

Title

Ensuring due regard to section 42 List (priority) Habitats and Species through the development control process

Background/Progress

As many are aware there was a recent court decision to approve development of the Thurrock Marshes in Essex. A key point on the judgment was that the developer was entitled to “rely on the letter from English Nature”. For more information see:

<http://www.wildlifeextra.com/go/news/thurrock-marsh009.html#cr>

As CCW, SNH and NE are the devolved government’s statutory nature conservation advisers, this judgment indicates that the opinions of these bodies are considered to have more weight than those made by a charity or local government ecologist. Therefore the content of letters from CCW with respect to planning applications is of critical importance as they are considered the highest authority.

While CCW fully considers protected sites and species in consultation responses, in general LBAP or S42 habitats and species are not taken into account. In most cases, this is not an issue itself as the LBAP and S 42 List considerations are picked up by the Local Authority. In fact, there is a lot to be said in terms of both the effective use of resources and division of responsibility with this approach. After all, with resources so low and stretched, there is little sense in a LA Ecologist and CCW Conservation Officer putting in a lot of time to say the same thing.

However, this is often not made clear in CCW’s responses to planning applications. Where habitat and species considerations, (the S42 list in particular) are not stated in CCW responses, this can potentially be used by a developer to undermine the response of the Local Authority or Wildlife Trust or can lead to misinterpretation on the part of the local planning officers. If CCW’s response is deemed to have the most weight, the omission of S42 habitats and species considerations can imply that CCW has no objection to them being lost through development or that the development site has limited, or no nature conservation value.

Plan/Proposals

- To determine a suitable way to ensure that planning application responses from CCW support local authority responses with regard to the S42 list.

A suggestion would be for CCW to produce a standard clause or caveat, to be included in every planning response with respect to S42 Habitats and Species, such as the example below:

In this response CCW have not considered those habitats and species listed on S42 NERC Act 2006 or the local biodiversity action plan. Should these be present on the development site and development leads to; a) the loss of habitat area, quality or features; b) the loss or reduction of a species' population or; c) the loss of a place or feature occupied or used by a species; then CCW confirms that this loss would be contrary to the achievement of Welsh biodiversity targets. Local authorities have a duty to prevent this loss or otherwise ensure appropriate compensation or mitigation measures are effectively delivered. CCW therefore recommend that further advice and/or comments are sought from the local authority ecologist in respect of S42 List habitats and species.

Decision Points

- a) To agree the need for as paragraph such as the example given above.
- b) CCW to agree to implement such a procedure.