



## Protected Species in Denbighshire

### Information for Planning Applicants

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## 1. Purpose of this document

This document is designed to provide planning applicants with basic information about protected species in Denbighshire and the relevant pieces of legislation protecting them. It includes details of the legal protection each species receives, focussing those species most likely to be affected by development in the county.

Impacts on protected species are considered when a planning application is being assessed by officers and by members of the Planning Committee; therefore the information in this document should be taken into account when submitting a planning application. The presence of protected species on or near to a site does not, in most cases, prevent development; however plans may need to be amended to ensure the protected species are not negatively affected in the long term. A licence may be required from Natural Resources Wales.

## 2. Background

The legislative provisions in the UK for the protection of wild plants and animals are contained primarily in the Wildlife and Countryside Act (as amended) 1981. Certain species are also protected by European legislation, transposed into UK law through the Conservation of Habitats and Species Regulations 2010 (as amended). Lists of these species are found in the appropriate schedules of the act and regulations respectively. Those which are known to occur within Denbighshire are summarised in the table below. In addition, certain species of wild mammals are protected under their own legal provisions, including badger, deer and seals. There is also a prohibition on whaling in all UK waters.

These pieces of legislation broadly prohibit the killing, injuring, taking or selling of those wild animals and plants listed in the appropriate schedule. It is also an offence to damage, destroy or obstruct access to any place which such an animal uses for shelter, protection or breeding, except within a dwelling-house, though in the case of bats this offence extends to dwelling houses, other than the living areas, and the advice of the appropriate statutory nature conservation agency should be sought prior to any such damage or obstruction. For Wales, this is Natural Resources Wales (NRW) and more information can be found on their website: [www.naturalresourceswales.gov.uk](http://www.naturalresourceswales.gov.uk).

Certain acts which are prohibited under the legislation can be authorised by a licence issued by the appropriate authority for the purpose of science, education, conservation and photography, development, to preserve public health or safety, to prevent the spread of disease or to prevent serious damage to livestock, crops, growing timber, property or fisheries. Again advice on licensing can be found on the NRW website. Neither is it an offence to take a disabled protected animal for the purpose of tending it and returning it to the wild or to kill such an animal if there is no reasonable chance of recovery, but advice should be sought from the appropriate body.

### 3. Protected species in Denbighshire

The following table summarises the main protected species found in Denbighshire and the relevant legislation covering them.

Protection	Species	Importance	Key legislation	
Statutory	Great crested newt	International	EC Habitats Directive; The Conservation of Habitats and Species Regulations 2010 (as amended); The Wildlife and Countryside Act 1981 (as amended)	
	Bats (all species)			
	Otter			
	Dormouse			
	Sand lizard			
	Natterjack toad			
	Floating-leaved water plantain ( <i>Luronium natans</i> )			
	Dolphins (all species)			
	Porpoises (all species)			
	Water vole	National	Wildlife and Countryside Act 1981 (as amended)	
	Red squirrel			
	Pine marten			
	All reptiles (slow worm, adder, common lizard, grass snake)			
	All amphibians (sale only banned) (common frog, common toad, palmate newt, smooth newt)			
	Barn owl			
	All nesting birds			
	Badger			Protection of Badgers Act 1992
	Deer			Deer Act 1991
Seals	Conservation of Seals Act 1970			
Non-statutory	Species of principle importance for conservation (Section 42 list) – there are over 1,000. The full list can be viewed on the Wales Biodiversity Partnership website	National	Natural Environment and Rural Communities (NERC) Act 2006	
	Local Biodiversity Action Plan (LBAP) local priority species	Local		

## 4. Species summaries

### 4.1 European Protected Species

**Great crested newt**

**Bats**

**Otter**

**Dormouse**

**Sand lizard**

**Natterjack toad**

European protected species (EPS) are protected under regulation 41 of the Conservation of Habitats and Species Regulations 2010 (as amended) and Section 9 of the Wildlife and Countryside Act 1981 (as amended). Under these pieces of legislation, it is an offence to:

- Intentionally kill, take or injure an EPS;
- Damage, destroy or obstruct a place used for breeding, resting, shelter or protection (whether they are present or not) or to disturb an EPS in such a place;
- Possess or control an EPS, alive or dead, or any part of them, or anything derived from them;
- Sell, offer for sale, advertise for sale or offer to buy an EPS, or a part of them or anything derived from them;
- Deliberately disturb or deliberately take or destroy the eggs of an EPS (e.g. great crested newt)

Offences under Section 9 carry a maximum penalty of a fine up to £5,000, imprisonment for up to six months, or both, for each animal in respect of which an offence is committed.

Licences can be issued in order to allow activities that would constitute an offence under the legislation. These are issued for specific purposes including scientific study, photography, conservation management and development.

### 4.2 Water vole

Water voles and their habitats are afforded protection under Section 9 of the Wildlife and Countryside Act 1981 (as amended). Under the legislation it is an offence to:

- Intentionally kill, injure or take (capture) a water vole;
- Possess or control a live or dead water vole, or any part of a water vole or anything derived from a water vole;
- Intentionally or recklessly damage, destroy or obstruct access to any structure or place which a water vole uses for shelter or protection;
- Intentionally or recklessly disturb a water vole while it is occupying a structure or place which it uses for shelter or protection;
- Sell, offer or expose for sale, or have in one's possession or transport for the purpose of sale, any live or dead water voles, or any part of a water vole or anything derived from a water vole;
- Publish any advertisement, or cause any advertisement to be published, which is likely to be understood as conveying that a person buys or sells, or intends to buy or sell, any of the above things.

Offences under Section 9 carry a maximum penalty of a fine up to £5,000, imprisonment for up to six months, or both, for each animal in respect of which an offence is committed.

### **4.3 Red squirrel**

Red squirrels and their habitat are also protected under Section 9 of the Wildlife and Countryside Act 1981 (as amended). Under the legislation is an offence to:

- Intentionally kill, injure or take (capture) a red squirrel;
- Intentionally or recklessly damage or destroy any structure or place a red squirrel uses for shelter or protection or disturb a red squirrel while it is occupying such a place;
- Possess a dead or live wild red squirrel, or any part of a red squirrel, unless you can show that the animal was taken legally;
- Sell, or offer for sale, a wild red squirrel or any part of a wild red squirrel.

Under Section 11 of the Act, it is also illegal to:

- Set in place a trap, snare, electrical device for killing or stunning or any poisonous, poisoned or stupefying substance; use a decoy, gas or smoke, bows or cross-bows, explosives, automatic weapons or mechanically propelled vehicles which are of such a nature and so placed as to be calculated to cause bodily injury to a red squirrel.

Offences under Section 9 carry a maximum penalty of a fine up to £5,000, imprisonment for up to six months, or both, for each animal in respect of which an offence is committed.

### **4.4 Bird species**

All wild birds, their eggs and nests are protected under Section 1 of the Wildlife and Countryside act 1981 (as amended). In addition, certain species receive additional protection under Schedule 1 of the act due to their rarity. Under the act it is an offence to:

- Intentionally kill, injure, take or possess any wild bird – even to ring them;
- Use cruel or indiscriminate methods of killing or capturing wild birds;
- Take, damage or destroy any occupied wild bird's nest or eggs. (Osprey nests are protected throughout the year);
- Sell or show in a competition any live wild bird (this does not apply to certain species if bred in captivity and ringed);
- Sell any dead wild bird (apart from some sporting birds in season);
- Sell the eggs of any British species of wild bird;
- Intentionally or recklessly disturb any specially protected wild bird (Schedule 1) while it is building a nest, nesting, or disturb its dependant young.

Exceptions to these offences can occur where a bird is sick or injured. It can be taken in order to treat it with the intention of releasing it when fit or to kill it if is so badly injured that it will not recover. Also where an offence is an unintentional result of a lawful operation which could not be reasonably avoided.

Certain birds can be taken or killed outside of the closed season:

Tufted duck	Gadwall
Pintail	Canada goose
Shoveller	Pink-footed goose
Wigeon	White fronted goose
Goldeneye	Moorhen
Greylag goose	Common snipe
Mallard	Coot
Pochard	Golden plover
Teal	Woodcock

Licences can also be issued by the Welsh Government that allows for the killing or taking of certain birds, their nests and their young in order to prevent serious damage to agriculture, or to preserve public health or safety, or to conserve wild birds:

Carrion crow	Magpie
Great black backed gull	House sparrow
Rook	Jackdaw
Jay	Starling
Lesser black backed gull	Herring gull
Woodpigeon	Collared dove
Feral pigeon	

Licences can also be obtained from NRW to carry out activities that would otherwise be illegal including disturbing birds for scientific study, photography, conservation management and preventing damage to crops and property.

The following wild birds are specially protected at all times:

Avocet	Hobby
Spotted crane	Barn owl
Honey buzzard	Stone curlew
Bearded tit	Hoopoe
Temminck's stint	Bee-eater
Kentish plover	Velvet scoter
Bewicks' swan	Kingfisher
Whimbrel	Bittern
Lapland bunting	White-tailed eagle
Black-necked grebe	Leach's petrel
Whooper swan	Black redstart
Little bittern	Woodlark
Black-tailed godwit	Little gull
Wood sandpiper	Black tern
Little ringed plover	Wryneck
Black-winged stilt	Little tern
Bluethroat	Long-tailed duck
Brambling	Marsh warbler
Cetti's warbler	Mediterranean gull
Chough	Merlin
Curlew	Osprey
Common quail	Peregrine

Common scoter	Purple heron
Corncrake	Purple sandpiper
Crested tit	Red-backed shrike
Crossbills (all species)	Red kite
Dartford warbler	Red-necked phalarope
Divers (all species)	Redwing
Dotterel	Roseate tern
Fieldfare	Ruff
Firecrest	Savi's warbler
Garganey	Scarlet rosefinch
Golden eagle	Scaup
Golden oriole	Serin
Goshawk	Shorelark
Green sandpiper	Short-toed treecreeper
Greenshank	Slavonian grebe
Gyr falcon	Snow bunting
Harriers (all species)	Snowy Owl
Spoonbill	

Some wild birds are specially protected during the close season:

Goldeneye
Greylag goose (in Outer Hebrides, Caithness, Sutherland and Wester Ross only)
Pintail

#### 4.5 Reptiles

**Common lizard**  
**Adder**  
**Slow worm**  
**Grass snake**

All species of British reptile are protected against intentional killing, injury or sale under the Wildlife and Countryside Act 1981 (as amended). The sand lizard and smooth snake are afforded higher protection under Regulation 41 of the Conservation of Habitats and Species Regulations 2010 (as amended) – see above (Note: smooth snake is not present in Denbighshire).

Exceptions to these offences are possible where an animal is sick or injured and has been taken in order to tend to it with the intention of releasing it when fit or where it is killed as an act of mercy because of serious injury or illness or where the killing is an unavoidable and unintentional result of a lawful action.

#### 4.6 Amphibians

**Common frog**  
**Common toad**  
**Smooth newt**  
**Palmate newt**

All species of British amphibian are protected against sale under the Wildlife and Countryside Act 1981 (as amended). The great crested newt is afforded higher protection under Regulation 41 of the Conservation of Habitats and Species Regulations 2010 (as amended).

#### 4.7 Badger

Protected under The Protection of Badgers Act 1992 and included on Schedule 6 of the Wildlife and Countryside Act 1981 (as amended). The legislation affords badgers protection against deliberate harm or injury making it an offence to:

- Wilfully kill, injure or take or attempt to kill, injure or take a badger;
- Have possession or control of any dead badger or any part of a dead badger;
- Cruelly ill-treat a badger, use badger tongs, dig for a badger or use small calibre firearms to kill or take a badger;
- Sell or offer to sell a live badger;
- Interfere with a sett by damaging or destroying it;
- Obstruct access to, or entrance of, a badger sett;

- Disturb a badger whilst it is occupying a sett;
- Have a live badger in your possession or control;
- Mark or attach any device to a badger.

Exceptions to these offences are possible where a disabled badger had been taken in order to tend to it, where a badger is killed as an act of mercy because of serious injury or illness or where the killing is an unavoidable and unintentional result of a lawful action.

Penalties for offences include fines of up to £5,000, plus up to six months imprisonment for each illegal sett interference, badger injury or death.

Works that disturb badgers whilst they are occupying a sett are illegal without a licence. Disturbance can occur even without direct interference or damage to the sett in question. In general, the following activities are likely to require a licence:

- Use of heavy machinery or significant earth moving within 30m of a sett;
- Use of lighter machinery (usually any wheeled vehicles) within 20m of a sett;
- Any digging, chain saw use or scrub clearance within 10m of a sett

#### 4.8 Fish

Certain fish species receive the same protection as mammals under the Wildlife and Countryside Act 1981 (as amended). Further laws cover game fish such as salmon, sea trout, trout and grayling, and coarse fish. Under these laws it is an offence to:

- Steal these fish;
- Remove game fish from stocked waters

Other offences such as poaching, are identified in both the Salmon and Freshwater Fisheries Act and The Salmon Act and the Theft Act.

The following species receive full protection under the Wildlife and Countryside Act 1981 (as amended):

Basking shark
Burbot
Couch's goby
Sturgeon (also protected under the Conservation of Habitats and Species Regulations 2010)
Vendace
Whitefish
Giant Goby

Where it is an offence to:

- Intentionally kill, take or injure these fish;
- Damage, destroy or obstruct a structure or place which these fish use for breeding or shelter or to disturb the fish in such a place;
- Possess or control these fish alive or dead, or any part of them, or anything derived from them;

- Sell, offer for sale, advertise for sale or offer to buy any of these fish, a part of them or anything derived from them;
- Deliberately disturb or deliberately take or destroy eggs of a fish listed in the Habitats Regulations.

In addition, allis shad are protected from killing, injuring and taking and damage or destruction of their place of shelter and protection and twaite shad are protected from damage and destruction of their place of shelter only.

Exceptions occur when a sick or injured animal is taken in order to tend to it with the intention of releasing it when fit or to kill it as an act of mercy because of serious injury or illness or where the killing is an unavoidable and unintentional result of a lawful action.

Under the Salmon and Freshwater Fisheries Act, it is an offence to:

- Use or possess any prohibited instruments including firearms, otter boards, set lines, spear gaff or light, or intend to use them;
- Use any fish roe;
- Buy, sell, expose for sale or have possession of any trout or salmon roe;
- Take, kill or injure any immature salmon or trout;
- Wilfully disturb fish spawn or spawning beds;
- Put any liquids or solids into water in order to harm fish;
- Use or possess in or near any waters any explosive, poison or electrical device with intent to take or destroy fish;
- Obstruct the passage of fish;
- Take or kill fish during close seasons;
- Fish for or take fish without a licence or contrary to the conditions of a licence;
- Have possession of any article intended for taking or killing fish other than one authorised by licence;
- Introduce fish or fish spawn into an inland water without the permission of NRW.

Prohibited methods and actions may be lawful if carried out with the written authority of NRW.

Under the Salmon Act 1986 it is an offence to:

- Have possession of salmon or sea trout in suspicious circumstances – unless you can prove that you have lawful possession of the fish.

Under the Theft Act 1968 it is an offence to:

- Fish without the consent of the landowner.

## 4.9 Seals

In Great Britain, extending to territorial waters, specific legislation in the Conservation of Seals Act 1970, prohibits certain methods of killing seals, which include using poison or firearms other than a rifle. A person taking or killing a seal will not be guilty of an offence if a disabled seal is taken solely for the purpose of tending it and then returning it to the wild after treatment, or if a seal is accidentally killed as the result of an otherwise lawful action.

It is not an offence to kill a seal for the purpose of preventing damage to fishing nets or tackle or if the seal is so disabled that there is no chance of recovery. The killing, injuring or taking of grey seals and common seals in their close seasons is prohibited; the close seasons relate to their respective breeding seasons.

#### **4.10 Deer**

Wild deer are protected under the Deer Act 1963 (amended by the Deer Act 1991). This prohibits the taking or killing of deer listed on the appropriate Schedule during the close season for that species, unless it is done for the purpose of preventing the suffering of an injured or diseased deer or to prevent damage to crops, vegetables, fruit, growing timber, or any other property of land. These actions can only be carried out by authorised persons or by persons who have the consent of the landowner or occupier to enter the land. The taking or killing of deer in the first hour after sunset and the last hour before sunrise is prohibited, as are certain methods of taking or killing, these include the use of traps, snares, poison and stupefying bait or nets. Certain weapons for the killing or taking of deer are prohibited, namely arrows, spears or any firearm or ammunition listed in the appropriate Schedule. A person will not have committed an offence if the weapon is used to prevent the suffering of an injured or diseased deer. The acts prohibited by the legislation can be authorised by a licence issued by the appropriate authority.

#### **4.11 Wild plants**

Section 13 of the Wildlife and Countryside Act 1981 (as amended) prohibits any person from intentionally picking, uprooting or destroying wild plants which are listed in Schedule 8, and it is an offence to sell such wild plants. The legislation also prohibits the uprooting of wild plants not listed on the Schedule, unless the uprooting is carried out by the owner or occupier of the land on which the plant is growing, or by someone having their permission to do so, or unless the action is authorised in writing by the appropriate local authority, although such authorisation does not confer a right of entry to the land.

The uprooting, picking or damaging of protected plants may be permitted under licence for purposes of science, education, conservation and photography, or to preserve public health or safety, or to prevent the spread of disease, or for the purpose of preventing serious damage to livestock, crops, growing timber or other form of property, or fisheries. The sale of such plants may also be permitted under licence, which must be obtained by the appropriate authority.

European legislation also protects certain species and whilst there are no additions to those listed in the Wildlife and Countryside Act, the collecting or cutting of certain wild plants, in addition to the picking, uprooting, destroying, selling or transporting of such wild plants is also prohibited.

#### **4.12 Invasive non-native species**

Section 14 of the Wildlife and Countryside Act 1981 (as amended) deals with offences relating to the introduction of invasive non-native species (INNS) listed in Schedule 9 of the Act. Under the legislation it is an offence to:

- Sell, offer or expose for sale; or have in possession or transport for the purposes of sale any animal or plant listed in Schedule 9 or anything from which such an animal or plant can be reproduced or propagated;
- Publish or cause to be published any advertisement likely to be understood as conveying that a person buys or sells or intends to buy or sell any animal or plant listed in Schedule 9 of the act or anything from which such and animal or plant can be reproduced or propagated;
- Release or allow to escape into the wild any animal which is of a kind which is not ordinarily resident in, and is not a regular visitor to, Great Britain in a wild state; or is included in Schedule 9.
- Plant or otherwise cause to grow in the wild any plant which is included in Schedule 9.

#### 4.13 Other protected species

There are many other species that have the same protection as mammals under the Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2010 (as amended). These include many species of butterfly and moth, beetles, spiders and many marine invertebrates. This means generally it is an offence to intentionally cause unnecessary suffering to them.

## 5. Further information and contact details

Further information about protected species can be found from the following organisations:

Natural Resources Wales

<http://naturalresourceswales.gov.uk/our-work/policy-advice-guidance/protected-species-wales/?lang=en>

Cofnod (North Wales Environmental Records Centre)

[www.cofnod.org.uk](http://www.cofnod.org.uk)

If you are looking for a professional ecologist to undertake a protected species survey you can find details of consultants working locally in the Ecological Consultants Contact List, available from: <https://www.denbighshire.gov.uk/en/resident/planning-and-building-regulations/planning/biodiversity.aspx>

Denbighshire County Council's biodiversity staff can be contacted for further information or to discuss requirements for planning applications:

Tel: 01824 708263

Email: [biodiversity@denbighshire.gov.uk](mailto:biodiversity@denbighshire.gov.uk)