



BRIEFING PAPER

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Hedgerow Netting Petition

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1. Petition on netting hedgerows

There are currently two open parliamentary petitions concerned with bird nesting with over 10,000 signatures. One is specifically about making ['netting' hedgerows to prevent birds from nesting a criminal offence](#) and had over 350,000 signatures by 2 May 2019.

The petition is a response to recent reports in the press on the use of nets by developers to prevent birds nesting in or near development sites. There have been articles in a number of publications including [The Guardian](#) and [the BBC](#), which includes an interactive map of where nets have been reported. There has also been concerns raised about a specific [project in Norfolk](#), where sand banks were netted in advance of an erosion protection project. In response to the concerns the netting has now been reduced at the site.¹

¹ North Norfolk County Council, [Bacton netting removal update](#), 16 April 2018

Box 1: Petition on swallows, swifts and martin nests

There is a second open petition calling for [legal protection for Swallow, Swift and Martin nest sites not just nests](#). This had over 70,000 signatures by the end of April 2019. It is a reaction to [reports](#) of the removal of swift, swallow and martin nests by supermarkets to prevent these migrating birds from returning to their nests the following year. The [RSPB reports](#) a 53% decrease in swift breeding numbers in the UK between 1995 and 2016 which it partly attributes to loss of nesting sites.

The Government response to the petition set out why these nests are not protected when empty:

Birds which habitually use the same nests, white-tailed eagles, ospreys and golden eagles, have their nests protected year round, even when not in use. In the case of swallows, swifts and martins, nests will remain in use throughout the summer until the birds leave on their autumn migration. They may return to the same sites for nesting, but these birds can and will, nest elsewhere. That is why the priority is to protect the nests while they are in use.

2. Legislation protecting nesting birds

Section 1 of the [Wildlife and Countryside Act 1981](#) (WCA) protects *any wild birds and its nest* (if in use or being built). Subject to certain exceptions, anyone commits an offence who intentionally:

- (a) kills, injures or takes any wild bird;
- (aa) takes, damages or destroys the nest of a wild bird included in Schedule ZA1;
- (b) takes, damages or destroys the nest of any wild bird while that nest is in use or being built; or
- (c) takes or destroys an egg of any wild bird,²

The wild birds listed in Schedule ZA1 are Golden Eagle, White Tailed Eagle and Osprey. In addition, Schedule 1 of the Act lists birds that it is an offence to intentionally or recklessly disturb at, on or near an 'active' nest. The RSPB provides a [full list of species here](#).

The maximum penalty if found guilty of an offence under Section 1 of the Act is a fine and 6 months in prison.

The legislation means that it is an offence to destroy or damage any bird nest that is being used or being built. It is also an offence to cause a disturbance near any nest being used by any species listed in Schedule 1, or to interfere in any way at any time with a nest from any of the three species listed above (all of which re-use their nest sites), even when the nest is not in use. Natural England guidance states that:

You must not do any work which might harm nesting birds or destroy their nests. You'll usually find nesting birds during the main nesting and breeding season from 1 March to 31 August.³

These restrictions have resulted in developers using nets to cover hedgerows and trees with netting in and around their sites before any nesting activity begins, as this could stop or restrict building during the summer months.

² [Wildlife and Countryside Act 1981](#)

³ Natural England, [Countryside hedgerows: protection and management](#), 16 August 2017

In recent blog on netting, [Natural England set out](#) that there is no specific regulation of the use of netting, but that developers must comply with the WCA and any planning requirements:

All wild birds are protected by law. Natural England does not regulate the use of netting, but it is essential that developers look at the most suitable option for complying with the law.

Survey reports and mitigation plans are required for projects that could affect protected species. This is part of the planning permission process.

The surveys will need to show whether protected species are present, and how they use the site. Mitigation plans need to show how developers will avoid or manage any negative impacts on protected species. In some limited circumstances netting may have a role to play in avoiding temporary impacts.

It is for those who install exclusion measures such as netting to ensure the mesh size of netting is suitable for the species involved and is properly maintained to ensure that they don't commit offences against wild birds.⁴

3. Hedgerows and wildlife

According to the Woodland Trust "as the most widespread semi-natural habitat in the UK, hedgerows support a large diversity of flora and fauna".⁵ There are a large number of species associated with hedges and many that use them for food and shelter. This is because "they are a good source of food (flowers, berries and nuts) for invertebrates, birds and mammals. In intensively farmed areas they offer a refuge for wild plants and animals."⁶ Many hedgerows are [protected](#) under the [Hedgerow Protection Regulations \(1997\)](#) based on their age, length, location or importance.⁷ The regulations make it illegal to remove protected hedgerows without permission from the Local Planning Authority.

The RSPB sets out the importance of hedgerows for wildlife including birds particularly in areas of low tree coverage:

Hedges may support up to 80 per cent of our woodland birds, 50 per cent of our mammals and 30 per cent of our butterflies. The ditches and banks associated with hedgerows provide habitat for frogs, toads, newts and reptiles.

In areas with few woods, many species of birds depend on hedgerows for their survival. At least 30 species nest in hedgerows. Many of these, such as bullfinches and turtle doves, prefer hedgerows more than 4m tall, with lots of trees, whereas whitethroats, linnets and yellowhammers favour shorter hedgerows (2–3m) with fewer trees. Dunnocks, lesser whitethroats and willow warblers prefer medium or tall hedgerows with few trees.⁸

As part of [Biodiversity 2020](#), the UK's strategy for wildlife and ecosystem services, the Government reports on an annual basis on a number of biodiversity indicators for the UK. The latest annual report on [UK Biodiversity Indicators](#) was published in July 2018. This shows improvement in some areas but there is still long-term decline in the number of key species such as birds and butterflies. The UK Biodiversity assessment includes an assessment of farmland and woodland birds:

In 2016 the farmland bird index was less than half its 1970 value. Short term, between 2010 and 2015, the smoothed index decreased by 9%.

The woodland bird index was 23% less than its 1970 value in 2016. Short term, between 2010 and 2015, the smoothed index showed no significant change.

⁴ Natural England, [Natural England welcomes government statement on netting](#), 10 April 2019

⁵ Woodland Trust, [Woodland Conservation News: Hedgerows and Hedgerow Trees](#), 2014

⁶ *ibid*

⁷ Natural England, [Countryside hedgerows: protection and management](#), 16 August 2017

⁸ RSPB, [The value of hedgerows for wildlife](#), [website as of 2 May 2019]

Further information can be found in the [RSPB blog article](#), summarising the results and what they mean.²⁵

4. Responses to netting petition

[The petition](#) calls on the Government to “make 'netting' hedgerows to prevent birds from nesting a criminal offence” It goes on to state:

Developers, and other interested parties are circumventing laws protecting birds by 'netting' hedgerows to prevent birds from nesting.

This facilitates the uprooting of hedgerows which aid biodiversity and provide the only remaining nesting sites for birds, whose numbers are in sharp decline.

'Netting' hedgerows threatens declining species of birds, presents a danger by entrapment to wildlife, and produces large amounts of plastic waste.

4.1 Government response

The petition has received enough signatures to require a Government response and be put forward for a debate in Parliament. The Government has also provided a written response, setting out that the Minister had written to developers to remind them that they “must fulfil their obligation to safeguard local wildlife and habitats” and that “netting trees and hedgerows is only appropriate where genuinely needed to protect birds from harm during development”. The response went on to highlight the current process for developers. It also referred to proposed changes that will require any development to measurably improve habitats:

Any development project must consider the impact on local wildlife and take precautionary action to protect habitat. Bird netting should be kept to a minimum, and used only to help protect birds during development.

In accordance with Natural England’s standing advice for local authorities needing to assess planning applications that affect wild birds, survey reports and mitigation plans are required for projects that could affect protected species. Our revised National Planning Policy Framework also makes clear that planning policies and decisions should contribute to and enhance the natural environment by minimising the impacts on, and providing net gains for, biodiversity. However, we plan to require developers to deliver biodiversity net gain, under new arrangements in the forthcoming Environment Bill. This will mean wildlife habitat must be left in a measurably better state than it was before any development.⁹

In December 2018, Defra published a consultation setting out the objectives of a [net gain policy for the environment, development and local communities](#). It also sought evidence on what aspects of natural capital should be considered and the options for developing an environmental net gain approach.

4.2 Netting and planning consent

An example of guidance from councils was set out by Shropshire Council, in a statement in response to queries and reports about netting. This sets out their view on how and when netting should be used within the planning process:

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

⁹ Parliament Petition, [Make 'netting' hedgerows to prevent birds from nesting a criminal offence](#), 11 April 2019

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.¹⁰

Planning policy

The [National Planning Policy Framework](#), in its chapter on *conserving and enhancing the natural environment*, observes that planning policies and decisions should contribute to and enhance the natural and local environment by (amongst other things) “protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan)” and “minimising impacts on and providing net gains for biodiversity”. Plans should also, it says:

distinguish between the hierarchy of international, national and locally designated sites; allocate land with the least environmental or amenity value, where consistent with other policies in this Framework; take a strategic approach to maintaining and enhancing networks of habitats and green infrastructure; and plan for the enhancement of natural capital at a catchment or landscape scale across local authority boundaries.¹¹

In addition, there is specific protection in planning terms for recognised sites of high importance. The more detailed [Planning Practice Guidance on the natural environment](#) sets out the legal obligations on local planning authorities and developers towards European sites designated under the Birds or Habitats Directives, protected species and Sites of Special Scientific Interest and, where harm to biodiversity is unavoidable, how mitigation or compensation should be ensured, usually through planning conditions or planning obligations:

What are the legal obligations on local planning authorities and developers regarding European sites designated under the Birds or Habitats Directives, protected species and Sites of Special Scientific Interest?

Updated guidance on the law affecting European sites, protected species and Sites of Special Scientific Interest is being prepared by [Defra](#) and will replace the advice set out in [Circular 06/05: biodiversity and geological conservation](#).

See related policy:

- [paragraph 170](#)

Paragraph: 011 Reference ID: 8-011-20140612

Revision date: 12 06 2014 [See previous version](#)

(...)

Where significant harm to biodiversity is unavoidable, how can mitigation or compensation measures be ensured?

The usual means to ensure that mitigation or compensation measures are secured is through [planning conditions](#) or [planning obligations](#), depending on circumstances.

Where compensation is required a number of avenues have been available. The applicant might offer a scheme tailored to the specific context, or consider the potential for biodiversity offsetting with the local planning authority.

Biodiversity offsets are measurable conservation outcomes resulting from actions designed to compensate for residual adverse biodiversity impacts arising from a

¹⁰ Shropshire Council, [Netting, nesting and the planning process – some guidance](#), 20 March 2019

¹¹ MHCLG, [National Planning Policy Framework](#), CM 48, February 2019, page 50

development after mitigation measures have been taken. The goal of biodiversity offsets is to achieve no net loss and preferably a net gain of biodiversity.

Special compensation considerations apply in the case of sites protected by the European Habitats and Wild Birds Directives. If harm to such sites is to be allowed (because there are no alternatives and 'imperative reasons of overriding public interest' can be shown) the Directive requires that all necessary compensatory measures are taken to ensure the overall coherence of the network of European sites as a whole is protected.

Paragraph: 020 Reference ID: 8-020-20140306

Revision date: 06 03 2014¹²

4.3 Other organisations

The [RSPB response](#), from 25 March 2019, acknowledged that netting may be required in certain circumstances but raised concerns that the practice may be spreading unchallenged:

Obviously careful consideration will be needed to develop rules around netting that really help birds, and allow legitimate activity to continue. But we cannot stand by and let the current practices spread unchallenged.

If work is absolutely necessary, then the use of netting could be avoided by tree and hedge removal being completed outside of nesting season; backed up by a commitment to plant new trees and hedges, as no one wants to live in a neighbourhood where the sights and sounds of nature have been driven out. We encourage the government to review the current law governing this area, and think creatively about what could be done to solve a problem that is upsetting so many people, and pushing nature away from our lives.

While the practice of netting is legal, the RSPB would like planners and housing developers to take some important points into consideration. We are also sending more detailed, technical guidance to all housebuilders so they can follow this best practice and contact us for any advice.¹³

The Chartered Institute of Ecology and Environmental Management (CIEEM) published a short statement acknowledging that this practice is sometimes recommended by its members, but should usually not be used unless planning permission has already been granted:

CIEEM is aware that members may occasionally suggest the use of netting to prevent birds nesting in trees/hedges but this should usually only be in circumstances where planning permission has already been granted, and only where there are unlikely to be any risks to other protected species.

We were unaware until recently of reports of bird fatalities as a result of the use of such nets, which would obviously be a cause for concern, and we stress that netting should not be used without advice from a competent ecologist. We will be raising the matter with Natural England shortly.¹⁴

4.4 Developers

Some developers are reportedly reviewing the practice in a response to the concerns raised, as reported in [the Guardian](#):

The action being taken across the country is leading some developers to review their policies. William Davis [a developer] told the Guardian: "Our discussions with Derbyshire Wildlife Trust were a definite factor influencing our policy decision, as was

¹² MHCLG, [Guidance: Natural environment](#), 21 January 2016

¹³ RSPB, [Use of netting on trees, bushes and hedgerows to prevent nesting birds](#), 25 March 2019

¹⁴ CIEEM, [CIEEM statement on tree and hedge netting](#), 26 March 2019

finding ourselves technically in the right but clearly at odds with public sentiment. We have removed the majority of nets and will by close of business on 5 April have removed all nets from our development sites.”

Bovis Homes and Bellway said they were changing their policies to stop the use of netting at any of their sites. The Home Builders Federation said that properly installed netting was legal and developers were under huge pressure from government to build 300,000 homes a year and speed was of the Essence.

Andrew Whitaker, the HBF’s planning director, said last year housing developments incorporated about 9 million trees and shrubs, making the industry one of the nation’s biggest providers of new trees.

“As we build the homes the country needs, the industry is committed to supporting and enhancing biodiversity, proactively protecting wildlife and providing an overall increase in the number of trees,” he said.¹⁵

¹⁵ The Guardian, [Property developers row back on netting used to stop birds nesting](#), 5 April 2019

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