

Appendix 12-B Designated Sites

12-B.1 Legislation

12-B.2 Biological Records

12-B.1 Legislation

Introduction

12-B.1.1 Certain habitats, plants and animals in the UK are safeguarded by conservation lists, conventions, obligations, legislative instruments and planning policies. The following have been taken into account in the nature conservation and biodiversity assessment for the Bexhill to Hastings Link Road:

- International Union for the Conservation of Nature (IUCN) Global Red Lists;
- Convention on the Conservation of Migratory Species of Wild Animals (1979) (Bonn Convention);
- Convention on the Conservation of European Wildlife and Natural Habitats (1979) (Bern Convention);
- European and National Red Lists or Species of Conservation Concern;
- EU Directive on the Conservation of Wild Birds as amended (79/409/EEC) (Birds Directive 1979);
- EU Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora as amended (92/43/EEC) (Habitats Directive 1992);
- Conservation (Natural Habitats, &c.) Regulations 1994 (Habitats Regulations);
- National Parks and Access to the Countryside Act 1949;
- Countryside Act 1968;
- Wildlife and Countryside Act 1981 (as amended);
- Environmental Protection Act 1990;
- Planning and Compensation Act 1990;
- Protection of Badgers Act 1992;
- Countryside and Rights of Way Act 2000 (CROW Act); and
- Biodiversity Convention 1994.

International Union for the Conservation of Nature (IUCN) Global Red Lists

12-B.1.2 The IUCN Red Lists and Red Data Books (RDBs) identify endangered species which are categorised according to threat: Extinct (EX), Extinct in the wild (EW), Critically Endangered (CR), Endangered (EN), Vulnerable (VU), Near Threatened (NT), Least Concern (LC), Data Deficient (DD) and Not Evaluated (NE).

Convention on the Conservation of Migratory Species of Wild Animals (1979) (Bonn Convention)

12-B.1.3 The Bonn Convention aims to conserve terrestrial, marine and avian migratory species throughout their range by conserving migratory species and

their habitats by providing strict protection for the endangered migratory species listed in Appendix I of the Convention and by concluding multilateral Agreements for the conservation and management of migratory species listed in Appendix II. The Bonn Convention is implemented in the UK through the Wildlife and Countryside Act 1981 (as amended), the Birds Directive and the Habitats Directive.

Convention on the Conservation of European Wildlife and Natural Habitats (1979) (Bern Convention)

12-B.1.4 The Bern Convention aims to conserve wild flora and fauna in their natural habitats; promote co-operation between states; and give particular emphasis to endangered and vulnerable species, including endangered and vulnerable migratory species. Strictly protected flora species are listed in Appendix I, strictly protected fauna species are listed in Appendix II and protected fauna species are listed in Appendix III.

European and National Red Lists or Species of Conservation Concern

12-B.1.5 European and National Red Lists and lists of Species of Conservation Concern have been produced for some taxa. For example, BirdLife International has produced lists of Species of Conservation Concern (BirdLife International, 2004). A wealth of Red Lists have been produced in the UK on species that are considered to be at risk of national extinction. Lists exist for each of the species groups.

EU Directive on the Conservation of Wild Birds as amended (79/409/EEC) (Birds Directive 1979)

12-B.1.6 The Birds Directive provides for the protection, management and control of naturally occurring wild birds within the European Union as well as their eggs, nests and habitats. A list of species (including rare and migratory birds) requiring special conservation measures is cited in Annex 1. One of the key provisions (under Article 4) is the establishment of an internationally co-ordinated network of protected areas, known as Special Protection Areas (SPAs) for 182 species listed in Annex I of the Directive. These are species that are considered to be in danger of extinction, vulnerable to specific changes in their habitat, rare, or requiring particular attention by reason of the specific nature of their habitat.

EU Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora as amended (92/43/EEC) (Habitats Directive 1992)

12-B.1.7 The main aim of the Habitats Directive is to contribute towards ensuring biodiversity through the conservation of natural habitats and of wild fauna and flora in the European Union. A series of sites known as Special Areas of Conservation (SACs) has been selected, designated and protected for 169 natural Habitats of Community Interest listed in Annex I of the Directive and 623 Species of Community Interest listed in Annex II. The UK has 76 of the Habitats of Community Interest, of which 22 are Priority Habitat Types, where the Community has a particular responsibility for their conservation in view of the

proportion of their natural range which falls within the EU territory. In the same way, a number of Species of Community Interest are given priority status.

Conservation (Natural Habitats, &c.) Regulations 1994 (Habitat Regulations)

12-B.1.8 In the UK, the Habitats Directive has been transposed into legislation by the Habitat Regulations. The Habitat Regulations contain five Parts and four Schedules and provide for the designation and protection of European sites and the protection of European protected species. The Regulations build on the existing nature conservation legislation for the protection of habitats and species listed in the Directive. It is an offence deliberately to kill, injure, take or disturb listed animal species and to destroy their resting places or breeding sites, or to pick up, collect, cut, uproot or otherwise destroy listed plant species. The Regulations also introduced a new system for the conservation of certain marine areas.

National Parks and Access to the Countryside Act 1949

12-B.1.9 The Act introduced the concept of National Nature Reserves (NNRs) and Sites of Special Scientific Interest (SSSIs) and conferred powers on local authorities to create nature reserves.

Countryside Act 1968

12-B.1.10 The Act strengthened the 1949 National Parks and Access to the Countryside Act 1949.

Wildlife and Countryside Act 1981 (as amended)

12-B.1.11 The Wildlife and Countryside Act 1981 (as amended) is the principal legal instrument concerning wildlife and countryside in the UK. It is the means by which the Bern Convention and the Birds and Habitats Directives are implemented in Great Britain. It strengthened the protection for SSSIs and restricted the killing, taking from the wild and disturbance of various species. It is an offence to ill-treat any animal; to kill, injure, sell or take protected species (with certain exceptions) or intentionally to damage, destroy or obstruct their places of shelter. The Wildlife and Countryside Act is divided into four parts: Part I is concerned with the protection of wildlife; Part II relates to the countryside and national parks (and the designation of protected areas such as SSSIs); Part III covers public rights of way; Part IV deals with miscellaneous provisions of the Act. Sections 1-8 of Part 1 of the Wildlife and Countryside Act relate to the protection of birds. Section 9 provides protection for wild animals and their habitats listed on Schedule 5. Section 13 identifies measures for the protection of wild plants listed on Schedule 8.

12-B.1.12 Schedule 1 Birds: Part 1 lists birds that are protected by special penalties at all times. Prohibited actions include intentional or reckless killing, injuring, taking, possessing, disturbing and selling (including parts and derivatives, eggs, nests, etc, as applicable) as well as damaging, destroying or disturbing nests in current use or dependant young, etc are prohibited. Part 2 lists birds protected by special penalties (as above) during close season.

12-B.1.13 Schedule 5 Protected Animals (other than birds): The intentional killing, injuring or taking, the possession and the trade in wild animals listed on the schedule are prohibited. In addition, the damaging, destroying or disturbing of nests in current use or with dependant young etc is prohibited. Protection of some species is limited to certain sections of the Act.

12-B.1.14 Schedule 6 lists animals that may not be killed or taken by certain methods.

12-B.1.15 Schedule 8 relates to protected plants and fungi and prohibits the unauthorised intentional uprooting of any wild plant species and forbids any picking, uprooting or destruction of plants listed on the schedule. It also prohibits the sale, or possession for the purpose of sale of Schedule 8 plants, including parts or derivatives of plants.

12-B.1.16 Up to date species lists are available from www.naturenet.net/law/wcagen.html.

Environmental Protection Act 1990

12-B.1.17 Provided further protection for SSSIs and established the three conservation councils and the Joint Nature Conservation Committee to succeed the Nature Conservancy Council.

The Planning and Compensation Act 1991

12-B.1.18 Improved local planning authorities' abilities to safeguard conservation and amenity areas by strengthening their planning enforcement and development control powers. It also required structure, local and unitary development plans to include policies in respect of the conservation of the natural beauty and amenity of the land.

Protection of Badgers Act 1992

12-B.1.19 Badgers are extensively protected by this Act, covering virtually any deliberate interference with the animals themselves or their setts. Licenses to permit interference with a Badger sett in the course of development can be issued by English Nature under the Act.

Countryside and Rights of Way Act 2000 (CROW Act)

12-B.1.20 The CROW Act 2000 strengthens the legal protection for threatened species and brings the Wildlife and Countryside Act 1981 in England and Wales up to date. The importance of biodiversity is given a statutory basis and requires the publication of lists of species and habitats that are of principal importance for the conservation of biological importance in England and Wales respectively. The lists are based on UK Biodiversity Action Plan (UK BAP) Priority Habitats and Species lists. The protection of SSSIs was also strengthened giving greater powers to English Nature to enter into management agreements, to refuse

consent for damaging operations, and to take action where damage is being caused through neglect or inappropriate management.

Biodiversity Convention 1994

12-B.1.21 Based on the principles of The Biodiversity Convention, the Government produced a consultative national action plan, Biodiversity: the UK Action Plan (Anon., 1994), to conserve and enhance biodiversity within the UK and to contribute to the conservation of global biodiversity through all appropriate mechanisms. As part of the development of the UK BAP, lists were produced of Priority Habitats and Priority Species requiring conservation actions.

12-B.1.22 The following are categories of Priority BAP Species:

- Biodiversity UK Long List (also known as Species of Conservation Concern): A list of 1250 species meeting one or more of four criteria (endemic, in rapid decline, internationally significant, or listed in international legislation). Those species not targeted for action (i.e. not 'priority species') will be subject to monitoring;
- Priority Species: Those species targeted for action through species action plans or species statements and comprising the middle and short lists;
- Biodiversity UK Middle List: A subset of the long list comprising approximately 400 species which are globally threatened or have declined in the UK by more than 50% in the last 25 years. The majority of these species were the subject of species action plans under development in 1997-1999; and,
- Biodiversity UK Short List: A subset of the long list comprising approximately 400 species which are globally threatened or have declined in the UK by more than 50% in the last 25 years. 114 species action plans for short list species were published in the UK Steering Group Report in 1995.

12-B.1.23 National Biodiversity Action Plans (BAPS) and the Sussex BAP have been consulted as part of the nature conservation and biodiversity assessment. The purpose of the Sussex BAP is to set out proposed biodiversity action plans for the main habitats and species in Sussex. The overall aim of the Sussex BAP is to conserve and enhance the biological diversity of Sussex and contribute to the conservation and enhancement of both national and international biodiversity. The objectives of the Sussex BAP are:

- To maintain, and where practicable enhance, the wildlife and habitats that give Sussex its character and natural diversity;
- To identify priority habitats and species which are important in Sussex and/or where there is a special responsibility to care for something which is important on a national or international scale;
- To set realistic, but ambitious, targets and timescales for priority habitats and species and to monitor progress of action plans against those targets;
- To ensure that biodiversity action continues as a joint initiative, evolving a dynamic framework for nature conservation; and,
- To raise public awareness and encourage involvement in biodiversity action.

12-B.1.24 The Hastings Borough Local BAP (LBAP) is in draft but the Borough Ecologist has commented on species and habitats of borough significance. Rother District Council uses the Sussex BAP.

12-B.1.25 The County of Sussex has a Rare Species Inventory (Sussex RSI). The criteria for selecting species on the Sussex RSI are:

- Species in the British Red Data Books (including all Notable fauna and Nationally Scarce flora);
- All taxa on the Biodiversity short-list;
- Internationally rare taxa cited in the Bern Convention, IUCN Red data lists, or EU Habitats Directive which are not covered by any of the above; and
- County rarities.

12-B.1.26 Sussex also has a Protected Species Register (Sussex PSR) which consists of species of plants, fungi and animals (other than birds) which are protected under Schedules 5, 6 and 8 of the Wildlife and Countryside Act 1981. There is some overlap between the Sussex RSI and Sussex PSR.

Badgers

12-B.1.27 With the exception of the inclusion of Badgers on Schedule 6 of the Wildlife and Countryside Act 1981 (as amended) which lists animals which may not be killed or taken using certain methods, the Protection of Badgers Act 1992 is a consolidating Act which brings together all the legislation specific to Badgers.

12-B.1.28 The 1992 Protection of Badgers Act protects both Badgers and their setts from harm or injury. The Act defines a Badger sett as 'Any structure or place, which displays signs indicating the current use by a Badger' and English Nature takes this definition to include seasonally used setts. The legislation does not directly protect Badger habitat or foraging grounds.

12-B.1.29 Where works are likely to disturb a Badger sett, it is necessary to obtain a licence from the relevant Statutory Nature Conservation Agency, in compliance with the 1992 Protection of Badgers Act. In England this would be obtained from English Nature.

12-B.1.30 Licences cannot be issued retrospectively so application should be made at least one month in advance of the proposed work. Work that disturbs Badgers without a licence is illegal. The following activities are considered licensable by English Nature when carried out within certain distances of sett entrances:

- Use of very heavy machinery within 30 metres of any entrance to an active sett, e.g. earth scrapers;
- Use of lighter machinery (particularly for any digging operation) within 20 metres, e.g. operation of a JCB; and,
- Light work, such as hand digging, within 10 metres.

Dormice

12-B.1.31 The Dormouse is currently believed to be one of the rarest British rodents. The mouse is a British Red Data Book species (Morris 1993) with a national population estimated at between 300,000 - 500,000 individuals (Harris et al. 1995). Dormice are markedly southern in distribution (Arnold 1993), and research (Morris 1993, Hurrell and McIntosh 1984, Bright and Morris 1989) has shown them to be generally tied to particular woodland types. Outside of these favoured habitats, they may be very local.

12-B.1.32 In England, the Dormouse is fully protected under the Wildlife and Countryside Act 1981 (as amended) through inclusion in Schedule 5. It also included in Schedule 2 of the Conservation (Natural Habitats, &c.) Regulations 1994 which defines European protected species of animals. It is also on the Short List of the Biodiversity Lists, is in the Lower risk – least concern (LC) category of rarity from the IUCN (1994) and is categorised as a Priority Species. Taken together, these legislative instruments make it illegal to carry out the following activities:

- Intentionally, deliberately or recklessly kill, injure or capture Dormice;
- Deliberately disturb dormice (whether in a nest or not); or,
- Damage, or destroy dormouse breeding sites or resting places.

12-B.1.33 However, licences can be issued to allow otherwise prohibited actions, by DEFRA, the licensing authority for works where development may affect the species.

Bats

12-B.1.34 In England, bats and their roosts are protected by law. In summary, it is illegal to kill, injure, or disturb bats, obstruct access to bat roosts, or damage or disturb bat roosts because of the following legislation:

12-B.1.35 Wildlife and Countryside Act 1981 (as amended) provides protection for all bats and their roosts and requires consultation with English Nature (in England) before carrying out activities that might harm or disturb bats and/or roosts. Under the Act it is illegal to:

- Intentionally or deliberately kill, injure or capture bats (take) bats;
- Deliberately disturb bats (whether in a roost or not);
- Damage, destroy or obstruct access to bat roosts;
- Possess or transport a bat or any parts of bats, unless acquired legally; or,
- Sell, barter or exchange bats, or parts of bats.

12-B.1.36 In this interpretation, a bat roost is 'any structure or place which any wild animal uses for shelter or protection'. Because bats tend to reuse the same roosts, legal opinion is that the roost is protected whether or not the bats are present at the time.

12-B.1.37 Countryside Rights of Way (CROW) Act 2000 adds the word “reckless” to the offence of disturbing a bat or damaging/destroying a place a bat uses for shelter or rest (i.e., a bat roost). This is important legislation because it protects bats and roosts from reckless and/or intentional damage/disturbance.

12-B.1.38 The Conservation (Natural Habitats, &c.) Regulations 1994 make it an offence to damage or destroy a breeding site or resting place of any bat, or to deliberately capture, kill or disturb a bat. Most development and maintenance works affecting bats and /or roosts, e.g. bridge/tree maintenance works, any demolition, barn conversions, works to churches etc, requires a Habitat Regulations Licence. In England, before works affecting bats or roosts is undertaken, a Habitats Regulations Licence must be obtained from DEFRA.

12-B.1.39 Bats may also be protected by site safeguard measures, for example by virtue of their roost site or feeding grounds being notified as a Special Area of Conservation (SAC) or a Site of Special Scientific Interest (SSSI).

12-B.1.40 When considering planning matters, Planning Policy Guidance Note 9 on Nature Conservation (PPG9) needs to be taken into account. PPG9 states that the presence of a protected species is a “material consideration” in considering a development proposal”. The local authority must contact English Nature if bats are likely to be present on a site proposed for development as part of the planning process. A survey may be required and permission may be refused or conditions attached to safeguard protected species and habitats. Conditions may dictate the timing of certain works, management of sites following development, and require a Habitats Regulations Licence before work can start.

12-B.1.41 There are three defences in law that allows what would otherwise be a prohibited act:

- Injured or disabled bats may be taken and possessed in order to look after them with the sole purpose of releasing them once they are no longer disabled;
- Similarly, badly injured animals may be legally killed. Within dwelling houses (does not include roof spaces or cellars only occupied rooms); bats may be disturbed and bat roosts may be damaged, destroyed or obstructed. However; bats may not be killed, injured or taken; and
- Killing, injuring, taking or disturbing bats or damaging, destroying or obstructing roosts are not offences if these were the accidental result of a lawful operation and could not reasonably have been avoided.

12-B.1.42 The above statements apply to any species on Schedule 5 of the Wildlife and Countryside Act. 1981 but there is one special provision that applies only to bats. This states that defences 2 and 3 cannot be relied upon (except within the living area of a dwelling house) unless the appropriate Statutory Nature Conservation Organisation (SNCO) had been notified and given a reasonable time to advise on whether the proposed action should be carried out and if so the method to be used.

Police and Court Powers

12-B.1.43 A police officer who suspects with reasonable cause that a person is committing or has committed an offence can stop and search them, search or examine any relevant thing in their possession, and seize it. They can also enter land other than a dwelling house without a warrant, or enter and search a dwelling house (with or without other persons) with a warrant. In England and Wales, the CROW Act makes bat offences arrestable.

DEFRA Licensing

12-B.1.44 Due to a recent ruling in the European courts, a licence is now required for all 'non-domestic' developments which contain known bat roosts. This is obtainable from DEFRA on the submission of a method statement detailing the works required and a mitigation package designed to 'maintain a favourable conservation status'.

12-B.1.45 There are three conditions that have to be met before a licence can be granted to allow development to proceed;

- There is no satisfactory alternative;
- The development will not be detrimental to the maintenance of the populations concerned at a favourable conservation status in their natural range; or
- The development must be for 'imperative reasons of overriding public interest including those of a social or economic nature.

12-B.1.46 If it is thought the work will have a direct effect on the bat roost and is unavoidable then advice must be sought from the Species Officer for English Nature or DEFRA prior to the work proceeding.

12-B.1.47 If bats are found whilst undertaking work as part of the development (at any stage, and even if planning permission has been granted), for example, whilst felling trees or demolishing a building work must be stopped and English Nature contacted for further advice. A licence may be required from DEFRA before work may continue.

Water Voles

12-B.1.48 The Water Vole is included on Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) but only in respect of Section 9(4) (a). This section affords protection to 'any structure or place which any wild animal included in Schedule 5 uses for shelter or protection' but does not protect the voles themselves. There is also no provision for licensing the intentional destruction of Water Vole burrows for development or maintenance operations.

Water Shrews

12-B.1.49 In common with other Shrew species, Water Shrews are protected under Schedule 6 of the Wildlife and Countryside Act (1981). This permits Shrews to be captured only by those in possession of a licence.

Otters

12-B.1.50 The Otter is protected under the Berne Convention Appendix 2, the Habitats Directive Annex 2 and 4, The Habitats Regulations 1994 Schedule 2 and the Wildlife and Countryside Act 1981 (as amended) Schedules 5 and 6.

Birds

12-B.1.51 In Britain, all birds and their nests and eggs, are protected by law and it is an offence, with certain exceptions to intentionally:

- Kill, injure or take any wild bird;
- Take, damage or destroy the nest of any wild bird while it is in use or being built;
- Take or destroy the egg of any wild bird;
- Have in one's possession or control any wild bird (dead or alive) or any part of a wild bird that has been taken in contravention of the Act or the Protection of Birds Act 1954;
- Have in one's possession or control any egg or part of an egg that has been taken in contravention to the Act. This includes items taken or killed before the passing of the Act;
- Have on one's possession or control any live bird of prey of any species in the world (with the exception of vultures and condors) unless it is registered and ringed in accordance with the Secretary of State's regulations;
- Have in one's possession or control any bird of a species occurring on Schedule 4 of the Act unless registered (and in some cases ringed) in accordance with the Secretary of State's regulations; or,
- Disturb any wild bird listed on Schedule 1 while it is nest building, or at a nest containing eggs or young, or disturb the dependant young of such a bird.

12-B.1.52 Birds can be protected under the Berne Convention, Bonn Convention, Birds Directive and the Wildlife and Countryside Act 1981 (as amended). Part 1 of Schedule 1 of the Wildlife and Countryside Act lists birds protected by special penalties at all times. Intentional or reckless killing, injuring, taking, possessing, disturbing and selling (including parts and derivatives, eggs, nests, etc. are prohibited. Part 2 lists birds protected by special penalties (as above) during close season.

12-B.1.53 The Birds Directive (European Communities Directive on the Conservation of Wild Birds) relates to the conservation of all species of birds naturally occurring in the wild in the European territory of the Member States (but not Greenland) and their eggs, nests and habitats. A list of species (including

rare and migratory birds) requiring special conservation measures, such as designation and maintenance of Special Protection Areas is cited in Annex 1 to this directive. Birds generally are protected from deliberate killing, taking from the wild, egg collecting, nest destruction and keeping in captivity, but allowances are made for game birds. Pest species can be derogated by Member States (carrion crow, collared dove, feral and wood pigeons, rook, jackdaw, great and lesser black-backed gulls, herring gull, jay, magpie, house sparrow and starling in Britain).

12-B.1.54 The leading governmental and non-governmental conservation organisations in the UK have reviewed the population status of the birds that are regularly found in the UK. A total of 247 species were assessed and each placed onto one of three categories of conservation importance - Red, Amber and Green. In total 40 species are Red-listed, 121 are Amber-listed and 86 are Green-listed. Seven quantitative criteria were used to assess the population status of each species and place it onto the red, amber or green list. These criteria are listed below. The review excluded species that are not native to the UK and those that occur irregularly as vagrants or scarce migrants.

12-B.1.55 Global Conservation status- Species assessed as Globally Threatened using IUCN11 criteria were placed on the red list.

Recent decline- Species whose breeding or non-breeding population declined, or range contracted, rapidly (by more than 50%) or moderately (by between 25 and 49%) over the last 25 years were placed on the red and amber lists respectively.

Historical decline- Species whose populations declined severely between 1800 and 1995 were placed on the red list, except for those that have recovered substantially (more than doubled) in the last 25 years, which were amber-listed¹². In earlier assessments, all species showing a serious historical decline were red-listed, but in this assessment the success of recent conservation action has been recognised by moving recovering species to the amber list.

European conservation status- Species whose population status is unfavourable in Europe (but which are not Globally Threatened) were placed on the amber list.

Rare breeders- Species with a mean population size of 1-300 pairs breeding annually over the last five years were placed on the amber list. If a full census was carried out in a single year, the result of this was used instead of a five-year mean.

Localised species- Species for which 50% or more of the breeding or non-breeding population occurs at 10 or few sites were placed on the amber list. This criterion was used because a species whose population is confined to a few sites faces a greater threat from chance events than one whose population is widespread. The sites considered were either Important Bird Areas (identified by BirdLife International) or Special Protection Areas (designated under the European Union's Directive on the Conservation of Wild Birds).

International importance- Species with 20% or more of their European population breeding in the UK were placed on the amber list, as were non-breeding wildfowl

with 20% or more of their northwest European population occurring in the UK and non-breeding waders with 20% or more of their East Atlantic Flyway population occurring in the UK. This criterion is different from the others as it is a measure of the UK's responsibility for each species rather than the extent to which species are threatened.

12-B.1.56 Red list species are the highest conservation priority, with species needing urgent action, those that are Globally Threatened according to IUCN criteria; whose population or range has declined rapidly in recent years; and those that have declined historically and not shown a substantial recent recovery. Amber list species are the next most critical group, those with an unfavourable conservation status in Europe, those whose population or range has declined moderately in recent years; those whose population has declined historically but made a substantial recent recovery; rare breeders; and those with internationally important or localised populations. Species that fulfil none of the criteria are green-listed. These criteria have been used in the assessment of the bird populations found on the site.

12-B.1.57 Birds in the Red, Amber and Green lists would be subject to at least one of the relevant factors listed below.

12-B.1.58 Red List criteria:

- Globally threatened;
- Historical population decline in UK during 1800-1995;
- Rapid (> or =50%) decline in UK breeding population over last 25 years; or
- Rapid (> or =50%) contraction of UK breeding range over last 25 years.

12-B.1.59 Amber List criteria:

- Historical population decline during 1800-1995, but recovering; population size has more than doubled over last 25 years;
- Moderate (25-49%) decline in UK breeding population over last 25 years;
- Moderate (25-49%) contraction of UK breeding range over last 25 years;
- Moderate (25-49%) decline in UK non-breeding population over last 25 years;
- Species with unfavourable conservation status in Europe (SPEC = Species of European Conservation Concern); or
- Five-year mean of 1-300 breeding pairs in UK ;
- or 50% of UK breeding population in 10 or fewer sites, but not rare breeders ;
- or 50% of UK non-breeding population in 10 or fewer sites ;
- or 20% of European breeding population in UK ;
- or 20% of NW European (wildfowl), East Atlantic Flyway (waders) or European (others) non-breeding populations in UK.

12-B.1.60 Green List criteria:

- No identified threat to the population's status.

12-B.1.61 Introduced:

- This is not a conservation status category, but indicates a species that has escaped and bred in the wild or has been deliberately released into the wild at some point in the UK's history. As these species are not native to the UK, they have no specific conservation status here.

Reptiles

12-B.1.62 All of the common reptile species (Grass Snake, Adder, Common Lizard and Slow Worm) native to Britain are protected by the 1981 Wildlife & Countryside Act 1981 (as amended) under Sections 9(1) and 9(5). This legislation makes it illegal to intentionally kill or injure a common reptile and also, to sell, barter, exchange or transport for sale these animals or parts of them. However, their habitat is not protected directly.

12-B.1.63 Because reptiles are protected under the Wildlife and Countryside Act 1981 (as amended) there is a legal obligation to undertake a reasonable effort in removing reptiles from a site where there is a risk of causing harm to reptiles, such as on a development site. Any direct impact on such a reptile species carried out intentionally would therefore be unlawful.

Amphibians

12-B.1.64 Full protection applies to the Great Crested Newt, Natterjack Toad, Sand Lizard and Smooth Snake and to all species of Marine Turtle when found in British waters. Protection, against killing, injuring and sale applies to the Common Lizard, Slow Worm, Grass Snake and Adder. Protection against sale applies to Smooth and Palmate Newts, the Common Frog and Common Toad.

12-B.1.65 The Great Crested Newt is fully protected under Section 9 of the Wildlife and Countryside Act 1981 (as amended) and under Regulation 39 of the Habitats Regulations 1994. In summary their protection is as follows:

- It is illegal to deliberately kill, injure, capture or disturb them or obstruct their access to areas where they live and breed;
- The areas where they live and breed are also protected against damage or destruction; and
- The law applies to eggs, tadpoles and juveniles as well as to the adults.

12-B.1.66 The Habitats Regulations lists Great Crested Newts under Schedule 2. Under Article 16 there are three conditions that have to be met before member states may waive protection for Schedule 2 species and grant a licence effectively to allow a development to proceed;

- There is no satisfactory alternative;
- The development will not be detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range, and,
- The development must be for 'imperative reasons of overriding public interest including those of a social or economic nature.

12-B.1.67 Great Crested Newt survey licences are issued by English Nature. Licences in relation to developments are issued by Department of the Environment, Transport and the Regions (DETR). English Nature plays an active role in determining such applications through providing advice to the Department on the conservation implications of proposals.

Landscape Features of Major Importance for Wild Flora and Fauna

12-B.1.68 Article 10 of the Habitats Directive requires Member States (where they consider it necessary) to endeavour to encourage the management of features of the landscape that are of major importance for wild flora and fauna. These features are those that, because of their linear and continuous structure or their function as stepping-stones, are essential for migration, dispersal and genetic exchange. Examples given in the Directive are rivers with their banks, traditional field boundary systems (such as hedgerows), ponds and small woods. Suitable planning conditions and obligations may serve to promote such management.

Hedgerows Regulations 1997 (SI 1997/1160)

12-B.1.69 The Hedgerows Regulations 1997 (SI 1997/1160) were made under section 97 of the Environment Act 1995. They aim to protect important hedgerows in the countryside by controlling their removal through a system of notification to local planning authorities (which administer the Regulations). The system applies to most countryside hedgerows in England and Wales, and covers hedgerows on, or adjoining land used for agriculture or forestry, the breeding or keeping of horses, ponies or donkeys, common land or village greens, SSSIs, or local nature reserves. They do not apply to garden hedges. The Regulations set out the criteria to be used by local planning authorities, in determining whether a hedgerow is important. The criteria relates to the value of hedgerows from an archaeological, historical, landscape or wildlife perspective. Hedgerows should be at least 30 years old and meet any of the criteria in order to be deemed important. Permission for removal of a hedgerow is not required if it is less than 20 metres long (unless both ends join with other hedgerows or it is part of a longer hedgerow), or is in, or borders a garden. Similarly permission to remove a hedgerow is not required in certain circumstances for emergency/access purposes.

Other UK Acts and Regulations

12-B.1.70 Other UK Acts and regulations of relevance are listed below:

- Water Resources Act 1991;
- Environment Act 1995;

- Wild Mammals Protection Act 1996; and
- Natural Environment and Rural Communities Act 2006

Natural Environment and Rural Communities Act 2006

12-B.1.71 On 1st October 2006, Section 40 of the Natural Environment and Rural Communities Act came into force in England and Wales. Section 40 of the Act states that:

“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”.

12-B.1.72 The purpose of the duty is to raise the profile of biodiversity in England and Wales and to stimulate a cultural change in all parts of the public sector with the intended result being that biodiversity issues become second nature for public bodies when developing policies and making decisions. The duty affects over 900 public bodies, ranging from local authorities, fire, police and health bodies, to museums and transport authorities.

12-B.1.73 Section 40 replaces and extends a duty, from S74 of the Countryside and Rights Of Way Act 2000, on Ministers and Government which already requires them to have regard to the purpose of conserving biodiversity.

12-B.1.74 Defra, in partnership with the Local Government Association, the Association of Local Government Ecologists, English Nature, the Countryside Council for Wales, Welsh Assembly and Wildlife and Countryside Link are working on developing guidance for those affected by the duty to assist them in fulfilling their responsibilities.

12-B.1.75 In recognition of the key role local authorities play with regard to conserving and enhancing biodiversity, there will be 2 sets of guidance:

- Specific guidance aimed at the needs and requirements of Local Authorities; and,
- More generic guidance aimed at all public bodies

12-B.1.76 The guidance will be produced in paper and electronic versions and is expected to be published in early 2007.

Policies and Plans

12-B.1.77 The following national, regional, county and local policies and plans for nature conservation and biodiversity relevant to the scheme are described in detail in the Planning Chapter:

- Our Countryside – the Future – A Fair Deal for Rural England (November, 2000);
- Working with the Grain of Nature: A Biodiversity Strategy for England (October, 2002);

- Securing the Future – Delivering UK Sustainable Development Strategy – The UK Government Sustainable Development Strategy (March 2005);
- A New Focus for England's Woodlands – England Forestry Strategy (December, 1998);
- PPS9 – Biodiversity and Geological Conservation (August, 2005);
- Regional Planning Guidance for the South East (RPG9) (March, 2001);
- Regional Economic Strategy for the South East of England 2002-2012 (July, 2002);
- Draft RSS – Draft South East Plan (part 1) (July 2005);
- East Sussex and Brighton and Hove Structure Plan 1991-2011 (Adopted December 1999);
- A Biodiversity Action Plan for Sussex (July, 1998);
- East Sussex Environmental Action Plan 2002-2005;
- Hastings Local Plan (April, 2004); and
- Rother Local Plan (November, 2003).

12-B.1.78 Planning Policy Statement 9 (PPS9) Biodiversity and Geological Conservation sets out planning policies on protection of biodiversity and geological conservation through the planning system. It was published in August 2005 and replaces PPG Note 9 on Nature Conservation (published October 1994).

12-B.1.79 Government Circular ODPM Circular 06/2005 Defra Circular 01/2005 Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System provides administrative guidance on the application of the law relating to planning and nature conservation as it applies in England. It complements the expression of national planning policy in PPS9 and the accompanying Good Practice Guide. Although this Circular outlines how statutory obligations impact within the planning system, in some cases the legislation will have an equal bearing on other regimes e.g. Transport and Works Act 1992.

12-B.2 BIOLOGICAL RECORDS

12-B.2.1 The following records for the study area were taken from information available through the Sussex Biodiversity Record Centre (Reports ESD/04/25 and ESD/06/189). Records for badgers and otters are confidential and are therefore not provided.

LP: Lower Plant HP: Higher Plant IV: Invertebrate B: Bird A: Amphibian R: Reptile
 M: Mammal

Ref No.	Species	Grid Reference	Date
LP1	<i>Moellerposis nebulosa</i>	TQ7810	1890
LP2	<i>Veizdaea aestivalis</i>	TQ757123	1950-1995
LP3	<i>Caloplaca chrysophthalma</i>	TQ770113	1848-1950
LP4	<i>Boletus aereus</i>	TQ785113	1993
LP5	<i>Boletus parasiticus</i>	TQ785113	1993
LP6	<i>Boletus porosporus</i>	TQ785113	1993
LP7	<i>Boletus pruinatus</i>	TQ785113	1993
LP8	<i>Lepiota friesii</i>	TQ785113	1993
LP9	<i>Chara virgata</i>	TQ70U	1919
LP10	<i>Fissidens exiguus</i>	TQ71L	1950-2001
LP11	<i>Fissidens rivularis</i>	TQ71L	1848-1990
LP12	<i>Tortula freibergii</i>	TQ70Z	1966
LP13	<i>Pterygoneurum ovatum</i>	TQ763123	1950-2002
LP14	<i>Hennediella stanfordensis</i>	TQ70Z	1991
LP15	<i>Bryum donianum</i>	TQ7407	1900
HP1	<i>Dryopteris aemula</i>	TQ71L	1977-2001
HP2	<i>Ranunculus hederaceus</i>	TQ778098	1975
HP3	<i>Thalictrum flavum</i>	TQ70U	1988
		TQ71V	1848-1988
		TQ778098	1983
HP4	<i>Meconopsis cambrica</i>	TQ764082	1995
HP5	<i>Fumaria bastardii</i>	TQ7307	1959
HP6	<i>Cardamine bulbifera</i>	TQ785113	13/05/1996
HP7	<i>Brassica oleracea</i>	TQ784091	24/09/1996
HP8	<i>Hippophae rhamnoides</i>	TQ759077	1995
HP9	<i>Myriophyllum verticillatum</i>	TQ7610	1995
		TQ778098	1974-1981
HP10	<i>Epilobium lanceolatum</i>	TQ785113	July 1991
HP11	<i>Scandix pecten-veneris</i>	TQ743097	1970
HP12	<i>Centaurium scilloides</i>	TQ731078	1985-1987
HP13	<i>Calystegia soldanella</i>	TQ764079	04/04/1992
HP14	<i>Nymphoides peltata</i>	TQ775088	1995
HP15	<i>Galeopsis angustifolia</i>	TQ7608	1987
		TQ778098	1974-1981
HP16	<i>Sambucus ebulus</i>	TQ778117	1999
HP17	<i>Hypochaeris glabra</i>	TQ784112	03/07/1996
HP18	<i>Senecio inaequidens</i>	TQ782089	Mar 1999
HP19	<i>Hydrocharis morsus-ranae</i>	TQ7610	1995
		TQ778098	03/08/1991
HP21	<i>Stratiotes aloides</i>	TQ71Q	1848-1990
		TQ778098	1974-1981

Ref No.	Species	Grid Reference	Date
		TQ70U	1848-1978
HP22	<i>Potamogeton trichoides</i>	TQ7610	1995
		TQ778098	1983
HP23	<i>Juncus subnodulosus</i>	TQ778098	1983
		TQ70Z	1848-1990
HP24	<i>Juncus maritimus</i>	TQ773084	04/06/1992
HP25	<i>Eleocharis uniglumis</i>	TQ70U	1970
HP26	<i>Eleogiton fluitans</i>	TQ778098	1983
HP27	<i>Carex divisa</i>	TQ70U	1848-1989
HP28	<i>Carex rostrata</i>	TQ778098	1995
HP29	<i>Briza maxima</i>	TQ758081	1995
HP30	<i>Catabrosa aquatica</i>	TQ778098	1983
HP31	<i>Parapholis incurva</i>	TQ756077	1988
		TQ761076	1988
HP32	<i>Calamagrostis epigejos</i>	TQ781105	27/05/1992
		TQ782089	10/12/1989
HP33	<i>Apera spica-venti</i>	TQ7608	1987
IV1	<i>Platycnemis pennipes</i>	TQ748127	23/07/1999
IV2	<i>Ischnura pumilio</i>	TQ7512	May 1900
IV3	<i>Coenagrion pulchellum</i>	TQ759097	29/05/1999
		TQ778098	1974-1983
		TQ70U	1965-1978
		TQ71Q	1846-1965
IV4	<i>Ceriagrion tenellum</i>	TQ782089	May 1998
IV5	<i>Gomphus vulgatissimus</i>	TQ782089	May 1999
IV6	<i>Brachytron pratense</i>	TQ751127	30/05/2002
		TQ761102	29/05/1999
		TQ777097	31/05/2002
		TQ781105	13/06/1992
		TQ70P	1846-1965
		TQ70U	1965-1978
		TQ70Z	1846-1965
		TQ734119	22/05/1997
		TQ747128	26/05/2003
TQ779105	07/06/1992		
IV7	<i>Cordulia aenea</i>	TQ70Z	1846-1965
		TQ71Q	1846-1965
		TQ71V	1846-1965
		TQ7709	20/06/1941
IV8	<i>Orthetrum cancellatum</i>	TQ70U	1965-1978
		TQ70Z	1846-1965
		TQ745128	05/08/1996
		TQ7509	1995
		TQ752127	20/06/1996
		TQ757102	28/07/2003
		TQ761102	28/07/2003
		TQ778098	1974-1983
		TQ779105	31/05/1992
TQ781105	13/06/1992		
IV9	<i>Sympetrum sanguineum</i>	TQ755126	23/07/1999
		TQ763104	13/08/1999

Ref No.	Species	Grid Reference	Date
		TQ778098	1974-1983
		TQ71V	1846-1965
		TQ734118	03/08/1997
		TQ761106	28/07/2003
		TQ7612	1989-1997
		TQ785113	1993
IV10	<i>Conocephalus discolor</i>	TQ767084	07/09/1989
IV11	<i>Omocestus rufipes</i>	TQ71L	1848-1992
IV12	<i>Sigara striata</i>	TQ778098	1985
IV13	<i>Bembidion maritimum</i>	TQ781087	11/01/1975
IV14	<i>Bembidion clarki</i>	TQ7610	1991
IV15	<i>Pogonus littoralis</i>	TQ7708	1848-1905
IV16	<i>Pogonus luridipennis</i>	TQ7708	1848-1905
IV17	<i>Diachromus germanus</i>	TQ70Z	1848-1905
IV18	<i>Acupalpus exiguus</i>	TQ7610	1991
IV19	<i>Demetrias imperialis</i>	TQ7610	1991
IV20	<i>Drypta dentata</i>	TQ7708	1848-1905
IV21	<i>Peltodytes caesus</i>	TQ778098	10/11/1986
IV22	<i>Laccophilus obsoletus</i>	TQ7708	1888
IV23	<i>Hygrotus decoratus</i>	TQ766103	1991
IV24	<i>Rhantus suturalis</i>	TQ778098	1985
IV25	<i>Gyrinus urinator</i>	TQ7709	1993
IV26	<i>Sphaerius acaroides</i>	TQ7708	1848-1905
IV27	<i>Hydrochus angustatus</i>	TQ7610	1993
IV28	<i>Hydrochus ignicollis</i>	TQ7610	1991
IV29	<i>Helophorus nanus</i>	TQ7610	1991
IV30	<i>Cercyon convexiusculus</i>	TQ7610	1991
IV31	<i>Cercyon tristis</i>	TQ7610	1991
IV32	<i>Bledius tricornis</i>	TQ7708	30/08/1975
IV33	<i>Bledius tricornis</i>	TQ764103	03/07/1991
IV34	<i>Achenium humile</i>	TQ764103	03/07/1991
IV35	<i>Atheta nannion</i>	TQ763103	03/07/1991
IV36	<i>Ilyobates subopacus</i>	TQ763103	03/07/1991
IV37	<i>Agrilus laticornis</i>	TQ777119	25/05/1999
IV38	<i>Silis ruficollis</i>	TQ778098	28/06/1989
IV39	<i>Atomaria pseudatra</i>	TQ7610	27/03/1923
IV40	<i>Pyrochroa coccinea</i>	TQ71L	1848-1992
IV41	<i>Mordellistena parvuloides</i>	TQ766093	21/06/1998
IV42	<i>Protapion difforme</i>	TQ7709	30/08/1975
IV43	<i>Protapion dissimile</i>	TQ788089	23/06/1999
IV44	<i>Oxystoma cerdo</i>	TQ778098	28/06/1989
IV45	<i>Notaris bimaculatus</i>	TQ782089	28/05/1999
IV46	<i>Ceutorhynchus atomus</i>	TQ780087	31/12/1993
IV47	<i>Anania funebris</i>	TQ71L	1884-1992
IV48	<i>Nymphalis polychloros</i>	TQ778098	1974-1983
IV49	<i>Boloria euphrosyne</i>	TQ7711	07/05/1992
IV50	<i>Tetheella fluctuosa</i>	TQ71L	1848-1992
IV51	<i>Scopula emutaria</i>	TQ778098	1974-1983
IV52	<i>Idaea sylvestraria</i>	TQ778098	1974-1983
IV53	<i>Orthonama vittata</i>	TQ778098	1974-1983
IV54	<i>Chloroclysta siterata</i>	TQ778098	1974-1983
IV55	<i>Spargania luctuata</i>	TQ71L	1848-1992

Ref No.	Species	Grid Reference	Date
IV56	<i>Triphosa dubitata</i>	TQ778098	1974-1983
IV57	<i>Euphyia biangulata</i>	TQ778098	1974-1983
IV58	<i>Eupithecia inturbata</i>	TQ778098	1974-1983
IV59	<i>Spilosoma urticae</i>	TQ778098	1974-1983
IV60	<i>Meganola albula</i>	TQ778098	1985
IV61	<i>Graphiphora augur</i>	TQ778098	1974-1983
IV62	<i>Mythimna obsoleta</i>	TQ778098	1974-1983
IV63	<i>Senta flammea</i>	TQ778098	1974-1983
IV64	<i>Amphipoea fucosa paludis</i>	TQ778098	1974-1983
IV65	<i>Archanara sparganii</i>	TQ778098	1974-1983
IV66	<i>Archanara algae</i>	TQ778098	1974-1983
IV67	<i>Chiloides maritimus</i>	TQ778098	1974-1983
IV68	<i>Deltote uncula</i>	TQ778098	1974-1983
IV69	<i>Schrankia taenialis</i>	TQ71L	1848-1992
IV70	<i>Macrochilo cribumalis</i>	TQ778098	1974-1983
IV71	<i>Paracolax tristalis</i>	TQ71L	1848-1992
IV72	<i>Vanoyia tenuicornis</i>	TQ7709	28/06/1989
		TQ778098	28/06/1989
IV73	<i>Anasimyia interpuncta</i>	TQ778098	28/06/1989
IV74	<i>Volucella zonaria</i>	TQ782105	31/08/1996
IV75	<i>Dolichovespula media</i>	TQ7810	30/07/1995
IV76	<i>Nomada fucata</i>	TQ756125	30/03/1997
IV77	<i>Anthophora quadrimaculata</i>	TQ789186	13/07/1998
IV78	<i>Zilla diodia</i>	TQ778116	13/03/1999
IV79	<i>Argiope bruennichi</i>	TQ776109	18/09/1996
		TQ777115	18/09/1996
		TQ780101	02/10/1998
		TQ780119	20/09/1996
		TQ782089	Oct 1999
B1	<i>Botaurus stellaris</i>	TQ778098	13/12/1999
B2	<i>Pernis apivorus</i>	TQ71V	25/05/1992
B3	<i>Circus pygargus</i>	TQ778098	1985
B4	<i>Rallus aquaticus</i>	TQ7709	1988-1992
B5	<i>Porzana porzana</i>	TQ7610	11/03/1986
		TQ767084	07/09/1989
		TQ778098	01/05/1999
B6	<i>Crex crex</i>	TQ7610	01/10/87-02/1
B7	<i>Asio otus</i>	TQ7710	09/01/1999
B8	<i>Locustella luscinioides</i>	TQ778098	1988
B9	<i>Acrocephalus palustris</i>	TQ778098	27/05/1999
B10	<i>Oriolus oriolus</i>	TQ7610	18/05/1984
B11	<i>Lanius collurio</i>	TQ7610	04/06/93-05/0
B12	<i>Serinus serinus</i>	TQ7610	2000
A1	<i>Triturus cristatus</i>	TQ7611	07/06/1999
R1	<i>Anguis fragilis</i>	TQ7309	01/03/1996
		TQ7408	01/01/1993
		TQ7409	01/01/1991
		TQ756125	04/05/1986
		TQ758116	01/01/1988
		TQ761091	01/01/1989
		TQ774087	2002
		TQ783093	2002

Ref No.	Species	Grid Reference	Date
		TQ787093	2002
		TQ789089	21/05/2004
		TQ773084	04/06/1992
		TQ779089	24/07/1993
		TQ7808	08/04/1998
		TQ782089	Oct 1998
		TQ784086	12/10/1989
		TQ788089	2002
		TQ789089	21/05/2004
R2	<i>Natrix natrix</i>	TQ7308	01/01/1986
		TQ7408	01/01/1994
		TQ749108	13/05/1993
		TQ7509	01/01/1996
		TQ756127	13/03/1991
		TQ7608	04/08/1995
		TQ7611	07/06/1999
		TQ7709	12/10/1989
		TQ774087	2002
		TQ779089	26/07/1993
		TQ7809	01/01/1991
		TQ7810	09/08/1994
		TQ782089	June 1999
R3	<i>Vipera berus</i>	TQ752123	01/01/1986
		TQ765124	28/04/1991
		TQ766124	28/04/1991
R4	<i>Lacerta vivipara</i>	TQ773084	04/06/1992
		TQ774087	2002
		TQ7808	08/04/1998
		TQ7809	01/01/1991
		TQ782089	Sep 1999
		TQ782100	19/05/1992
		TQ784086	12/10/1989
R5	<i>Lacerta agilis</i>	TQ71L	1848-1992
M1	<i>Sorex araneus</i>	TQ782089	1997-1999
M2	<i>Sorex minutes</i>	TQ782089	1997-1999
M3	<i>Nyctalus noctula</i>	TQ789107	20/02/1992
M4	<i>Pipistrellus pipistrellus</i>	TQ732097	20/04/1990
		TQ734114	12/07/1986
		TQ763089	08/08/1996
M5	<i>Chiroptera</i>	TQ732084	30/05/1991
		TQ734097	21/06/1985
		TQ736101	06/02/1986
		TQ759118	01/01/1990
		TQ764084	Oct 1993
		TQ762107	08/04/1987
		TQ788107	15/06/1985
M6	<i>Plecotus auritus</i>	TQ740093	13/10/1992
		TQ7407	1939
M7	<i>Arvicola terrestris</i>	TQ7610	Dec 1997
		TQ777088	Feb 2002
		TQ782089	Sep 1998
M8	<i>Muscardinus avellanarius</i>	TQ71K	Mar 1943

Ref No.	Species	Grid Reference	Date
		TQ71L	1848-1992
		TQ755098	25/10/1993
		TQ7609	1953
		TQ777116	1997-1998
M9	<i>Tursiops truncatus</i>	TQ7407	05/07/1963
		TQ760073	22/05/2004