

Otter Protection: Best Practice Guidance for Developers, Ecologists and Planning Authorities (UK) Nov24



This planning advice is validated, endorsed and recommended by South Wales Otter Trust, the International Otter Survival Fund and The UK Wild Otter Trust and was produced by Lee Jenkins. It aims to provide basic, clear information to planning authorities, developers, landowners and ecologists, and can be referred to as guidance for council planning. It is intended that this document will evolve as and when required and further guidance will be produced in the future.



Otters and the Law

Eurasian otters (*Lutra lutra*) are an iconic wild mammal and are common across the UK. Road fatalities, persecution and water pollution continue to be a problem for otters, and as a result, they have become a UK protected species. Otters are a European Protected Species (EPS) and are fully protected in the UK by Schedule 5 of the Wildlife and Countryside Act 1981 (as amended), by the Conservation of Habitats and Species Regulations 2017 (as amended) and by the Animal Welfare Act 2006.

Offences:

- Capture, kill or injure an otter
- Disturb an otter in a place used for shelter or protection
- Obstruct, damage or destroy a breeding site, place of shelter or resting place
- Possess, control, transport, sell or exchange any live or dead otter or any part or derivative

If any activities are undertaken that result in any of the above, then an offence would be committed under current legislation. If prosecuted, a conviction can be up to 6 months imprisonment and/or an unlimited fine.

The National Planning Policy Framework (July 2021) states when determining planning applications, local planning authorities should apply the principle that: if significant harm to biodiversity resulting from a development cannot be avoided, mitigated or, as a last resort, compensated for, then planning permission should be refused. Therefore, otters are a material consideration of any planning application. Planning authorities have a duty under Section 40 of The Natural Environment and Rural Communities Act 2006: “every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, the purpose of conserving biodiversity”.

Surveys for otters will be required to support any planning applications if either historical or distribution records show otters to be active in the area, if there signs of otters on the development site or nearby, if there is suitable habitat for otters. Early consultation is advised and encouraged to ensure appropriate surveys and mitigation has been recommended to support a planning application. A report by a suitably qualified ecologist should be provided at the time of submission of the planning application.



What should planning expect to see considered?

Planning considerations:

- ▶ Is the development within 50m of any type of watercourse or water body? **Even small streams/coastal and ditches can be used for foraging or as corridors.**
- ▶ Is the development likely to block or impede otter movement across land? (i.e. on a river bend that otters may use as a shortcut).
- ▶ Are otters known, or likely to be present, in or near the development site or within 2km?
- ▶ Have the developers employed a suitably qualified ecologist (if required) who has considered the suitability of the site and adjoining areas for otters?

Favourable Otter Habitats:

Woodland, thick scrub and/or dense vegetation cover.

Areas relatively undisturbed by humans.


Areas ungrazed by stock, or if grazed, are there trails to water?

Areas close to water, including coastal (<50m).

Areas rarely flooded or just above the floodplain level.

Habitats containing large patches (at least 0.5ha) of dense cover such as scrub, thickets, weedy young plantations, timber stacks and log piles, groups of windblown trees, large bank-side root systems, hollow trunks or stands of tussocky, tall, fen vegetation.



An illustration of a brown otter leaping out of the water. The otter is in mid-air, with its front paws extended towards a laptop computer on the water's surface. The background is a light blue and green wash with white bokeh spots, suggesting a bright, sunny day. The otter has a white patch on its chest and whiskers.

Otter Surveys and Reports (1 / 2)

- ▶ Ecological surveys should include details on the presence of otters or evidence of otters, and the corresponding impact that may be caused by the proposed development. Any report that states a site has been cleared before an ecological assessment was undertaken should be treated with extreme caution and indicates that the legal requirements previously outlined may not have been met.
- ▶ Survey findings should be kept confidential and should be undertaken by an ecologist qualified and experienced to carry out surveys for otters. Ecologists must ensure they have land access permission.
- ▶ The purpose of any survey is to identify the use of a site by otters and to assess the effect of a proposed development on them.
- ▶ Otters could be affected if the development proposal causes damage to breeding sites, loss of resting places or disturbance to otters whilst occupying holts. Dangers to otters can also occur from indirect impacts such as from noise, light, vibration, fire, chemical use or increased vehicle traffic.

Otter Surveys and Reports (2/2)

The following are best practices measures to ensure the site has been adequately assessed and reported:

- ▶ The ecological surveyor must be suitably qualified and experienced with an understanding of otter ecology. Surveys should be carried out early in the project timeline to inform design.
- ▶ The survey report should contain sufficient information to inform the local planning authority of the otter status at the application site and any mitigation, compensation and enhancement measures proposed to protect otters prior to, during development and after the work has been completed.
- ▶ The report should include the results of a desktop survey search which may include a request to the local biological records centre. A 2km search radius should be conducted.
- ▶ The report should include the results of a minimum of two, but ideally four, otter surveys which are carried out throughout the seasons (summer can be difficult to survey due to vegetation cover). Optimum survey times are autumn and late winter/early spring. The survey must cover the site and a minimum of 250m meters (ideally 1km) from the site boundary, up and downstream and including the opposite bank. The survey must include 50 meters of associated habitat to any water, with a focus on runs and trails (above ground resting sites tend to be close to water [$<50\text{m}$] but they may be found in woodlands as small as 0.5ha or less provided they contain patches of dense scrub and thickets; the less disturbed a site, the higher the possibility that otters may use otherwise suboptimal sites for resting).
- ▶ A map of survey findings (with grid references or WTW) should be included showing any otter field signs (including breeding sites, holts and couches) and their corresponding proximity to the development footprint. Photographs, as appropriate, should also be included.
- ▶ The report should include any further survey requirements as well as any mitigation measures that are required. A requirement to update the survey before commencement of works is also normally a requirement. Development proposals including loss of breeding sites, holts or similar (or disturbance of) should demonstrate that other available options have been considered and explain why they are not being pursued; a licence from the relevant body (Natural England / Natural Resources Wales) will be required prior to commencement.
- ▶ Developers and ecological surveyors should be made aware that the planning authority has access to an otter specialist, that they can utilise if needed.

The key is, are otters present? If so, how and when are they using the area? How will they be impacted by the proposed development?

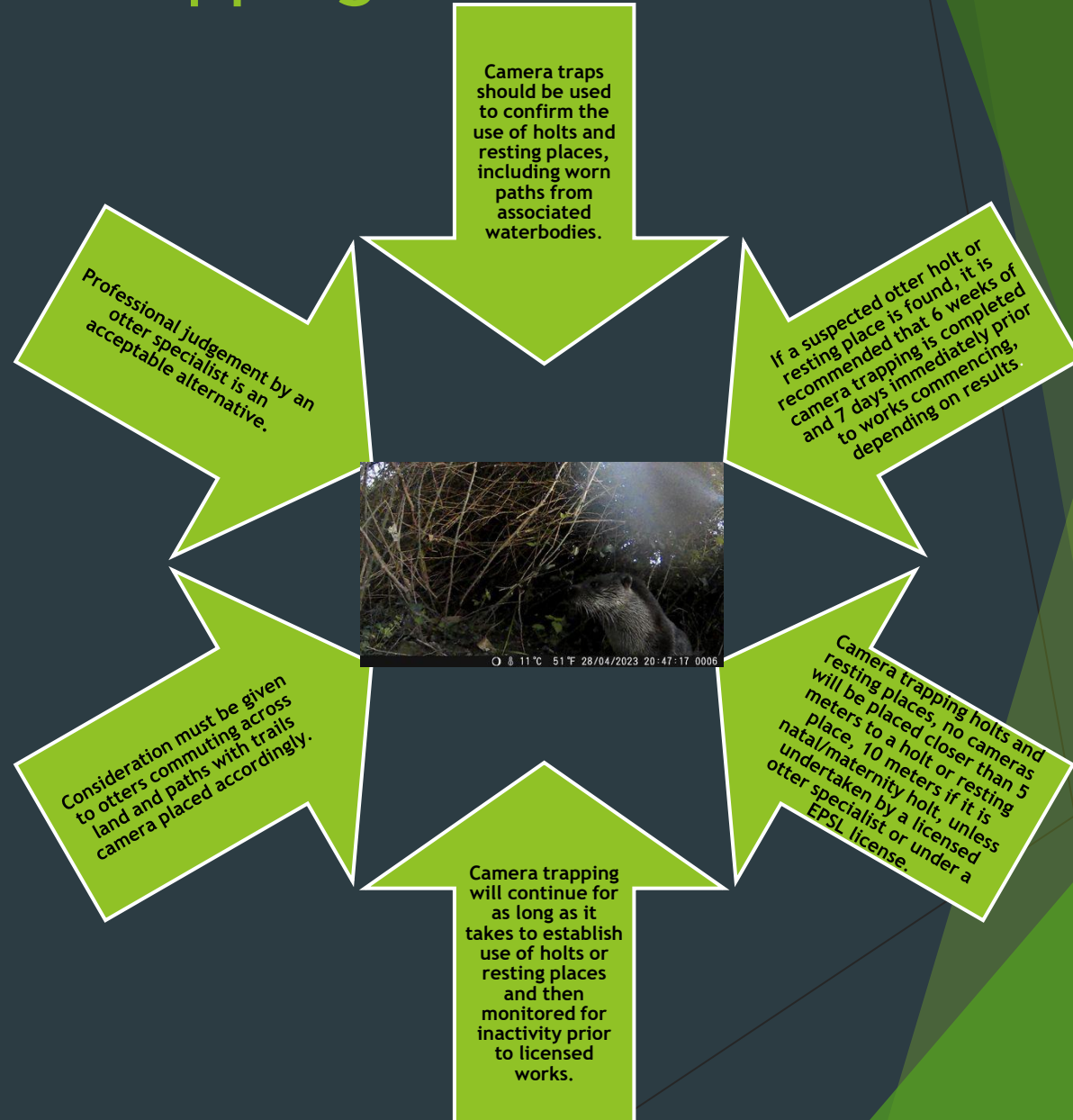
Evidence of Otters - Signs of Activity and Presence:

- Spraints - faeces used to communicate
- Jelly - discharge
- Urine staining
- Footprints
- Trails
- Slides
- Food remains (fish, amphibians, invertebrates, birds etc.)
- Scratch marks
- Tunnels in foliage
- Couch- An otter's resting place i.e. flattened grass
- Holt - An otter's home



Survey Methods: Camera Trapping

- Cameras to be placed no closer than 5m from a confirmed holt or resting place (personal/EPSSL otter licence typically required).
- Cameras to be placed no closer than 10m from a natal/maternity/nursery holt (personal/EPSSL otter licence typically required).
- 6 weeks initial camera trapping, with a visit every 1-2 weeks to evaluate footage and consider positioning.
- Critical to camera trap a holt/resting place, immediately prior to any works commencing, where the holt or resting place may be affected. Where camera trapping is not possible, human observation, ideally around dawn and dusk alternatively, should be undertaken for a minimum of 7 days, ideally 14 days, as part of a EPSSL licence.



Protection and Buffer Zones

Protection zones - otters are sensitive to development and require their resting places to be protected from disturbance. Female otters with young are particularly sensitive. Inclusion of protection zones should be an essential part of a planning approval.

An otter holt or couch typically requires a 50m protection zone.

A natal den typically requires a 100m minimum protection zone.

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 license has been issued permitting such activities.

Buffer zones to waterbodies are essential to protect otters from disturbance. A minimum of a 10m buffer on both sides of a watercourse (smaller on small watercourses, where no works can take place). This is always recommended, even in the absence of otters, as a buffer zone to protect the overall biodiversity value of a watercourse.

The best means of protection for otters is for development not to intrude on their habitat. The results of the otter survey will show the locations of well-established trails that otters use time and time again to travel from land to water. If these areas can be avoided by developers, otters are less likely to be disturbed.



During Construction Recommendations (1/2)



- All site personnel to be fully briefed concerning the presence of otter, mitigated measures, relevant legislation, penalties that can be imposed and who to contact if they should need to.
- Ensure no dogs are brought to the work site.
- Lighting should not hit the water surface or areas immediately adjacent. Where possible use upward lighting.
- The effect of noise and vibrations can be greatly reduced by installing festival grade sound proofing attached to Heras fencing, particularly on the side bordering a watercourse.



- Any excavations, holes or trenches made should be filled, securely covered or have wildlife ramps outside of works hours. Deep holes >2m should have padding on the base to reduce the impact of an animal falling in, i.e., bales of straw as well as an escape ramp.
- Working hours should be restricted to daylight hours only when otters are known to be present.
- Pollution protocols and management must be in place to avoid spillage into the watercourse.



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