence that the third test is met, for example, if a compensatory bat roost is required, it should be reflected on submitted plans.
- 3.10 If EPS are present, but it is considered that a Habitats Regulations offence is unlikely or can be avoided (and an EPS Licence is not required), the applicant must ensure that a non-licence method statement or mitigation strategy is included within the submission, detailing any necessary avoidance or mitigation measures that will ensure the development is undertaken in a lawful manner.
- UK Protected Species**
- 3.11 Applicants must avoid impacts on UK protected species wherever possible. The most common UK protected species encountered within development in the JLP area are reptiles, Barn Owls and badgers. It will be necessary to establish the presence of and implications upon these protected species before applying for planning permission and to avoid impact wherever possible. Any avoidance and mitigation measures should also be included within the submission.
- 3.12 Natural England has issued [standing advice regarding protected species](#)⁶ to assist LPAs with considering how developments might impact protected species and with assisting LPAs in their decision making for planning applications. The same information may be useful to applicants and developers.
- 3.13 For works affecting some UK protected species, [further licences](#)⁷ may be required from Natural England.

⁵<https://www.gov.uk/guidance/wildlife-licences>

⁶<https://www.gov.uk/guidance/protected-species-how-to-review-planning-applications>

⁷<https://www.gov.uk/guidance/wildlife-licences>

Biodiversity Action Plan (BAP) habitats and species and UK Habitats and Species of Principal Importance

- 3.14 Applicants must avoid harmful impacts on BAP habitats and species wherever possible. BAP habitats and species are those identified as being the most threatened and requiring conservation action under the UK BAP. The UK BAP lists have been used to help draw up statutory lists of Habitats and Species of Principal Importance listed in section 41 of the NERC Act (2006) for which LPAs have a duty to conserve (commonly referred to as Priority Habitats and Species).
- 3.15 Within Devon the [Devon BAP Priority Species](#)⁸ list was updated in 2018 with a list of 1,600 species known to be rare in Devon and a list of 96 species for which Devon has a particular responsibility to look after the species and their supporting habitats. The location of Priority Habitats can be found on [Defra's interactive map](#)⁹.
- 3.16 If adverse impacts cannot be avoided they must be mitigated as far as possible and compensated for on or off-site (if it can be satisfactorily secured). For Priority Habitats, compensation must be by restoration of existing, or creation of new Priority Habitat to ensure no net loss of that particular habitat type. If compensation is not possible an application may be refused.
- Cirl Buntings**
- 3.17 Cirl Buntings are a rare species in the UK (reflected by inclusion as a s41 Priority Species, listing on Schedule 1 of the Wildlife and Countryside Act, 1981, on the Red list as a species of high conservation concern, and a Devon BAP Priority Species) with a very restricted range, most of the population occurring within South Devon.

⁸<https://www.naturaldevon.org.uk/devons-natural-environment/devons-wildlife/devonspecialspecies/>

⁹<https://magic.defra.gov.uk/magicmap.aspx>

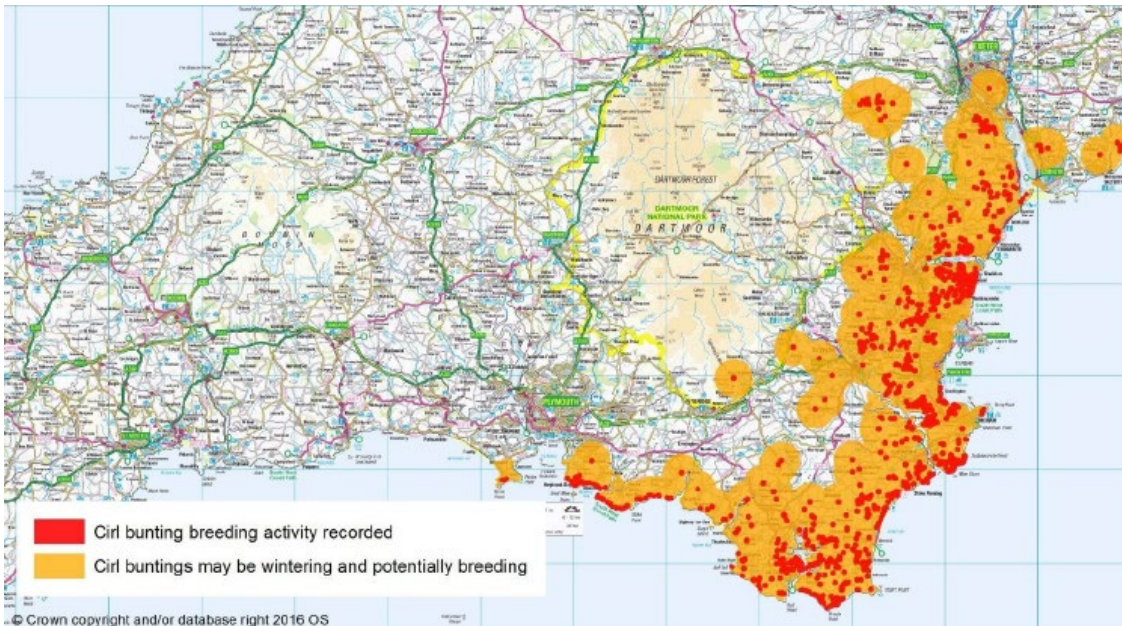


Figure 3: Cirl Bunting breeding range in Devon Primary source: 2016 national survey

- 3.18 In areas where there are historic records of Cirl Buntings breeding territories, or where suitable habitat is present on a development site, the developer and the LPA will either need to accept presence of Cirl Buntings and agree on the level of presence or undertake specific Cirl Buntings surveys, in accordance with the [Wildlife and development guidance note: Cirl Bunting \(2017\)](#)¹⁰, or the latest iteration thereafter.
- 3.19 Where loss of summer breeding or winter Cirl Bunting habitat is unavoidable, compensatory habitat must be provided. This is unlikely to be achieved on the development site but may be able to be achieved on other land within South Devon.
- 3.20 To adequately compensate for the loss of habitat associated with one pair of Cirl Buntings, it is necessary to provide at least 2.5ha of appropriately managed habitat, to include:
- <1.13ha of semi-improved/rough grassland (summer feeding habitat);
 - <0.2ha hedge/scrub (nesting habitat); and,
 - <1ha weedy overwinter stubble (winter feeding habitat).
- 3.21 Where suitable mitigation or compensation cannot be provided on site, contributions towards off-site compensation will be sought.

¹⁰<https://www.rspb.org.uk/globalassets/downloads/documents/conservation-projects/wildlife-and-development-guidance-note---cirl-bunting-october-2017.pdf>

3.22 Where offsite compensation is made as a contribution towards land purchase for a nature reserve and RSPB (or other body), management and monitoring costs for the first five years with subsequent costs being met by RSPB (or other body) reserve management budget, full details of cost calculations can be found within the Wildlife and development guidance note: Cirl Bunting (2017).

4. How to consider compensation and Biodiversity Net Gain in planning applications

4.1 This guidance expands on guidance at DEV26.5 of the SPD.

Major applications

1. Consultant ecologist to undertake desk study and initial Preliminary Ecological Appraisal:
 - Assess habitats, their quantity and value;
 - Record findings within Preliminary Ecological Appraisal; and,
 - Undertake further protected species surveys if required.
2. Complete the Defra Biodiversity Metric Calculator:
 - Calculate area and quality of existing biodiversity units;
 - Calculate proposed onsite habitat restoration and creation (and if relevant offsite) in terms of biodiversity units; and,
 - Calculate change in biodiversity units, the value must show a 10 per cent increase in biodiversity units to be policy compliant.
3. Submit PEA/protected species surveys results as an Ecological Impact Assessment (EclA) with the Defra Biodiversity Metric Calculator spreadsheet.
4. Include details of ongoing management and maintenance of onsite provisions (within a Landscape and Ecological Management Plan – LEMP).
5. If compensation/net gain provisions are to be offsite, provide details of how this will be achieved, and how it fits will local priorities for habitat restoration and creation:
 - If on land owned by applicant, a Management Plan will be required for 30+ years, delivery of which will be secured by s106 clause.
 - If on land owned by a third party, as above with the third party signatory to the s106.
 - If unable to provide on land in applicant's control, provide a calculation showing habitat creation costs applicable to required number of biodiversity units. This is likely to include: land purchase; habitat creation and ongoing management. When agreed, the sum to provide this habitat creation/restoration will be secured by s106 clause and paid upon meeting the trigger to the LPA.
6. LPA to secure provisions by Section 106

NB – Any necessary impact avoidance and mitigation measures will need to be detailed within the EclA and adherence to these will be conditioned, and for larger and/or more complex schemes a proportionate Construction and Environmental Management Plan will be required.

Minor applications

Is an ecological survey required? (find out by reviewing LPA local validation checklist)

Yes - Consultant ecologist to:

1. Undertake desk and site survey and record findings within Preliminary Ecological Appraisal.
2. Where there will be an impact on protected habitats or species undertake further surveys as appropriate. Compile results within an Ecological Impact Assessment.
3. Complete an ECOP and Biodiversity Budget and attach these as appendices to the PEA/EclA, showing a 10% or (where not practicable) a clear biodiversity net gain. Reflect any provisions on elevation drawings as applicable.
4. Where necessary (depending on scale), include details of ongoing management and maintenance of onsite provisions (within a Landscape and Ecological Management Plan)
5. If considered appropriate and proportionate Biodiversity Net Gain, the LPA will condition adherence to the ECOP (and elevation/other drawings as applicable).

No - Applicant to:

1. Applicants will be encourage to complete an ECOP and Biodiversity Budget sheet, showing a clear biodiversity net gain, to include (as a minimum):
 - One inbuilt bat box/brick/tube per dwelling;
 - One inbuilt bird box/brick per dwelling;
 - One inbuilt bee brick per dwelling;
 - A hole for small mammals (such as hedgehogs) in each garden fence of 13 x 13cm.
2. If considered appropriate and proportionate Biodiversity Net Gain, the LPA will condition adherence to the ECOP (and elevation/other drawings as applicable).