

Adopted Torfaen Local Development Plan (to 2021)

Biodiversity, Ecosystem Resilience and Development Supplementary Planning Guidance

February 2024

Executive Summary

This document is available in Welsh
Mae'r ddogfen hon ar gael yn Gymraeg

Introduction, Purpose and Status of SPG

This Supplementary Planning Guidance (SPG) details how Torfaen Council will ensure development within the county borough maintains and enhances biodiversity and resilient ecological networks. This is in line with the Council's declaration of both nature and climate emergencies, adopted Local Development Plan policies and the enhanced biodiversity and resilience of ecosystems duties under Part 1, Section 6 of the Environment (Wales) Act 2016 ('the S6 duty') and the Resilient Wales Goal of the Well Being of Future Generations (WCFG) Act 2015.

The main policy within the Adopted Torfaen Local Development Plan (2013) is Policy S7 (Conservation of the Natural and Historic Environment) which requires that proposals for all new development must have full regard to the context of the local natural and built environment and its special features. Other relevant policies are S2, S3, S8, BW1, C1, C2 and BG1 which can be viewed in full via <https://www.torfaen.gov.uk/en/Related-Documents/Forward-Planning/Adopted-Torfaen-LDP-Written-Statement.pdf>

A draft of this SPG was consulted upon for a six week period with comments received being taken into account in this final version which was approved for adoption by Council decision on 27th February 2024. It has been prepared in accordance with the policies contained within:

- Future Wales (February 2021)
 - the adopted Torfaen Local Development Plan (December 2013)
- and guidance set out in:
- Building Better Places (July 2020)
 - Planning Policy Wales 12th Edition (February 2024)
 - Technical Advice Note 5: Nature Conservation and Planning (2009)

Approach of the SPG

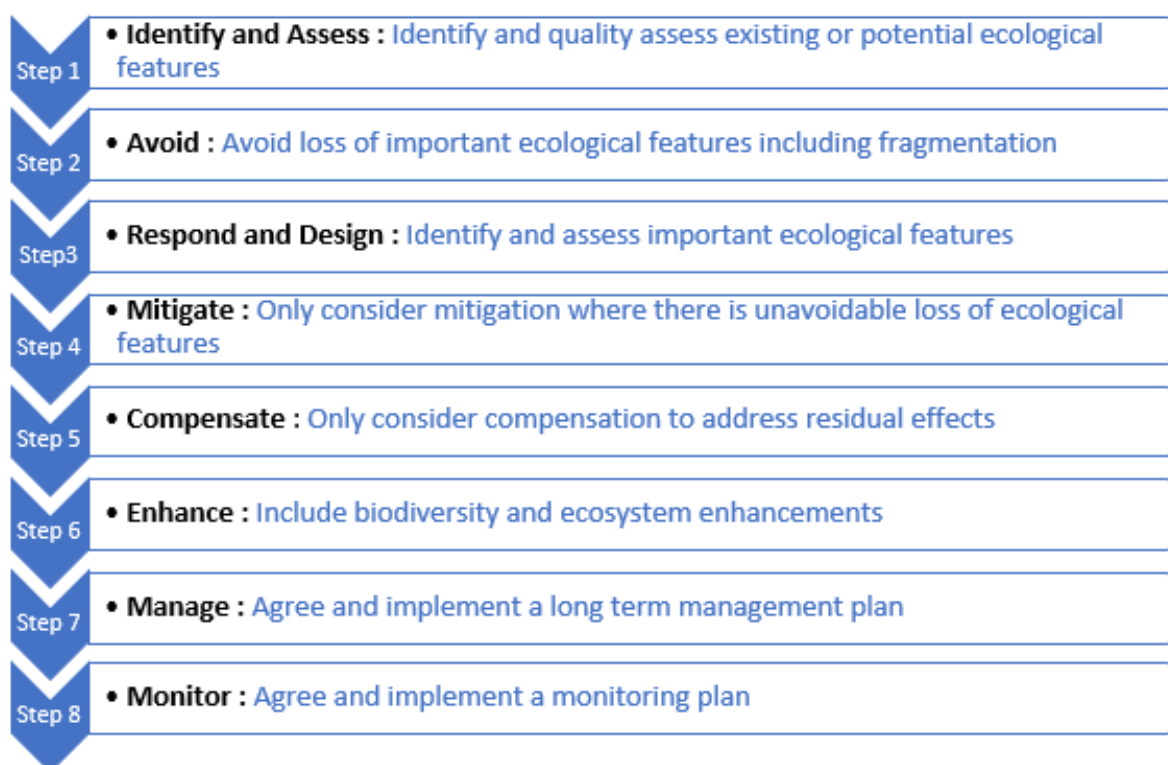
An outline of the duties and requirements of applicants and the Council itself is made clear, having regard to the relevant legislative and policy frameworks. Section 2 explains how Torfaen LDP policies will be implemented and outlines how compliance with these policies will assist in demonstrating how development proposals accord with the S6 Duty and other relevant legislation. It provides specific guidance in relation to designated sites, including international, national and local designations.

Section 3 of the SPG introduces the stepwise approach as set out in national planning policy which aims to build the consideration of biodiversity into the development management process at the earliest possible stage, in order to achieve the best sustainable outcome and to help minimise delays and additional costs. Section 3 is framed as guidance on how biodiversity will be addressed on all scales of development from minor householder applications, through to large scale major developments. It provides best practice guidance on the timing, scale, nature and content of ecological surveys and assessments of habitats, sites and species.

Sections 4 & 5 explain in more detail the principles of the stepwise approach and set out how the Council will ensure that any adverse environmental effects are firstly avoided, then minimised, mitigated and as a last resort compensated for. Guidance is also provided on how the requirement in national guidance to secure enhancement “wherever possible” will be implemented through the planning system, paying attention to the extent to which enhancement is proportionate to each planning proposal. The section also provides guidance on how the relevant ecological survey information will support this process. Section 6 provides a resource of additional information.

A separate draft Green Infrastructure SPG has been produced concurrently and should be referred to alongside this SPG.

The Stepwise Approach



The stepwise approach is applicable to all types and scales of development, from minor applications and householder development through to major applications. However, this guidance makes clear that the actions required to be undertaken should be proportionate to the proposal and the potential impact on biodiversity and ecosystem resilience.

The key overarching principles are as follows:

- Biodiversity and ecosystem resilience should be considered at the earliest possible stage of a development, as part of an integrated approach to design of the development, to demonstrate a full understanding of the biodiversity value of a site, its ecosystem resilience and its relationship to the wider green infrastructure network
- Submission of timely and appropriate ecological information is crucial. In particular, where the Councils Ecologist has identified that a Preliminary Ecological Assessment (PEA) must be submitted with an application along with any additional species surveys identified in the PEA, failure to submit the required information could lead to the application being refused. The Council will refer to the relevant CIEEM guidance in determining whether submitted ecological information has been carried out by an appropriate ecological consultant following the appropriate ecological reporting methodologies.
- All applicants should consider where Invasive Non-native Species (INNS) surveys and assessments are required
- Applicants are required to demonstrate how the proposal and associated biodiversity measures have responded to the ecological information
- The Council will only consider negotiating compensation measures where it has been clearly and robustly demonstrated that avoidance and mitigation cannot be achieved
- Compensation will not be acceptable for irreplaceable habitats (e.g. ancient woodlands)
- The Council will seek to achieve a net benefit for biodiversity in all developments, proportionate to the scale of the development and having regard to the submitted evidence regarding biodiversity and resilience of ecosystems both within and adjacent the site.
- Where approval from the SuDS Approval Body (SAB) is required, early and parallel engagement with the SAB process is strongly advised. The Councils Ecologist is a consultee on all SAB applications and can provide advice on ecological measures required.

Understanding a Site

A baseline understanding of the biodiversity and ecological impacts and opportunities presented by a development should be undertaken. Screening to determine the presence of protected species and habitats should be carried out on the basis of data provided by the South East Wales Biodiversity Record Centre (SEWBRc). The adopted LDP provides additional mapped information on constraints which can be accessed via this link.

<https://www.torfaen.gov.uk/en/PlanningAndDevelopment/Planningpolicy/LocalDevelopmentPlan/Local-Development-Plan.aspx>

Appendix 1 of the SPG provides a survey checklist of species and habitats most likely to be affected by specific types of development, surveys required and the appropriate survey

seasons. Ecological Surveys are generally considered to be valid for a period of 2 years after which time, updated surveys will be required.

Additional surveys, assessments or licences may be required by law including Environmental Impact Assessment (EIA), Habitat Regulations Assessment (HRA), NRW Protected Species Licence (separate to applying for planning permission), European Protected Species (EPS) Development Licence and UK Protected Species Licence.

It is strongly recommended that design teams provide an 'Ecological Constraints and Opportunities Plan' (ECOP), which is an efficient and effective way to communicate the key issues raised in the detailed technical ecological reports. If prepared early enough, the ECOP is a useful tool to inform both pre-app discussions and updated designs at all stages of the development design and planning process.

In line with the placemaking approach, the Council will expect proposals to demonstrate how designs:

- respond to all available evidence relating to identified biodiversity and green infrastructure qualities: and
- have evolved in line with the stepwise approach.

Submitting a Planning Application

By the time a planning application is ready for submission the ecological features present on the site should have been fully considered and the stages of the Stepwise approach followed. Any identified impacts should have been avoided, minimised or mitigated in the design of the proposal presented and fully justified in the application.

All relevant ecological survey or assessments required should be submitted along with the application. The ecologist employed by the applicant must always work to the relevant recognised survey and mitigation guidelines and industry standards and should give an evidence-based justification for any deviation from these guidelines.

Where applications are submitted without ecological information, they may be validated but cannot be determined until any necessary ecological work has been undertaken and submitted and approved. Where surveys and reports are submitted which recommend further survey work is carried out, and this is not submitted the Local Planning Authority may refuse the application.

Welsh Government have clarified that where biodiversity enhancement is not proposed as part of an application, significant weight will be given to its absence, and unless other significant material considerations indicate otherwise, it will be necessary to refuse permission. The Council considers that the lack of ecological evidence of a negative effect on biodiversity or ecosystem resilience which is directly related to the development to be a significant material consideration in this regard.

In accordance with PPW and the S6 duty, the Council will seek to ensure that development provides a net benefit for biodiversity. The Council will therefore explore with the applicant what opportunities exist within or outside the development to provide enhancements to biodiversity and ecosystem resilience. Where the Council concludes that it is reasonable to require mitigation, compensation, or enhancement measures, and this

cannot be integrated into the design of the development or created on site, it may still seek to secure these measures off-site.

The Council may recommend approval subject to section 106 Agreement / planning obligations. Planning Obligations are legally binding agreements between the developer and the Planning Authority or a unilateral agreement by the developer enforced by the Planning authority under S106 of the Planning Act 1990, which involve a commitment to address the impacts of a development that will make it acceptable in planning terms, where otherwise it might be refused. Such obligations will normally be required where off-site compensation provisions are necessary or financial contributions are needed to ensure that there are no detrimental impacts on biodiversity.

Please note that Torfaen Council does not condition protected species surveys and would not consider doing so for any scheduled development works. In accordance with the stepwise approach, survey work should be undertaken at the earliest possible stage in order that measures to maintain and enhance biodiversity are integrated into the design of the development.

The preparation and implementation of an appropriate management and monitoring plan will usually be agreed as part of the plans required to be submitted to grant consent. Applicants should note that larger developments will require a Construction Environmental Management Plan (CEMP) setting out detail of no-go zones, protective fencing and other practical measures.

Contact Details

If you have any queries regarding this SPG, please feel free to contact us.

For development management advice, please contact us at planning@torfaen.gov.uk

For planning policy and ecology advice, please contact us at ldp@torfaen.gov.uk