Integrating Biodiversity Objectives into Planning
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”.
What Do We Know?
Nature Conservation (Scotland) Act 2004
2004 asp 6
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The Nature Conservation (Scotland) Act 2004

PART 1

1 Duty to further the conservation of biodiversity

(1) It is the duty of every public body and office-holder, in exercising any functions, to

– further the conservation of biodiversity so far as is consistent with the proper exercise of those functions.
What (perhaps) do we know we don’t know?
Objective 1

We need to know the biodiversity policy that we want planners and applicants to know

and

make sure that it is provided in a form fit for purpose!
What don’t we know we don’t know?
METAPHORICAL ALLIGATORS!!

• Missing the importance of biodiversity as a planning issue
• Insufficient information to make a decision
• Lack of understanding about how to protect and enhance features
• Failure to comply with statutory obligations
  • Judicial Review following unlawful decision
• Failure to apply national policies effectively
• Poor and ill-informed professional practice
• Sanction under the RTPI’s Code of Professional Conduct!
• Biodiversity killed, affected, lost or in decline because of poor decisions!
Objective 2

We need to be very aware of what planners and applicants may not know!
So if we know all that ….

What about forward planning for biodiversity?
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

Woodland fenced and under new coppice management regime

Restored unimproved wet grassland meadow managed for Marsh Fritillary Butterflies

Front Loading Biodiversity into Forward Planning

Pond managed for Great Crested Newts

New barn owl box in sports pavilion

Flood balancing ponds created in field corners

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 wheelchair access
Objective 3

We need to create a real vision for biodiversity in our local landscapes and know how to implement it on the ground.
More stuff
we should know
STATUTORY INSTRUMENTS

2007 No 1843

WILDLIFE
COUNTRYSIDE

The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007

Made 22nd June 2007
Laid before Parliament on 26th June 2007

Annex 1

The Secretary of State is a Minister designated(s) for the purposes of making Regulations under section 2(2) of the European Communities Act 1972(b) (which inserts a new section 2(9) (a) of the Act(4)) in respect of measures relating to the conservation of natural habitats and of flora and fauna.

These Regulations make provision for a purpose in accordance with section 2(3) of the European Communities Act 1972.

It appears to the Secretary of State that, in the exercise of his powers, he may have reference to an Annex to Council Directive 92/43/EEC(2) on the conservation of natural habitats and of wild fauna and flora(3), or to Council Directive 79/409/EEC(5) on the conservation of wild birds(6), to be construed as a reference to that Annex as amended from time to time.

In the exercise of his powers conferred by sections 2(2)(a) of Schedule 2 to the European Communities Act 1972 and by section 307(3) and (5) of the Criminal Justice Act 2003(g), he makes the following Regulations:

(a) European Communities (Regulations) (No. 6) Order 1992 (S.I. 1992/2976).
(b) 1972(c).
(e) In so far as the Annex or Regulation(s) with which measures are added to the Annex or Regulation(s) is required by virtue of section 55 of the Scotland Act 1998 (c. 46), the power of the Secretary of State to make regulations in relation to those matters is inserted into section 38 of the Legislative and Regulatory Reform Act 2006 (c. 31).
(f) Paragraph (a) was inserted by section 38 of the Legislative and Regulatory Reform Act 2006 (c. 31).
The Habitats Regulations: The ‘Three Tests’

Under Regulation 44, 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).
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.
The Inspector stated that:

"On balance I am not satisfied that there is sufficient evidence before me to conclude that there would be no significant risk to the well being of protected species. It would therefore be wrong to grant planning permission for the proposal in the absence of a survey to establish the extent of any harm and whether it would be feasible to allay this harm by mitigation measures. I therefore conclude that the appeal should be dismissed on this ground, notwithstanding the lack of sustained objections on other issues".
Appeal dismissed – Land off Beili Glas Road, Fleur de Lis, Blackwood. Caerphilly County Borough Council (2005)

The Inspector stated that:

“I have reached the view that there is inadequate information before me to enable the framing of mitigating conditions, or to predict the effectiveness of such controls.”

“The appellant suggests the imposition of a condition requiring further ecological survey – in my opinion, such a condition would not be appropriate as the necessary survey is required to inform a decision on the acceptability of the proposed development as well as the use of any planning conditions”.
Objective 4

We need to know and also use statutory obligations for protected species conservation.
We should know that the planning system has targets to meet!
Options in the Absence of Information … *i.e. Not Knowing!*

- Determine application in absence of information, grant consent … and risk legal challenge for non-compliance with Habitat Regulations 3(4) and 44 + Section 1 Part 1 Nature Conservation (Scotland) Act 2004.

- Applicant withdraws planning application

- Application is refused on grounds of insufficient information

- Defer a decision until sufficient information has been received
Options in the Absence of Information .... *i.e. Not Knowing!*

**OR**

Find A The Fifth Option!
To assist in answering the following questions, refer to the Help Text for further information on what information is going to be required as part of the planning application when there is reasonable likelihood that important biodiversity or geological conservation features may be present or nearby are likely to be affected by your proposals.

Having referred to the guidance notes and the authority’s local Planning Application Requirements, Is there a reasonable likelihood of the following being affected adversely or conserved and enhanced within the application site, OR on land adjacent to or near the application site:

a) **Protected and priority species** (help text):
   - ☐ Yes, on land adjacent to the development site
   - ☐ Yes, on the development site
   - ☐ No

b) **Designated sites, important habitats or other biodiversity features** (help text):
   - ☐ Yes, on the development site
   - ☐ Yes, on land adjacent to the development site
   - ☐ No

c) **Features of geological conservation importance** (help text):
   - ☐ Yes, on the development site
   - ☐ Yes, on land adjacent to the development site
   - ☐ No
Local Requirements for Biodiversity

Validation Checklists
LOCAL REQUIREMENTS FOR PROTECTED SPECIES

Adequate Survey
Assessment of Impacts
Avoidance
Mitigation
Compensation
Enhancement

Q. When is the above needed?
A. Criteria / Thresholds
Criteria and Thresholds

Proposals for Development That Will Trigger a Protected Species Survey

<table>
<thead>
<tr>
<th>Proposals for Development</th>
<th>Barn Owl</th>
<th>Barn Owl</th>
<th>Breeding Birds</th>
<th>Grass Crested Newt</th>
<th>Dormouse</th>
<th>Red Squirrel</th>
<th>Water Vole</th>
<th>Badger</th>
<th>Reptiles</th>
<th>Amphibians</th>
<th>Plants</th>
<th>Other species?</th>
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Objective 5

We should ask very clearly for what we want and need to know!
Objective 6

We need to show people what we mean and what we want them to know.
Welcome to the Biodiversity Planning Toolkit – your one-stop-shop for incorporating biodiversity into the planning system and new development.

The Biodiversity Toolkit is an online planning resource for England, Wales, Scotland and Northern Ireland. Use this site to learn how to:

- Apply for planning permission in situations where biodiversity may be encountered;
- Design biodiversity into a wide range of different types of development;
- Determine application where biodiversity may be a material consideration;
- Incorporate biodiversity into spatial plans and forward planning documents;
- Research Government policy, good practice and statutory obligations that relate to biodiversity conservation in the UK.

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Upland

Urban

Rural

Coastal

Marine
An interactive barn based on a simpler version of the interactive house on the planning portal site

Showing inside and outside views before and after barn conversion
Thank you for your ear

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