



Llywodraeth Cymru
Welsh Government

Development Management Manual

Section 3 Annex: Application of the Habitats Directive to the
Process of Prior Approval

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Application of the Habitats Directive to the Process of Prior Approval

Contents

Section	Sub-section
1	Introduction
2	Tests required by the Habitats Directive
3	Mitigation
4	The use of conditions
5	What if approval cannot be granted?
6	Further guidance
Schedule 1	
	Process Flowchart

1.0 Introduction

- 1.1 A prior approval process applies to some permitted development rights granted by The Town and Country Planning (General Permitted Development) Order 1995 (GPDO). Before some agricultural, forestry, telecommunication and demolition operations can commence, conditions in the GPDO mean the developer must apply to the local planning authority (LPA) to confirm whether prior approval is required for certain details of the development. When considering such an application, the duty in regulation 9(3) of The Conservation of Habitats and Species Regulations 2010 ('the 2010 Regulations'), as amended, means the LPA must have regard to the requirements of the Habitats Directive (Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora).

2.0 Tests required by the Habitats Directive

- 2.1 Consideration required of a proposal benefitting from permitted development rights is very similar to that given to a planning application in respect of the Habitats Directive. LPAs need to consider whether:

- sufficient information has been submitted for them to determine that the proposal satisfies an appropriate Habitats Directive derogation purpose;
- there is no satisfactory alternative to the proposal; and
- the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

2.2 An ‘appropriate derogation purpose’ could be one referred to in regulation 53(2)(e) of the 2010 Regulations, which identifies the purposes of preserving public health or public safety or other imperative reasons of overriding public interest. These purposes are the most commonly used to justify derogation from the Directive; however other purposes also exist for which a licence may be granted under the 2010 Regulations.

2.3 Article 1(i) of the Habitats Directive defines conservation status of a European species.

2.4 Although an LPA must consider the above tests, it should not duplicate the role of the conservation body. A LPA should only refuse to approve details requiring prior approval where both a criminal offence relating to European protected species (EPS) is likely to result from the development and where a licence from Natural Resources Wales (NRW) is unlikely to be granted¹. Where NRW has stated it is satisfied a proposed development can be licensed, the LPA is entitled to rely upon their view.

2.5 The conclusions of the tests, as well as the likelihood of a licence would be granted for the proposal, will then form a material consideration for the LPA when making a decision in respect of prior approval. The LPA will need to demonstrate that officers, or elected members, were aware of their duty and had considered it in making the determination.

3.0 Mitigation

3.1 When considering the tests, mitigation measures may need to be submitted and approved by the LPA for the scheme to proceed. Mitigation should only be that required to ensure the operations will not be detrimental to the maintenance of the population of the protected species concerned at a favourable conservation status in their natural range.

4.0 The use of conditions

4.1 Where a LPA proposes to grant approval of the details submitted, the duty in article 12 of the Habitats Directive to consider EPS is **not discharged** through:

- conditions requiring surveys of EPS to be undertaken; or
- the use of an ‘informative’ on the notice informing the applicant of EPS issues or that other approvals may also be required.

¹ R (Morge) v. Hampshire County Council [2011]

5.0 What if approval cannot be granted?

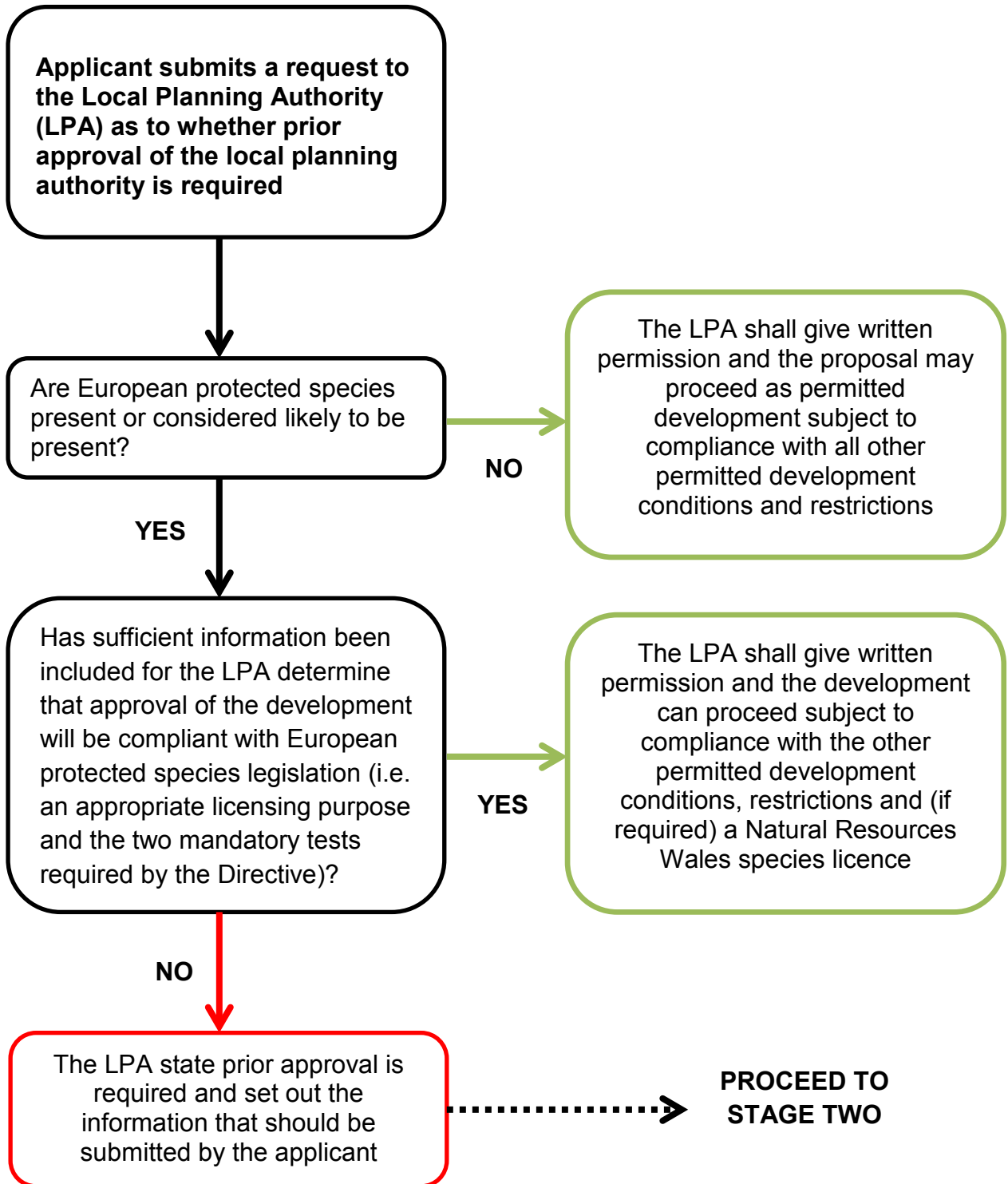
- 5.1 In exceptional circumstances, particularly related to demolition where there are limited alternatives, it may not be possible to grant prior approval as a result of the Habitats Directive. The applicant will have a right of appeal to the Welsh Ministers should this occur. Should the decision of the LPA be upheld at appeal, this effectively means that the permission granted by the GPDO cannot be implemented. This does not prevent the applicant seeking prior approval for an alternative scheme, or seeking planning permission to undertake works on the site.

6.0 Further guidance

- 6.1 The European Commission has produced guidance to help interpret EPS legislation '[Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC](#)' (February 2007).

Schedule 1 – Process Flowchart

STAGE ONE



STAGE TWO

