

Wednesday 6 July, 2022

Report of the Assistant Director - Growth & Regeneration

Petition to stop the netting of hedges in Tamworth

Not Exempt

Purpose

To provide evidence to the scrutiny committee which will support the preparation of a report from the Committee to Cabinet in the Autumn, in response to a public petition on the netting of hedges.

Recommendations

It is recommended that:

1. The report is endorsed and forms part of the ISaG response to Cabinet, later in the year.

Executive Summary

A petition was submitted to the Council on 1st March 2022 seeking to stop the netting of hedges in Tamworth. The petition contained over 4,600 signatures.

The petition was presented at the Council meeting dated 15 March 2022. The minutes of the meeting are set out as follows:

The Leader of the Council:

1. Noted the petition and shares the sincere concerns of the signatories to protect our local natural wildlife;
2. Noted and that a prima facie review, or initial impression of the issue, suggested that the power to act may lay outside the Council's statutory powers;
3. Agreed that given the importance of this issue, the matter be referred to the Infrastructure, Safety and Growth Scrutiny Committee (ISG) with the brief that they review the relevant sections of the National Planning Policy Framework (NPPF) and new Environmental legislation currently before the Commons, and any other material they believe relevant and;
4. Agreed that the Infrastructure Safety & Growth Committee bring a report to Council by the Autumn so that there would be time to act on the report by the next breeding season.

This issue of netting hedges came to the fore in 2019 when a number of national newspapers and TV programmes reported on the increasing use of netting on hedgerows and trees by developers. The Wildlife and Countryside Act (1981), which is set out below, has resulted in developers using nets to cover hedgerows and trees with netting in and around their sites before any bird nesting activity begins, as this could stop or restrict building during the summer months.

Legislation protecting Nesting Birds

It is an offence under Section 1 of the Wildlife and Countryside Act of 1981 (WCA) to intentionally take, damage or destroy the nest of any wild bird while it is in use or being built, or to intentionally kill, injure or take chicks or adults, or intentionally take or destroy any eggs.

Within the WCA no dates are legally stated between which hedges cannot be trimmed, cut, laid or coppiced, however the main bird breeding season is recognised as being between 1 March and 31 August. The risk of committing any of the above offences is therefore increased between these dates.

If any work is to be undertaken on a hedge (or tree) within these dates it is recommended that the hedge is checked for any signs of breeding activity first, such as observation from a distance using binoculars and direct searching of the hedge for nests.

Developers who are removing a hedgerow or tree as part of a planning consent, net the hedges and trees, so that they do not undertake works illegally should wild birds be present. Netting is therefore mitigation for the developer so that they don't fall foul of the WCA.

If it is suspected that an offence is/has been committed in relation to wild birds then the first point of contact should be with the local Police Force. An investigation will then be held by a Wildlife Crime Officer (101) and there will be an incident number so that you can go back to them if necessary.

Natural England does not regulate the use of netting however developers must look for the most suitable options for complying with the law. For example, as part of the planning process survey reports and mitigation plans will form part of that process for projects that could affect protected species. Mitigation plans need to show how developers will avoid or manage any negative impacts on protected species. In some limited circumstances Natural England acknowledge that netting may have a role to play in avoiding temporary impacts. It is also important to consider the netting mesh size to ensure that it is suitable for the species involved and is properly maintained so that offences against wild birds are not committed.

National Wildlife Crime Unit

The National Wildlife Crime Unit (NWCU) is a police led, stand-alone, multi-agency unit with a UK-wide remit for wildlife crime (see [National Wildlife Crime Unit](#)). The NWCU Investigative Support Officers also offer free assistance to police forces. Part of the NWCU strategy is to identify organised crime groups involved in wildlife crime. The priorities for the NWCU include monitoring:

- Badger persecution.
- Bat persecution.
- Illegal trade in endangered species protected under CITES. It includes illegal trade in raptors, ivory, medicinal and health products (including rhino horn), reptiles and timber. For more information on CITES (see [Practice note, Habitats and wildlife: international conventions: UK implementation](#)).
- Poaching.
- Raptor persecution.

The National Police Chiefs' Council, Crown Prosecution Service, Natural England and Natural Resources Wales have signed a memorandum of understanding on the prevention, investigation and enforcement of wildlife crime (see [NWCU: Memorandum of understanding on the prevention, investigation and enforcement of wildlife crime](#)).

Environment Act 2021

Part 6 of the Environment Act deals with nature and biodiversity. Paragraph 98 specifically references Schedule 14 which makes provision for biodiversity gain to be a condition of planning permission in England.

During the netting debate in 2019 the Government's response was twofold; firstly they wrote to developers setting out their responsibilities in relation to netting and secondly they planned to require developers to deliver biodiversity net gain (BNG) which is now incorporated into the Environment Act.

The Act requires all development schemes in England to deliver a mandatory 10% BNG to be maintained for a period of at least 30 years. The concept seeks measurable improvements for biodiversity by creating or enhancing habitats in association with development. Development proposals must "leave biodiversity in a better state than before".

BNG means developers and land owners in England must determine and evidence a project's final BNG value using the specified Defra biodiversity metric if they want their plans to move through the planning process swiftly.

The introduction of the requirement to provide a 10% net gain of biodiversity for all new developments is as a response to the government's goal to leave the environment in England in a better state than it is found over the next 25 years, as set out in their policy paper "*A Green Future: Our 25 Year Plan to Improve the Environment*".

The National Planning Policy Framework 2021

The National Planning Policy Framework expects planning policies and decisions to enhance the natural environment by minimising the impacts of development on, and providing net gains for, biodiversity. The relevant paragraphs from the NPPF are in Appendix 1. There is no direct reference to netting but it does pick up the requirements from the Environment Act around biodiversity net gain or BNG.

Borough Council officers have been implementing BNG and refer applications to the County ecologist to assess and advise. Policy EN4 provides the hook within the local plan which will in due course be reviewed to reflect more recent legislation, as set out in this report.

There are application exemptions and these include applications for development proposals which result in negligible impacts or minimal impacts to low or medium 'distinctiveness' habitats such as agriculturally productive land, householder applications; and change of use applications.

The Government's response to the netting debate in 2019 was with the BNG agenda – which is not about netting hedges but about improving habitats. Biodiversity Net Gain requires developers to either mitigate harm from their proposals by ensuring that more habitats are retained on site and/or that habitats provision is improved post development on or off site.

Conclusion

All wild birds are protected by law and disturbing them and their habitats is a criminal offence; however there is no specific regulation of the use of netting and it does not require planning permission to do it.

Appendix 2 provides an example by Shopshire Council who have dedicated a website page to the issue, which is something that we may wish to consider.

Additionally Shropshire put an information note on their decision notices to outline developer responsibility when it comes to netting hedges. This is also something that we could consider.

We cannot though, as a planning department, enforce against the netting of hedges. We often speak with developers about the issue but ultimately refer concerned residents onto the Wildlife Crime Officer.

We are currently in the process of developing a new local plan for Tamworth which will reflect Government policies and guidance including requirements around BNG which may influence how developers consider existing trees and hedgerows in future.

Options Considered

n/a

Resource Implications

n/a

Legal/Risk Implications Background

The relevant legislation to protect wildlife is set out in this report.

Equalities Implications

n/a

Environment and Sustainability Implications (including climate change)

Netting hedges by developers is their way of protecting birds during the development process. Legislation is recently enacted to enhance and improve biodiversity on development sites which could have a positive impact on the retention of hedges and trees.

Background Information

A petition titled 'Make 'netting' hedgerows to prevent birds from nesting a criminal offence' received 365,508 signatures was submitted to Parliament for consideration. The topic was debated on the 13 May 2019.

On 8 April 2019, in response to public concern about anti-bird netting around permissioned or potential development sites, a letter from the Secretary of State for Housing, Communities and Local Government was forwarded to major house-builders. It reminded them of their legal obligation to consider the impact of any project on local wildlife and take precautionary action to protect habitat. The Government also responded by outlining that Biodiversity Net Gain was an important feature in forthcoming legislation, now the Environment Act.

Report Author

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List of Background Papers

None.

Appendices

Appendix 1: Paragraph 179 – 182 of the NPPF 2021.

Appendix 2. Shropshire Council guidance on netting hedges and the planning process

Appendix 1: Relevant Paragraphs from the NPPF 2021

Paragraph 179: To protect and enhance biodiversity and geodiversity, plans should:

- a) Identify, map and safeguard components of local wildlife-rich habitats and wider ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity⁶¹; wildlife corridors and stepping stones that connect them; and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation; and
- b) promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity.

Paragraph 180: When determining planning applications, local planning authorities should apply the following principles:

- a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;
- b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;
- c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists; and
- d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.

Paragraph 181: The following should be given the same protection as habitats sites:

- a) potential Special Protection Areas and possible Special Areas of Conservation;
- b) listed or proposed Ramsar sites⁶⁴; and
- c) sites identified, or required, as compensatory measures for adverse effects on habitats sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.

Paragraph 182: The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.

Netting, nesting and the planning process – some guidance

Following national coverage of the issue of netting vegetation to prevent birds from nesting, Shropshire Council has been receiving phone calls from residents. Where planning applications are involved we have been passing on the reports to the developers.

Normally we don't put a condition on planning decisions regarding nesting birds as they have legal protection under the Wildlife and Countryside Act 1981 and, as such, birds are protected whether or not the planning process is involved. But, we do raise awareness of the legal protection of nesting birds by putting information on the planning decision notice. The responsibility therefore rests with the persons authorising and installing the netting, and their ecological advisors, to ensure that an offence is not committed under wildlife legislation.

We would always encourage developers to plan their work to avoid the bird nesting season and hence prevent the need to use other methods such as netting vegetation.

If members of the public see vegetation being cleared, which they know is supporting nesting birds, or birds are being trapped under netting and the owners cannot be contacted, they should call the **Wildlife Crime Officer on 101**.