

OTTERS

ADVICE FOR PLANNING OFFICERS AND APPLICANTS SEEKING PLANNING
PERMISSION FOR LAND WHICH MAY AFFECT OTTERS

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Introduction

Otters are a European protected species (EPS) and a Northern Ireland priority species. Development can cause disturbance or impact directly on their places of refuge or feeding areas. They are subject to a system of strict protection and are a material consideration during the planning process. They must be considered carefully for any application which has the potential to impact on them.

Typical Habitat and Features Used by Otter

The Common or Eurasian Otter (*Lutra lutra*) is the only native otter species present in Northern Ireland. The Common Otter is a semi aquatic, shy and secretive mammal that is rarely seen, but does in fact have a widespread distribution in Northern Ireland. Otters in Northern Ireland inhabit freshwater rivers and lakes as well as coastal areas. They also use suitable surrounding habitat including woodland, scrub, bogs, marshes and reed beds. Coastal dwelling otters must be close to a fresh water source to enable them to rid their fur of salt.

Within its territory, an otter will have a number of resting places called couches and holts. Couches are above ground resting places used during the day. They can be an uncovered nest like structure but often are not as conspicuous as this and may simply be an area of flattened vegetation in long grass or reed beds which does not appear to offer any protection from disturbance.

A holt is essentially a hole in the ground which is used by an otter for sleeping and resting. The most common type of holt is a hole leading to a cavity under the roots of a river-bank or lake-side tree. However, otters are very versatile and can also form holts in log piles or cavities in rocky banks or caves. Most holts are situated on the river bank, but some can be up to 100 metres away, particularly for otters that make use of the sea.

Female otters use holts called natal dens, in secluded areas, to give birth to cubs. They are usually similar in structure to other holts, with an opening leading into a cavity. Woodland and scrub are particularly important habitats for natal dens, as they provide good cover and protection from disturbance. As well as choosing a protected area, the female must also ensure that the natal den is close to a good food supply, and away from areas of flooding. A breeding site for otters is an area of land or open water, large enough to provide security from disturbance, with one or more potential natal dens, play areas for cubs, access to a good food supply and an area where there is no risk of flooding. There is no defined breeding season for otters.

Legislation

Otters are listed on Annex IV of the EC Habitats Directive (92/43/EEC) and are protected under the Conservation (Natural Habitats etc.) Regulations 1995 (as amended), known as the Habitats Regulations.

Under the Habitats Regulations it is an offence:

- Deliberately to capture, injure or kill a wild animal of a European protected species;
- Deliberately to disturb such an animal while it is occupying a structure or place which it uses for shelter or protection;
- Deliberately to disturb such an animal in such a way as to be likely to;
 - affect the local distribution or abundance of the species to which it belongs;
 - Impair its ability to survive, breed or reproduce, or rear or care for its young; or
 - Impair its ability to hibernate or migrate;
- Deliberately to obstruct access to a breeding site or resting place of such an animal; or
- To damage or destroy a breeding site or resting place of such an animal.

There is no provision within the legislation to issue licences to kill otters for the purpose of development.

Policy

Planning Policy Statement 2 Natural Heritage (PPS2), Policy NH2 and the Strategic Planning Policy Statement states that a development proposal shall not harm a protected species.

The policies states that development proposals are required to be sensitive to all protected species and sited and designed to protect them, their habitats and prevent deterioration and destruction of their breeding sites or resting places.

The policy incorporates consideration of the three legal tests necessary for EPS when disturbance may take place.

Impacts from Development

Otters can be threatened by pollution, habitat loss, and habitat fragmentation as a consequence of development. However development is not necessarily incompatible with the continued presence of otters, providing that mitigation measures are incorporated into planning proposals to ensure the protection of otters and their habitat.

Development has the potential to cause disturbance to otters. More seriously than this it can cause pollution, fragmentation or loss of their habitat, which can ultimately result in the loss of the species in an area. The ideal objective is to ensure that proposed developments will not result in disturbance to otters or the loss of any resting places and that it fully incorporates the otters foraging needs. Breeding sites are very important for otter conservation. Proposals should take these sites into consideration, ultimately aiming to avoid them altogether.

Appropriate mitigation should therefore be included within proposals to facilitate this. Provided otters are considered fully in proposals for development, there is often no reason why the two should be incompatible.

The process to consider is shown in Appendix 1.

Survey Requirements

The Northern Ireland Biodiversity Checklist (<https://www.daera-ni.gov.uk/topics/environmental-advice-planners>) should be used to establish if an otter survey is required for a complete application. This is more likely if landscape features used by otter are present on or near the site. Otters should always be considered for applications near rivers, streams and lakes. Otter survey specifications are available on the NIEA website at <https://www.daera-ni.gov.uk/articles/site-surveys>.

All surveys should be undertaken by suitably experienced and where necessary, licensed surveyors. Surveys should look for evidence of otters by, for example, searching for spraint (faeces), feeding remains, otter slides, holts and couches. When surveying a site it should firstly be established whether the habitat on site is suitable for otters to rest, breed and/or to forage. The likelihood of otters using a site increases with its proximity to a water body. Surveys can be carried out throughout the year but evidence is often easier to find during the spring before vegetation establishes and as water levels recede exposing wet mud where paw prints are more easily observed.

The surveyor should walk the whole site paying particular attention to boundaries, water bodies, river banks, woodland, areas of scrub, tree hollows and reed beds. The survey should also include areas outside the site if suitable habitat is present within the nearby area.

The Centre for Environmental Data and Recording (CEDaR) (<http://www.nmni.com/cedar>) and National Biodiversity Network Gateway (<https://data.nbn.org.uk/>) may provide useful information in relation to otter presence on site.

Mitigation Guidelines

Mitigation refers to all works required to comply with legislation and minimise impacts on protected species when developing on sites where they are present. The first consideration should be to avoid impacts on otters and their resting places through the design of a proposal. This is likely to involve the design and implementation of appropriate mitigation measures to safeguard the animals, their holts and their foraging habitat.

Where otters are present on or near a site the following mitigation measures should be applied as a minimum:

- retain all otter holts where possible;
- retain waterbodies and areas of woodland and scrub where possible; and
- provide adequate protection zones during construction and operation of the development.

Protection Zones

Otters are sensitive to development, and require their resting places to be protected from disturbance. Female otters with young are particularly sensitive. Protection zones should be conditioned as part of a planning approval. The protection zones should always be clearly marked out before any construction activities commence. No works of any kind including clearance of vegetation and storage of materials can take place within the protection zones, unless a licence has been issued permitting such activities.

- An otter holt or couch requires a 30m protection zone
- A natal den requires a 150m protection zone

Licensing

NIEA is the Regulating Authority in Northern Ireland with regard to European protected species. The Habitats Directive (transposed by the Habitat Regulations) includes a strict system of protection for EPS. However the Habitats Regulations also provides the Regulating Authority (NIEA) with the 'Power to Grant Licences' where EPS may be disturbed or a resting place may be destroyed in order for a development to go ahead.

However licence applications are subject to strict procedures and a licence may only be granted where a proposal meets the three legal tests sets out in the Habitats Regulations. For planning applications these are:

1. there are imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment; and
2. there is no satisfactory alternative; and
3. 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.

Before granting a licence NIEA will require detailed survey information on otter use of a site and detailed mitigation and/or compensation measures. If a licence is granted it will be conditional on all necessary mitigation and compensation measures being implemented.

Where EPS have been identified as using or resting within a development site, all possible means of mitigation should be investigated to avoid an application for a licence. A licence is unlikely to be granted for the destruction of an otter breeding holt (natal den).

The Planning Authority's Role in Protecting Otters

In order to comply with the Habitats Regulations, the planning authority, before granting any planning approval, must ensure that they have adequately considered any potential impacts on an EPS from a development proposal.

This is achieved by ensuring an appropriate survey is undertaken when there is a reasonable likelihood of the species being present. Where EPS are found to be present and

likely to be disturbed, the planning authority must undertake the three tests within the legislation (and detailed within PPS2) before any permission can be granted.

If otter breeding or resting places are found on a site then impacts should be avoided if at all possible, and that all reasonable alternatives should be sought to avoid disturbance to these. Where disturbance to otters is unavoidable NIEA should be consulted with the otter survey to inform the planning authorities' judgement and the three tests.

Reference Material

The booklet 'Otters and Development' provides some more background information on otters and how to mitigate for them. See <https://www.daera-ni.gov.uk/publications/otters-and-development> (PDF, 1.39MB); Relevant caselaw on EPS which provides some clarity on planning and EPS: R (Simon Woolley) v Cheshire East Borough Council and Millennium Estates Limited (the Woolley case); and the Supreme Court decision in R (Vivienne Morge) v Hampshire County Council (the Morge case).

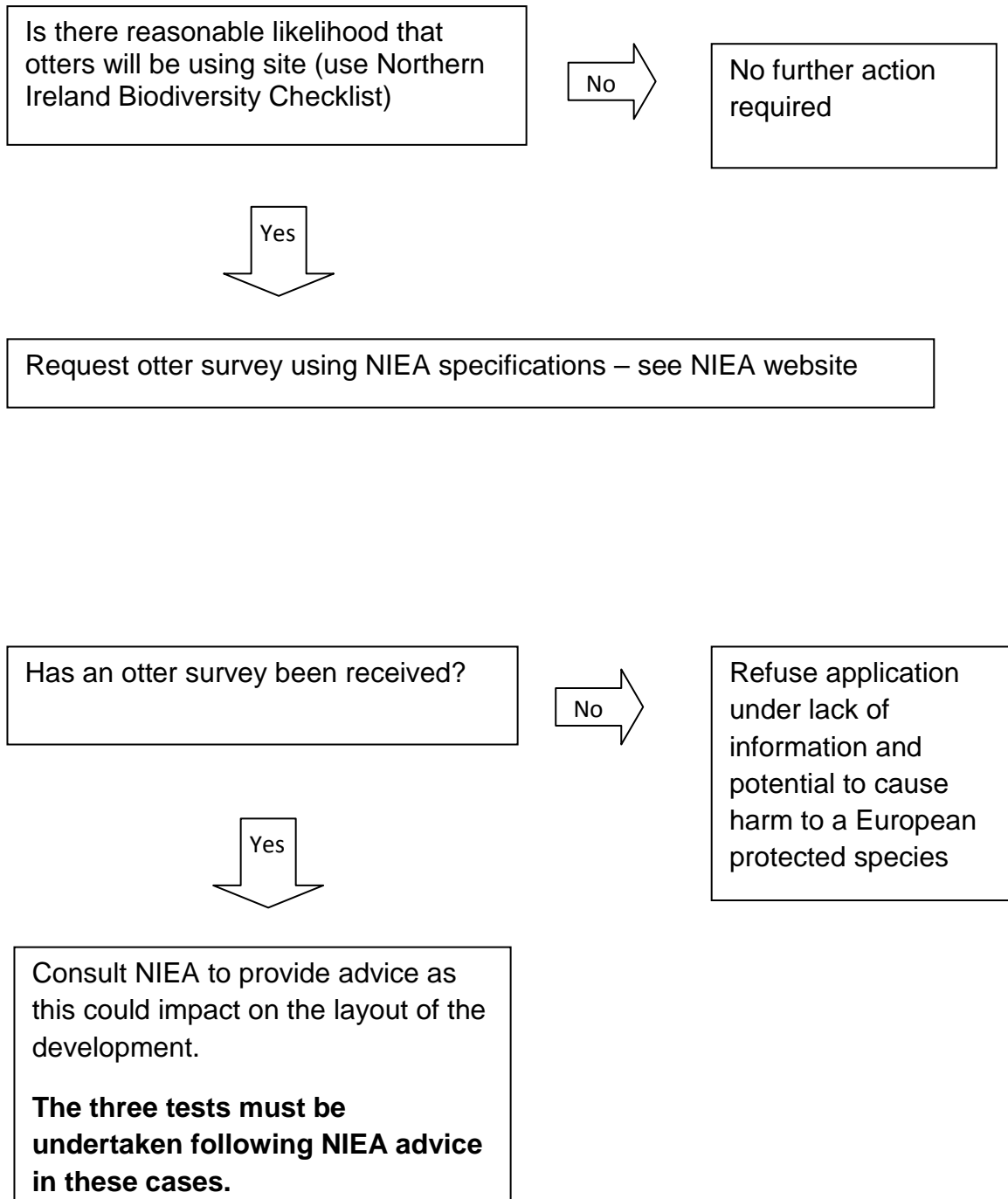
Otter Informative for Decision Notices

The applicant's attention is drawn to The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended), under which it is an offence:

- a) Deliberately to capture, injure or kill a wild animal of a European protected species, which includes the otter (*Lutra lutra*);
- b) Deliberately to disturb such an animal while it is occupying a structure or place which it uses for shelter or protection;
- c) Deliberately to disturb such an animal in such a way as to be likely to;
 - (i) affect the local distribution or abundance of the species to which it belongs;
 - (ii) Impair its ability to survive, breed or reproduce, or rear or care for its young; or
 - (iii) Impair its ability to hibernate or migrate;
- d) Deliberately to obstruct access to a breeding site or resting place of such an animal;
or
- e) To damage or destroy a breeding site or resting place of such an animal.

If there is evidence of otter activity on the site, all works must cease immediately and further advice must be sought from the Wildlife Team, Northern Ireland Environment Agency, Klondyke Building, Cromac Avenue, Gasworks Business Park, Belfast BT72JA. Tel. 028 905 69605

Appendix 1: process to consider when dealing with otters for applications





**Creating prosperity and well being
through environment and heritage
excellence**

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