

Case ID: IESS.22.018

Description: Consideration of local permitted planning policies and practices in respect of development proposals on land designated as a special area of conservation (SAC) or/and a special protection area (SPA).

Case Summary

<p>What was the issue?</p>	<p>A representation received by ESS asserted that a local authority in Scotland was not complying with several environmental laws in respect of 'permitted development' works, despite the potential for adverse impacts on protected areas and/or trees.</p>
<p>What did ESS do?</p>	<p>ESS accepted the case for 'pre-investigation'. We sought information from the local authority in relation to relevant guidance, policies and procedures.</p> <p>ESS approached the local authority to seek their cooperation in resolving these concerns on an informal basis.</p> <p>ESS made recommendations to the local authority to revise and strengthen the operational procedures in this area.</p>
<p>What outcome was achieved?</p>	<p>The local authority accepted ESS' recommendations and amended relevant operational procedures to reflect these.</p> <p>This action satisfied ESS' previously-identified concerns and this case was brought to a conclusion.</p> <p>Informal resolution was achieved between the local authority and ESS in this case.</p>

Background to ESS involvement

In August 2022, Environmental Standards Scotland (ESS) received a representation expressing concerns that a local authority had failed to adequately assess potential adverse impacts associated with a 'permitted development' project prior to works starting on the site. Specifically, the representation was concerned over the local authority's policies and practices in respect of such developments.

Whilst ESS acknowledged that the representation related to an individual case (which ESS is unable to overturn) the representation in our view raised broader concerns regarding the local authority's guidance, policies, and procedures in this regard. Accordingly, we approached the local authority to seek their cooperation in resolving these concerns on an informal basis. ESS scrutinised the local authority's processes and sought additional information from them to assess their operational procedures, specifically whether they were sufficiently robust enough to ensure that a similar situation did not happen again.

It was confirmed that the relevant local authority's operational procedure did not outline the requirement of impact assessments (such as a Habitat Regulations Appraisal (HRA), Environmental Impact Assessment (EIA), or BS5837 (Tree Assessment) when undertaking maintenance projects and other projects categorised as 'permitted development'. This was despite these works having the potential to cause adverse impacts upon a Conservation Area (Site of Special Scientific Interest (SSI) or Special Areas of Conservation (SAC)) or trees subject to a Tree Protection Order (TPO). In view of this, ESS made recommendations for improvements to the local authority's operational procedure, which were accepted and implemented.

Outcome

The updated operational procedure has been shared with ESS and we believe this now satisfies the concerns raised in the representation and offers assurance that a similar situation should not reoccur in the future. As a result of this, ESS considers that informal resolution has been achieved, where the local authority has taken reasonable remedial action in response to our comments.