

Mike Oxford

Policy Officer



A S S O C I A T I O N   O F

Local Government Ecologists

Donald Rumsfeld  
United States Defence Secretary Feb 12th 2002

“As we know, there are known knowns.

There are things we know....

We also know there are known unknowns.

That is to say we know there are some things  
we do not know....

But there are also unknown unknowns, the ones we don't know  
we don't know”.



# Countryside and Rights of Way Act 2000

## CHAPTER 37

### ARRANGEMENT OF SECTIONS

#### PART I

#### ACCESS TO THE COUNTRYSIDE

#### CHAPTER I

#### RIGHT OF ACCESS

##### *General*

Section

1. Principal definitions for Part I.
2. Rights of public in relation to access land.
3. Power to extend to coastal land.

##### *Maps*

4. Duty to prepare maps.
5. Publication of draft maps.
6. Appeal against map after confirmation.
7. Appeal procedure.
8. Power of Secretary of State or Assembly to delegate functions relating to appeals.
9. Maps in conclusive form.
10. Review of maps.
11. Regulations relating to maps.

##### *Rights and liabilities of owners and occupiers*

12. Effect of right of access on rights and liabilities of owners.
13. Occupiers' liability.
14. Offence of displaying on access land notices deterring public use.

##### *Access under other enactments or by dedication*

15. Rights of access under other enactments.
16. Dedication of land as access land.

# The Countryside and Rights of Way Act 2000

*Section 74:*

*“It is the duty of-*

*(a) any Minister of the Crown*

*(b) any Government department*

*in carrying out his or its functions, to have regard ... to the purpose of conserving biological diversity in accordance with the Convention....*

*... but not including Unicorns!”*



# Natural Environment and Rural Communities Act 2006

## CHAPTER 16

### CONTENTS

#### PART 1

#### NATURAL ENGLAND AND THE COMMISSION FOR RURAL COMMUNITIES

##### CHAPTER 1

##### NATURAL ENGLAND

###### *Constitution and general purpose*

- 1 Constitution
- 2 General purpose

###### *Advisory functions*

- 3 Review and research
- 4 Advice

###### *General implementation powers*

- 5 Carrying out proposals etc.
- 6 Financial and other assistance
- 7 Management agreements
- 8 Experimental schemes

###### *Other functions*

- 9 Information services etc.
- 10 Consultancy services and training
- 11 Power to charge for services and licences

# The Natural Environment and Rural Communities Act 2006

*Consolidation of all previous legislation ...*

*Section 40:*

*“Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity”*

Things We Don't Know We Don't Know

The Extent of Statutory Obligations

# Primary Legislation

National Parks and Access to the Countryside Act 1949

Forestry Act 1967

Countryside Act 1968

Forestry Act 1979

Norfolk and Suffolk Broads Act 1988

Town and Country Planning Act 1990

Natural Heritage (Scotland) Act 1991

Water Industry Act 1991

Land Drainage Act 1991 + 1995

Protection of Badgers Act 1992

Environment Act 1995

Countryside And Rights of Way Act 2000

Countryside (Scotland) Act 1967

Conservation of Seals Act 1970

Wildlife and Countryside Act 1981

Environmental Protection Act 1990

Planning & Compensation Act 1991

Deer Act 1991

Water Resources Act 1991

Sea Fisheries (Wildlife Cons) Act

Land Drainage Act 1994

Wild Mammals Protection Act 1996

Local Government Act 2000

Plus - Planning Legislation, Drainage Legislation *etc.*



# Secondary Legislation

The Forestry (Felling of Trees) Regulations 1979, S.I. 1979 No.791

The Forestry (Exceptions from Restrictions of Felling) Regulations 1979, S.I. No. 792

Wildlife and Countryside (Registration to Sell etc. Certain Dead Wild Birds) Regulations 1982; S.I. 1982 No 1219

Wildlife and Countryside (Ringing of Certain Birds) Regulations 1982, S.I. 1982 No 1220

Wildlife and Countryside (Registration and Ringing of Certain Captive Birds) Regulations 1982, S.I. 1982 No 1221

Wildlife and Countryside (Claims for Compensation under section 30) Regulations 1982, S.I. 1982 No 1346

The Deer (Close Seasons) (Scotland) Order 1984, S.I. 1984 No 76

The Deer (Firearms) (Scotland) Order 1985, S.I. 1985 No 1168

The Environmental Assessment (Afforestation) Regulations 1988, S.I. 1988 No 1207

The Conservation of Seals (Common Seals) (Shetland Islands Area) Order 1991, S.I. 1991 No 2638

The Conservation of Seals (England) Order 1993, S.I. 1993 No 2876

The Conservation (Natural Habitats &c.) Regulations 1994, S.I. 1994 No 2716

List of Wild Birds (Sundays) Orders

List of Orders establishing Areas of Special Protection for Birds

List of Orders designating Environmentally Sensitive Areas.

The Hedgerow Regulations 1997, S.I. 1997 No 1160

The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999,

# Things We Know

## OFFICE OF THE DEPUTY PRIME MINISTER

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*ODPM Circular 06/2005*  
*Office of the Deputy Prime Minister*  
*Eland House, Bressenden Place, London SW1E 5DU*

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*Defra Circular 01/2005*  
*Department for Environment, Food and Rural Affairs*  
*Nobel House, 17 Smith Square, London SW1P 3JR*

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16 August 2005

GOVERNMENT CIRCULAR:  
BIODIVERSITY AND GEOLOGICAL  
CONSERVATION – STATUTORY OBLIGATIONS  
AND THEIR IMPACT WITHIN THE PLANNING  
SYSTEM

# Statutory Obligations for LPAs

- When dealing with cases where a European Protected Species may be affected, the LPA is a competent authority under the Habitats Regulations 1994.
- Regulation 3(4) states:  
*“Without prejudice to the preceding provisions, every competent authority in the exercise of their functions, shall have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of their functions”*

# The Habitats Regulations: The 'Three Tests'

In making their decision, should LPAs have “*due regard*” to:

- the purpose of preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment - Regulation 44(2)(e);

As long as:

- there is no satisfactory alternative - Regulation 44(3)(a); and
- the action authorised will not be detrimental to the maintenance of the species concerned at a favourable conservation status in their natural range - Regulation 44(3)(b).

# Crucial Legislation

- National Parks & Countryside Act 1949
- Wildlife and Countryside Act 1981 (WCA)
- The Protection of Badgers Act 1992
- Conservation (Natural Habitats) Regulations 1994
- Hedgerow Regulations 1997
- Impact Assessment Regulations 1999
- Countryside and Rights of Way Act 2000 (CRoW)
- Natural Environment and Rural Communities Act (2006)



Office of the  
Deputy Prime Minister  
*Creating sustainable communities*

Planning shapes the places where people live and work and the country we live in. It plays a key role in supporting the Government's wider economic, social and environmental objectives and for sustainable communities.



PLANNING

Planning Policy Statement 9:  
Biodiversity and Geological  
Conservation

August 2005

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Deputy Prime Minister  
Creating sustainable communities

  
defra  
Department for Environment,  
Food and Rural Affairs

  
ENGLISH  
NATURE



PLANNING

Planning for Biodiversity  
and Geological Conservation:  
A Guide to Good Practice

# Crucial Biodiversity Documents

- UK Biodiversity Action Plan
- England Biodiversity Strategy
- Regional Biodiversity Action Plans / Strategies
- Local Biodiversity Action Plans



# ***METAPHORICAL ALLIGATORS !!***

- **Missing the importance of ecological issues within the organisation**
- **Having insufficient information to make a decision or to take action**
- **Failure to comply with statutory obligations**
- **Failure to apply national policies effectively**
- **Referral to the ombudsman or relevant watch dog**
- **Judicial review / criminal prosecution following unlawful action**
- **Poor and ill-informed professional practice / delivery of services**
- **Wildlife killed, affected, lost and in decline because of poor decisions or needless and inappropriate actions!**

# Unlawfulness and the Risk of Legal Challenge !

Noteworthy Judicial Review involving protected species:

*Regina vs. Cornwall County Council ex parte Jill Hardy*; Sept 2000

- This case involved potential disturbance to bats roosting in a disused mine. The judgement hinged on a procedural matter: the applicant's Environmental Statement was adjudged to have provided insufficient information upon which to grant planning permission.
- Environmental information must be taken into account before the decision to grant planning permission is made.

Appeal dismissed - 14 March 2006 at Former Hack Green  
RAF Camp, Coole Lane, Hack Green, Austerson, Nantwich  
CW5 8AS

Inspector concluded that the development proposal did not meet the relevant tests in Regulation 44 of the Habitats Regulation, including maintenance of favourable conservation status of GCN (40% of Great Crested Newt habitat would be lost).

Inspector also stated that "the provisions of the Directive [the tests] are relevant in reaching planning decisions..." i.e. that the Local Planning Authority, as a competent authority, should have regard to the requirements of the Directive when reaching planning decisions and NOT left until the licence application stage.

# Wildlife Crime is a Criminal Offence !

Compliance therefore requires  
informed decision-making followed by appropriate action



## Guidance for Local Authorities on Implementing the Biodiversity Duty

Defra deals with  
the essentials of life  
– food, air, land,  
water and people

[www.defra.gov.uk](http://www.defra.gov.uk)

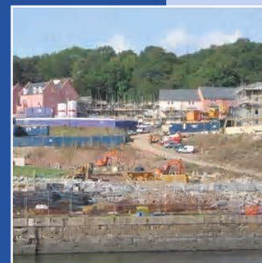
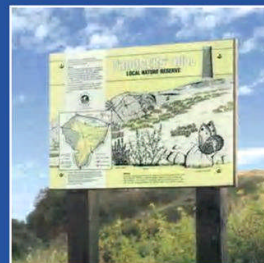
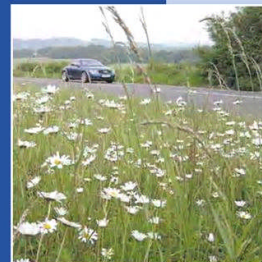
# Local Authority Services and Biodiversity



## Your Statutory Obligations

Section 40: Natural Environment and Rural Communities Act 2006

*"Every public body must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity"*





Defra deals with  
the essentials of life  
– food, air, land,  
water and people

## Guidance for Public Authorities on Implementing the Biodiversity Duty

[www.defra.gov.uk](http://www.defra.gov.uk)



# ***PublicBodies***

- **The NERC duty applies to over 900 public bodies**
- **410 local authorities**
- **21 Government departments**
- **80 Executive agencies**
- **9 Regional government offices**
- **750 Non departmental public bodies**
- **273 NHS Trusts in England and Wales**
- **9 Regional assemblies**
- **Utilities – water and energy services**
- **All other bodies carrying out functions of a public character under a statutory power**



# ***PublicBody Services & Biodiversity***

- **Policies, Strategies, Operations and Biodiversity**
- **Management of Public Land and Buildings**
- **Planning, Infrastructure and Development**
- **Education, Advice, Awareness and Community Involvement**

**Policies/ Strategies/ Operations**

**and**

**Biodiversity**

# East of England Sustainable Development Toolkit Poses 5 Questions for Biodiversity

- Will it encourage greater biodiversity?
- Will it create any new habitats/wildlife sites?
- Will it protect and enhance existing habitats and wildlife?
- Will it help to protect any species at risk?
- Will it help to protect any SSSIs or other designated sites

(Defra Guidance pages 18 / 19 )

**Statutory compliance and professional competence**

**Land take for our buildings**

**Energy Use**



**Raw Materials**

**Waste management and recycling**

**Transport**

**Policies, strategies, decisions and actions**

**Pollution: light / water / air / noise**

**Procurement**

So Lets Start with  
Things We Know

**Review of the ServicesWe Offer**

# Biodiversity and Council Services

- Land Use Planning
- Highways and Transportation
- Public Open Space
- Crematoria and Graveyards
- Leisure and Tourism
- Marketing & Economic Development
- Pest Control
- Environmental Health
- Council Farm Holdings
- Waste Management
- Legal Services
- Education
- Land Drainage & Flood Defence
- Housing Services
- Social Services
- Community Safety
- Health Promotion
- Libraries and Museums
- Trading Standards
- Architectural Services
- Engineering Services
- Regeneration Schemes



ASSOCIATION OF  
Local Government Ecologists

*INCREASING THE MOMENTUM*



**A Vision Statement  
for Biodiversity in  
Local Government**

**2004 - 2010**

# ALGE's 8Key ServiceThemes

1. Political Leadership and Democratic Accountability
2. Encouraging Local Coordination and Partnership
3. Data Collection and Use
4. Planning Policy and Development Control
5. Increasing Community Awareness & Participation
6. Management of Council Land
7. Assisting Other Land Managers and Owners
8. Statutory Responsibility and Professional Competence



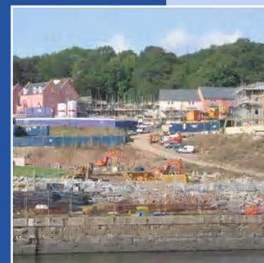
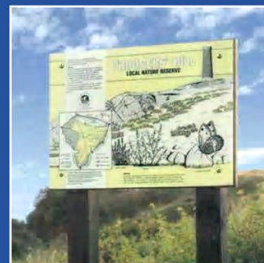
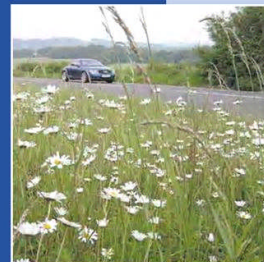
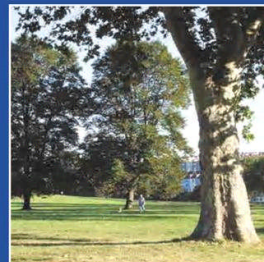
# Local Authority Services and Biodiversity



## Your Statutory Obligations

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*"Every public body must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity"*



# Conserving Nature for the Community



Corporate Biodiversity Action Plan

# **Environmental Management and Audit Systems (EMAS)**

**e.g. Newcastle City Council**

**Cost savings on management of their street trees  
along with benefits for wildlife**

# Oxfordshire FireService



**Kent** Fire &  
Rescue Service

# The Fire and Rescue Service



**Aims to protect:**

- **Life**
- **Property**
- **Environment**



**The Fire Service College**  
Moreton-in-Marsh, England

**BIODIVERSITYAUDIT**





SUSSEX RD by ROMAN ROAD (course of)

SETTLEMENT (of)

Fosse Manor Farm

Blenheim Farm

School

Allot Gdns

Moreton-in-Marsh

Poultry Houses

Smallholding

Depot

Cotswold Business Village

Sewage Works

Lemington Grange

The Lodge

Nursery

Court Farm

GP

Fishpond Coppice

Lemington Manor

Upper Woodhills Farm

Todenham Plantation

Lodge

Four Shire House

Four Shire Stone Farm

Cooper's Coppice

Issues

Issues

Drain

Drain

Drain

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SUSSEX RD by ROMAN ROAD (course of)

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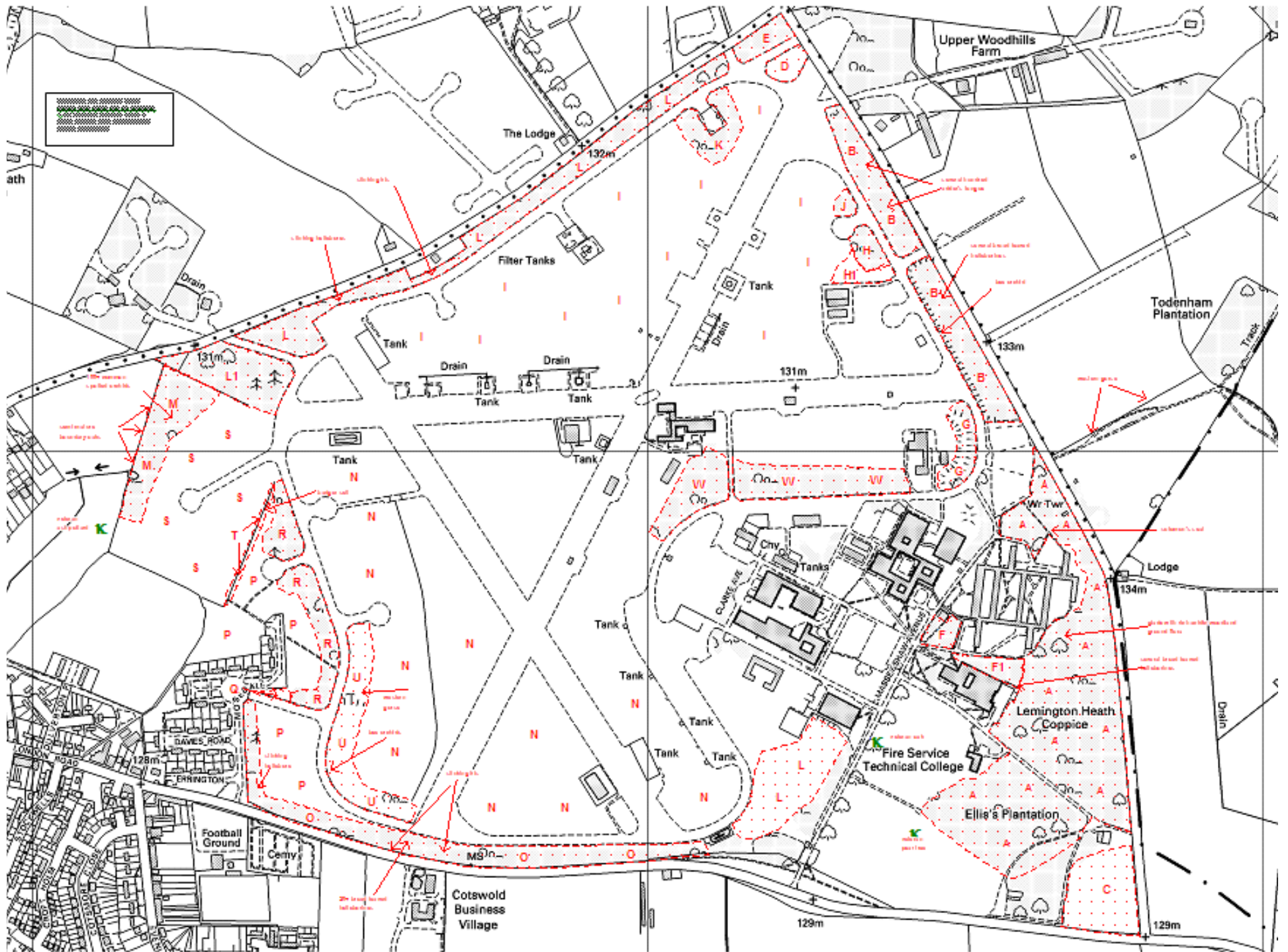
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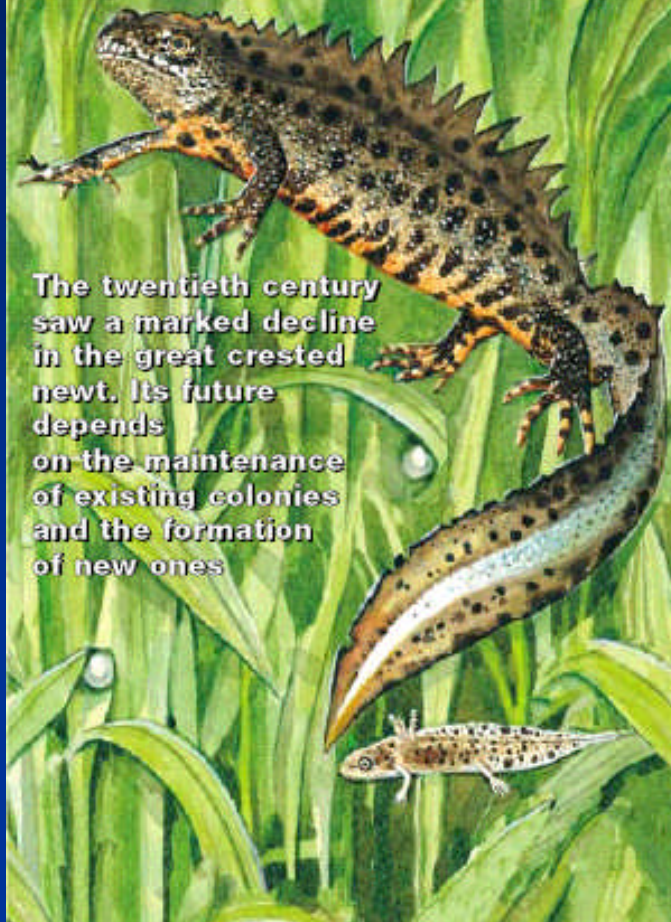




# THE CONSERVATION OF GREAT CRESTED NEWTS

## A BRIEF GUIDE TO HABITAT MANAGEMENT

The twentieth century saw a marked decline in the great crested newt. Its future depends on the maintenance of existing colonies and the formation of new ones



# The Habitats Regulations: The 'Three Tests'

In making their decision, should LPAs have “*due regard*” to:

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As long as:

- there is no satisfactory alternative - Regulation 44(3)(a); and
- the action authorised will not be detrimental to the maintenance of the species concerned at a favourable conservation status in their natural range - Regulation 44(3)(b).

# EPSLicence ApplicationForm

- Personal details and experience of surveyor/consultant
- Purpose of licence
- Background to proposed activity or development
- Species site survey and assessment
- Impact assessment
- Mitigation and compensation
- Timetable
- Maps showing location of all proposed activities

## **FIRE SERVICE OPERATIONS - PREVENTION**

**Dorset Heaths**

**People = Increased risk of heathland fires!**

**Pro-active strategic approach with a strong partnership to reduce these fires**

**Avoid water pollution in liaison with the Environment Agency**

**Review of potential damaging operations!**



Reconciling Day to Day Operational  
Requirements with Biodiversity!!!

# **Review of Training Activities**

## **Raising Awareness**



# **Demonstration of Due Regard**

**Targets  
Standards  
Monitoring**

**Biodiversity Performance Indicators  
for Local Authorities**

# Local Authority Services and Biodiversity

## Your Statutory Obligations

Section 40: Natural Environment and Rural Communities Act 2006

*"Every public body must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity"*



FOR LAND  
MANAGEMENT

## The Wildlife Trusts' Biodiversity Benchmark

### Why not commit your authority to work towards the Benchmark?

The Biodiversity Benchmark is a systematic management process that recognises continual biodiversity improvement. It enables any organisation which owns or manages land to assess its impact on the natural world, improve its environmental contribution and demonstrate its commitment to biodiversity. The Benchmark can help public authorities fulfil their NERC duty by clarifying existing biodiversity and environmental commitments and by helping to integrate biodiversity with policy and decision making.

The Biodiversity Benchmark process:

- helps identify relevant legislation and creates a framework to ensure compliance
- contributes to local partnerships by providing up-to-date ecological information and helping to deliver Local Biodiversity Action Plans
- develops targets to improve biodiversity performance and demonstrates a lead to the community and constituents
- is compatible with specification standards like ISO 14001 and EMAS which define the requirements for organisations' environmental management systems.

Local authorities can choose which category of Biodiversity Benchmark is most suitable for their needs – *single site, multiple site or whole organisation*; for more information contact your local Wildlife Trust or Wildlife Trust Consultancy or visit [www.biodiversitybenchmark.org](http://www.biodiversitybenchmark.org)



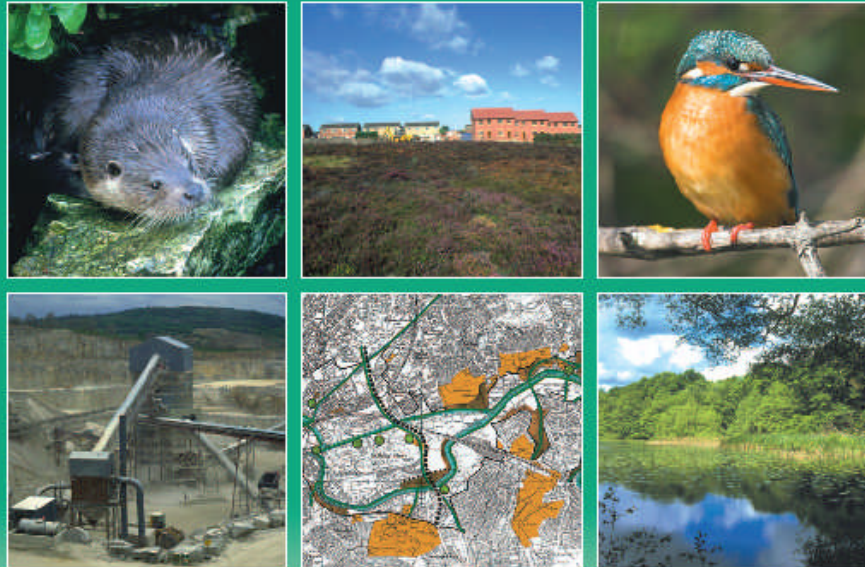
PUBLICLY AVAILABLE SPECIFICATION



## PAS 2010

# Planning to halt the loss of biodiversity

Biodiversity conservation standards for planning in the United Kingdom



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Local Government Ecologists

ICS codes: 13.020.01; 91.020

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# **Planning, Infrastructure and Development**

# Things We Know



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*Creating sustainable communities*

Planning shapes the places where people live and work and the country we live in. It plays a key role in supporting the Government's wider economic, social and environmental objectives and for sustainable communities.



# PLANNING

Planning Policy Statement 9:  
Biodiversity and Geological  
Conservation

August 2005

# *Key Principles From PPS 9*

*Information - A Good Evidence Base*

*Maintain, Enhance and Restore*

*Strategic Approach to Wider Environment*

*Policies Should Promote Enhancement*

*Permit development aiming to conserve and enhance*

*Explore Reasonable Alternatives And Avoid Impacts*

*Mitigate and Compensate Significant Impacts*

*Where Mitigation / Compensation is Not Possible – Refuse!*

# Things We Know



# PLANNING

Planning for Biodiversity  
and Geological Conservation:  
A Guide to Good Practice

# A Guide To Good Practice

## Checklist of an Environmental Information Base

Page 4

# ***Guide To Good Practice: Information Base***

- **the bio-geographical character of the area (its main landscapes types)**
- **key natural systems and processes within the area**
- **the location and extent of internationally, nationally and locally designated sites**
- **the distribution of UKBAP priority habitats and species**
- **main landscape features which, due to their linear or continuous nature, are important for the migration, dispersal and genetic exchanges of plants and animals**
- **areas with potential for habitat enhancement or restoration, including those necessary to help biodiversity adapt to climate change**
- **an audit of green space within built areas and where new development is proposed;**
- **information on the presence of protected and priority species and areas where these are likely to occur;**
- **information on the biodiversity value of previously developed sites**
- **areas of geological value which would benefit from enhancement/management.**

# New Development Delivers Gain for Biodiversity

Pond managed for Great Crested Newts

New purpose built bat roost in roof of new building

Restored floodplain grazing marsh

Retention, restoration and expansion of unimproved neutral grassland meadow

Creation of Butterfly Garden

Bird boxes under eaves of buildings

New barn owl box in sports pavilion

Woodland fenced and under new coppice management regime

Flood balancing ponds created in field corners

Restored unimproved wet grassland meadow managed for Marsh Fritillary Butterflies

Playing field margins managed for long grass and small mammals

River margins restored and managed for water vole

Artificial otter holt installed

New nature trail with wheel chair access



# Land Management Delivers Gain for Biodiversity

Pond managed for Great Crested Newts

New purpose built bat roost in roof of new building

Restored floodplain grazing marsh

Retention, restoration and expansion of unimproved neutral grassland meadow

Creation of Butterfly Garden

New barn owl box in sports pavilion

Bird boxes under eaves of buildings

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Restored unimproved wet grassland meadow managed for Marsh Fritillary Butterflies

Playing field margins managed for long grass and small mammals

River margins restored and managed for water vole

Artificial otter holt installed

New nature trail with wheel chair access

**Management  
of  
PublicLand Buildings**

**Education, Advice, Awareness  
and  
Community Involvement**

Nature Walk  
(follow the orange line)





Avon and Somerset Constabulary  
**Portishead police HQ**  
**Nature Walk**



**Welcome** to the Grounds of Police HQ. Our 47 acre downland site is rich in wildlife and provides a habitat for a variety of animals, birds, insects and plants. A large proportion of the site is protected under a planning regulation that protects the flora and fauna that live here.



The suggested route of this walk is over a mixture of grass, woodland path and hard surfaces. Please be mindful that at times there may be un-even surfaces.

The walk starts outside of the main reception area and proceeds passed the old Bowling green and alongside the pine lawn. This lawn has a collection of pine trees that have been planted for wildlife and staff to enjoy. The walk now enters the first of the ponds. This was an original 'dew pond' which was enlarged when the site was developed. This is home to the great crested newt and several families of Mallard duck. Follow the boardwalk along the pond and into the woodland. The large tree stump by the side of the pond on the right is now home to a family of bats. The bird nesting boxes along these walks are regularly used by Blue tits. The path now enters the central meadow. This protected area has many wild flowers that include Cowslips, Field Scabious, Self heal, betony and meadow Vetchling.



Crossing over the gravel track you now enter another area of woodland that originally formed a hedge line. Squirrels are regularly seen in the trees here and their destructive habit can be seen on some of the trees where they have stripped the bark. The path now passes close to the gravel footpath that leads to the second pond or lagoon. This also is the home for the Great Crested Newt and usually several pairs of Mallard ducks. Reed warblers are often heard in the reed mace surrounding the pond.



Retrace your foot steps to rejoin the woodland path (alternatively you can stay on the gravel footpath if you wish to take a short cut!) follow the path through the woodland that is usually home to many birds including tits, finches, woodpeckers and often a pheasant. Roe deer occasionally visit from near by woodland and have given birth to two kids on site in previous years. At the end of the woodland area the view opens out at the perimeter fence and across to an old barn where you can regularly see peregrine Falcons.



Continue along this path until you cross another bridge into the 'Debbie Leat' meadow.



This meadow was transplanted from where the training school now stands during its construction in the early 90's. In late summer this meadow is abundant with summer flowers that include Birdsfoot trefoil, red and white clover, vetch and nectar feeding butterflies along with the day flying Burnet moth, feeding off the Knapweed. The surrounding wooded areas contain Guelder rose, wild cherry and Rowan.



The walk now crosses over the main drive and turns left into the small wildflower meadow. In spring it is a profusion of yellow cowslips that then give way to oxeye daisies, Ragged Robin and then knapweed and vetch. At the end of this small meadow the path splits either left through the woodland or right to bring you back nearer the buildings.



On entering the west meadow, the largest on site, you can see small plantings of Rowan saplings. These are all rare and endangered species found only in the West Country and are part of the Millennium tree project and were donated by Bristol University. The two meadow paths take you through the grassland that contains many wild flowers including Field Horsetails, Yellow rattle, Tormentil and Ladies bedstraw. At the top of the meadow the undergrowth screens a large badger sett. Badger gates have been provided in the perimeter fence for easy access to a tunnel that allows them to cross under the road to another foraging area. Both this sett and the other sett that is located on the eastern side of the site are extremely active with the occupants foraging over the whole site and beyond via the unique gates in the perimeter.

Finally follow the path along the side of a training building which is actually the roof of an underground Rifle range. Care is needed to cross the road and return to your starting point.

# **Sources of Advice**

**CABE Space  
Grounds Maintenance Specifications**

(Defra guidance page 36)

# **Sources of Advice**

**The Local Biodiversity Partnership  
in partnership  
with  
your Organisation**

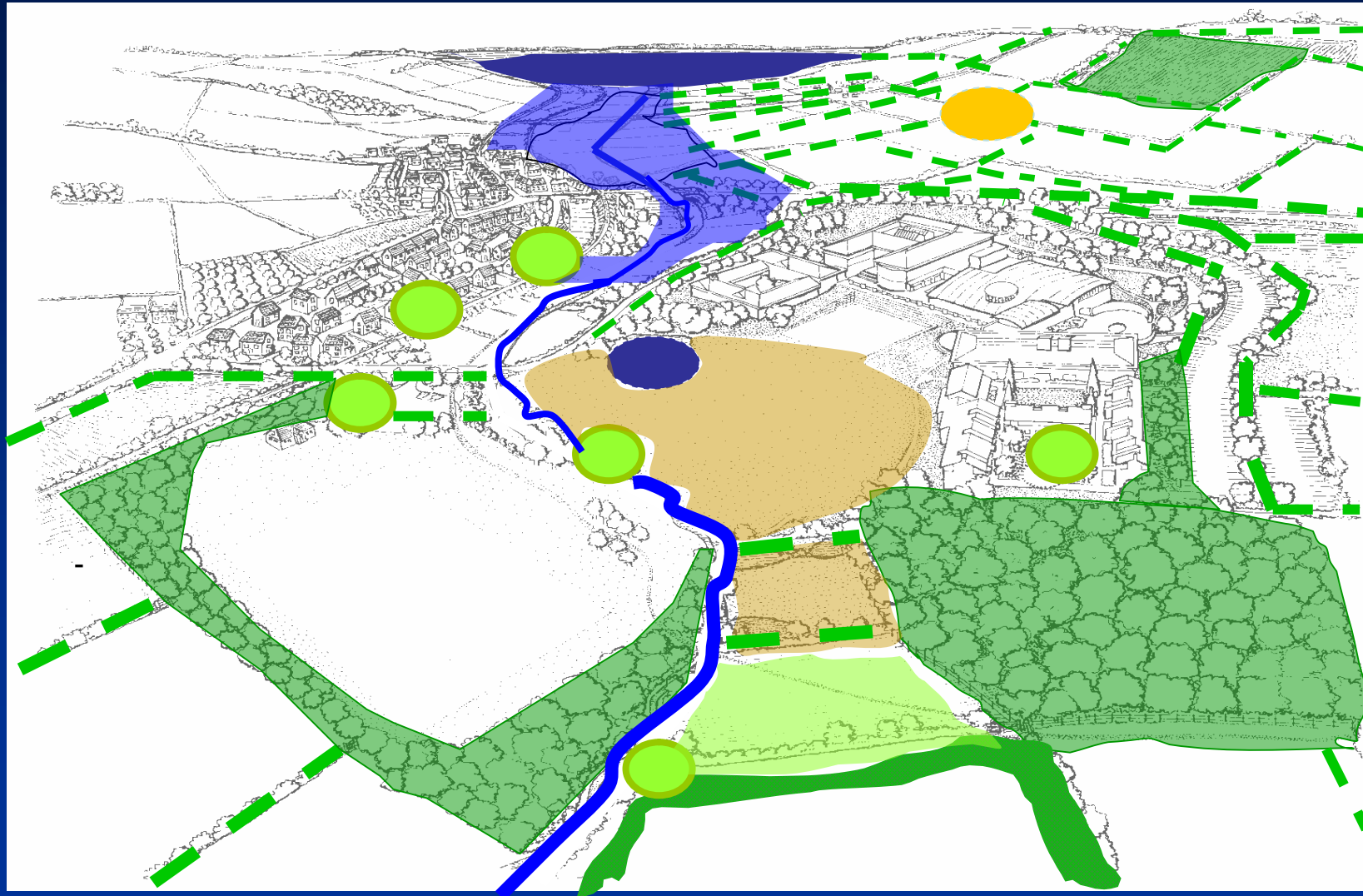
**The Whole is Greater  
than the Sum of the Parts**

**Ecological/Habitat Networks**

**Green Infrastructure**



# Wider Improvements to Habitat Network (Green Infrastructure)



[michaeloxford@btinternet.com](mailto:michaeloxford@btinternet.com)