

## APPENDIX 6.1

# RELEVANT LEGISLATION, PLANNING POLICY & GUIDANCE

## Appendix 6.1

### Relevant Legislation, Planning Policy and Guidance

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#### LEGISLATION

##### **The Conservation of Habitats and Species Regulations 2017 (as amended)**

The Conservation of Habitats and Species Regulations 2017 (as amended) (known as the “Habitats Regulations”) transpose the European Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the “Habitats Directive”) into UK legislation. The Regulations will remain in force until 31 December 2020, the Implementation Period Completion Day for the UK’s exit from the European Union.

The Habitats Regulations provide for the designation of both Special Protection Areas (SPAs) and Special Areas of Conservation (SACs) in the UK, which form part of the Natura 2000 network of protected areas across Europe. The Regulations also prohibit certain actions relating to European Protected Species (EPS), which include *inter alia* Hazel Dormouse *Muscardinus avellanarius*, Great Crested Newt *Triturus cristatus*, European Otter *Lutra lutra* and all native species of bat.

Further information on SPAs, SACs and European Protected Species is provided in the relevant sub-sections of this Appendix.

##### **Wildlife & Countryside Act 1981 (as amended)**

The Wildlife and Countryside Act 1981 is the principal mechanism for the legislative protection of wildlife in Great Britain. Various amendments have occurred since the original enactment. Certain species of bird, animal and plant (including all of the European Protected Species listed above) are afforded protection under Schedules 1, 5 and 8 of the Act. Reference is made to the various Schedules and Parts of this Act (**Table A1.1**) in the section of this Appendix dealing with Legally Protected Species. The Act also contains measures for the protection of the countryside, National Parks, Sites of Special Scientific Interest (SSSIs) and public rights of way as well as preventing the establishment of invasive non-native species that may be detrimental to native wildlife.

**Table A1.1: Relevant Schedules of the Wildlife & Countryside Act 1981 (as amended)**

Schedule	Protected Species
Schedule 1 Part 1	Protects listed birds through special penalties at all times
Schedule 1 Part 2	Protects listed birds through special penalties during the close season
Schedule 5 Section 9.1 (killing/injuring)	Protects listed animals from intentional killing or injuring
Schedule 5 Section 9.1 (taking)	Protects listed animals from taking
Schedule 5 Section 9.2	Protects listed animals from being possessed or controlled (live or dead)
Schedule 5 Section 9.4a	Protects listed animals from intentional damage or destruction to any structure or place used for shelter or protection
Schedule 5 Section 9.4b	Protects listed animals from intentional disturbance while occupying a structure or place used for shelter or protection
Schedule 5 Section 9.5a	Protects listed animals from being sold, offered for sale or being held or transported for sale either live or dead, whole or part
Schedule 5 Section 9.5b	Protects listed animals from being published or advertised as being for sale
Schedule 8	Protects listed plants from: intentional picking, uprooting or destruction (Section 13 1a); selling, offering for sale, possessing or transporting for the purpose of sale (live or dead, part or derivative) (Section 13 2a); advertising (any of these) for buying or selling (Section 13 2b).
Schedule 9	Prohibits the release of species listed in the Schedule into the wild.
Schedule 9a	Allows environmental authorities to issue species control orders to landowners, obliging them to control/eradicate invasive and/or non-native species.

Further information on legally protected species, designated wildlife sites and invasive non-native species is provided in the relevant sub-sections of this Appendix.

### **Countryside & Rights of Way Act 2000**

Many of the provisions of the Countryside and Rights of Way (CRoW) Act 2000 have been incorporated as amendments into the Wildlife and Countryside Act (1981) and some provisions have now been superseded by later legislation such as The Natural Environment and Rural Communities Act (2006).

The most relevant changes provided by the CRoW Act include the added protection given to SSSIs and other important sites for nature conservation. Importantly, under the Act it became a criminal offence to "recklessly disturb" Schedule 1 nesting birds and species protected under Schedule 5 of the Wildlife and Countryside Act. It also enabled heavier penalties on conviction of wildlife offences.

### **The Natural Environment and Rural Communities Act 2006**

The Natural Environment and Rural Communities (NERC) Act 2006 was intended to raise the profile of biodiversity amongst all public authorities (including local authorities, and statutory undertakers) and to

make biodiversity an integral part of policy and decision-making processes. The NERC Act also improved wildlife protection by amending the Wildlife and Countryside Act 1981.

Section 40 (S40) of the Act places a 'Biodiversity Duty' on all public bodies to have regard to the conservation of biodiversity when carrying out their normal functions. This includes giving consideration to the restoration and enhancement of species and habitats.

Section 41 (S41) of the Act requires the Secretary of State to publish a list of habitats and species which are of Principal Importance for the conservation of biodiversity in England. This was published in 2007 and is commonly referred to as the "S41 list". Public authorities have a responsibility to give specific consideration to the S41 list when exercising their normal functions. For planning authorities, consideration for Species and Habitats of Principal Importance will be exercised through the planning and development control processes. Further information on Species and Habitats of Principal Importance is provided in the relevant sub-sections of this Appendix.

## **SITES DESIGNATED FOR THE CONSERVATION OF NATURE**

There is a hierarchy of nature conservation sites which is based on the level of statutory (legal) protection and the administrative level of importance. Other features of nature conservation interest outside designated sites may also be a material consideration in the determination of planning applications.

### **Statutory Sites: International**

#### *Ramsar Sites, Special Areas of Conservation (SAC) and Special Protection Areas (SPA)*

The Conservation of Habitats and Species Regulations 2017 (as amended) provide the primary legal basis for the protection of Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) in Great Britain.

SACs are sites which support internationally important habitats and/or species listed as being of Community Importance in the Annexes of the European Habitats Directive 92/43/EEC. SPAs are sites which support internationally important numbers of bird species listed as being of Community Importance in the Annexes of the European Birds Directive 2009/147/EC. Together, SACs and SPAs make up the Natura 2000 network of Sites of Community Importance throughout Europe. They are often referred to as "European sites".

Ramsar sites are wetlands of international importance and are, as a matter of national planning policy, subject to the same strict protection as SACs and SPAs. The majority of terrestrial Ramsar sites in England are also notified as SPAs and/or Sites of Special Scientific Interest (SSSIs).

Any plan or project considered likely to affect a SAC, SPA or Ramsar site must be subject to a Habitats Regulations Assessment (HRA), as set out under Regulation 63 (and Regulation 105 in respect of Land Use Plans) of the Habitats Regulations 2017 (as amended).

The local authority (or other 'competent authority') carries out the HRA, but the onus is on the developer to provide the necessary information to inform this process, usually in the form of a report.

## **Statutory Sites: National**

Nationally important sites include Sites of Special Scientific Interest (SSSIs) and National Nature Reserves (NNRs). A development proposal that is likely to affect a nationally important site will be subject to special scrutiny by the local planning authority and Natural England. Certain operations may be permitted. Any potentially damaging operations that could have an adverse effect directly or indirectly on the special interest of the site will not be permitted unless the reasons for the development clearly outweigh the nature conservation and/or geological value of the site itself and the national policy to safeguard such sites, as set out in Section 15 of the National Planning Policy Framework (NPPF).

### *Sites of Special Scientific Interest*

The Wildlife and Countryside Act 1981 (as amended) and the CROW Act 2000 provide the primary legal basis for the protection of Sites of Special Scientific Interest (SSSIs). These sites have been designated to capture the best examples of England's flora, fauna, geological or physiographical diversity.

### *National Nature Reserves*

National Nature Reserves (NNRs) are declared under the National Parks and Access to the Countryside Act 1949 and the Wildlife and Countryside Act 1981, as amended by the Environmental Protection Act 1990. They are managed to conserve their habitats or to provide special opportunities for scientific study of the habitats communities and species represented within them. NNRs represent the very best parts of England's SSSIs. The majority of NNRs also have European nature conservation designations.

## **Statutory Sites: Regional/Local**

### *Local Nature Reserves*

Local Nature Reserves (LNRs) are declared by local authorities under the National Parks and Access to the Countryside Act 1949 as living green spaces in towns, cities, villages and countryside. They provide opportunities for research and education, or for simply enjoying and having contact with nature. LNRs are usually protected from development through local planning documents which may be supplemented by local by-laws.

## **Non-Statutory Sites**

### *Local Wildlife Sites*

Local planning authorities may designate non-statutory sites for their nature conservation value based on important, distinctive and threatened habitats and species within a national, regional and local context. These sites are not legally protected but are given some protection through the planning system. These sites may be declared as 'County Wildlife Sites', 'Sites of Importance for Nature Conservation' (SINCs), or 'Sites of Nature Conservation Importance' (SNCIs) in local and structure plans. Non-statutory sites are a material consideration when planning applications are being determined. The precise amount of weight to be attached, however, will take into account the position of the site in the hierarchy of sites as set out above. Further information is typically provided in local level planning policy.

## **Nature Conservation in Areas Outside Designated Sites**

Various other features exist outside designated sites that are important for the conservation of nature and which are a material consideration in the planning system.

### *Habitats of Principal Importance in England*

Fifty-six habitat types have been identified as Habitats of Principal Importance for the conservation of biodiversity in England under Section 41 of the NERC Act 2006. Although these habitats are not legally protected, the NPPF, Government Circular 06/05, good practice guidance and the NERC Act place a clear responsibility on planning authorities to further the conservation of these habitats. They can be a material consideration in planning decisions, and so developers are advised to take reasonable measures to avoid or mitigate impacts to prevent their net loss and to enhance them where possible. Additional guidance to developers is typically provided in local level planning policy.

The S41 list also includes species as explained below under 'Species of Principal Importance in England'.

### *Networks of Natural Habitats*

Networks of natural habitats link sites of biodiversity importance and provide routes or stepping stones for the migration, dispersal and genetic exchange of species in the wider environment. Examples include rivers with their banks, traditional field boundary systems (such as hedgerows), ponds and small woods. Local planning authorities are encouraged through the NPPF to maintain networks by avoiding or repairing the fragmentation and isolation of natural habitats through planning, policies and development control.

### *Hedgerows*

Hedgerows can act as wildlife corridors that are essential for migration, dispersal and genetic exchange of wild species. Hedgerows that qualify as a Habitat of Principal Importance under S41 of the NERC Act 2006 are a material consideration in the planning system.

Under the Hedgerow Regulations 1997, it is an offence to remove a hedgerow without submitting a notice to the Local Planning Authority and waiting for their decision. The Regulations are aimed at countryside hedges and do not apply to hedges around private dwellings or where planning permission has been granted for a project that includes hedge removal. Hedgerows that satisfy wildlife, archaeological, historical or landscape criteria qualify as 'important' under the Regulations. If a hedgerow is not important, the Local Planning Authority may not prevent its removal; however, Local Planning Authorities are required under the Regulations to protect and retain Important hedgerows unless satisfied that the circumstances justify its removal.

### *Tree Preservation Orders*

Tree Preservation Orders (TPOs) may be declared under the Town and Country Planning Act 1990 and the Town and Country Planning (Trees) Regulations 1999 to protect individual trees and woodlands from development and cutting. TPOs are designed to preserve amenity or landscape conservation. The importance of trees as wildlife habitat may be taken into account, but alone is not sufficient to warrant a TPO. For this reason, TPOs do not fit comfortably under the remit of nature conservation and are generally dealt with by an arboricultural consultant rather than an ecologist. Further guidance on TPOs in relation to development is available from the Department for Communities and Local Government.

### *Ancient Woodland & Veteran Trees*

Ancient woodlands are defined as areas continuously wooded since at least 1600 AD. Even an ancient wood which has been replanted may still have remnants of ancient woodland wildlife and historical features and has potential to be restored. Ancient woodland is not a statutory designation and does not provide legal protection, but local authorities are advised under the NPPF and National Planning Practice Guidance (NPPG) not to grant planning permission for any development that would result in the loss or deterioration of ancient woodland, ancient trees or veteran trees unless there are 'wholly exceptional reasons' and 'a suitable compensation strategy in place'. Local Planning Authorities must take into account Natural England and the Forestry Commission's *Standing Advice for Ancient Woodland and Veteran Trees*, available on the [www.gov.uk](http://www.gov.uk) website.

### *Surface & Ground Waters*

Surface waters (including flowing and standing water) and ground water can directly and indirectly impact upon the conservation of nature.

Guidance on pollution prevention is hosted on the Government's website and focuses on regulatory requirements. This covers topics including the prevention of pollution if you are a business, managing business and commercial waste, oil storage, working on or near water, and managing water on land. Careful planning and the application of these guidelines can help reduce the risk of construction and maintenance work causing pollution to surface and ground waters. Some activities with the potential to impact watercourses or groundwater may require consent under the Water Resources Act 1991.

### *Water Resources Act (WRA) 1991*

Under the WRA there is strict regulation of discharges (including sediment, chemicals, nutrients) to rivers, lakes, estuaries and groundwaters. It also aims to ensure that polluters cover the costs associated with pollution incidents.

## **SPECIES PROTECTION**

### **Legally Protected Species**

The species listed in the following subsections are of relevance to the proposals and are protected by law in England. When preparing a planning application, it is essential to determine the presence or likely absence of legally protected species and the extent to which they may be affected by a proposed development. This can best be achieved by undertaking surveys early in the planning process. Avoidance and/or mitigation measures may be required to address any predicted impacts upon protected species and may necessitate a licence. The Government website offers standing advice from Natural England and DEFRA which can be applied to planning applications that affect protected species.

### *Bats*

There are 18 species of bat in the UK, seven of which are Species of Principal Importance in England. All bats and bat roosts are protected under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended). Bats are also a European Protected Species protected under the Habitats Regulations 2017 (as amended). It is an offence to:

- Intentionally or deliberately kill, injure or capture bats;

- Intentionally, deliberately or recklessly disturb bats in such a way as to be likely to significantly affect the ability of any significant group of bats to survive, breed, or rear or nurture their young or the local distribution of or abundance of a species of bat;
- Intentionally, or recklessly damage, destroy or obstruct any place used for shelter or protection (i.e. bat roosts) or intentionally or recklessly disturb a bat whilst it is occupying such a place;
- Damage or destroy a breeding site or resting place of a bat; and
- Possess, sell or transport a bat, or anything derived from it.

Development proposals affecting bats or their roosts require a European Protected Species mitigation licence from Natural England.

### *Great Crested Newt*

The Great Crested Newt *Triturus cristatus* is a Species of Principal Importance in England. It is legally protected under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) and is afforded significant further protection as a European Protected Species under the Habitats Regulations 2017 (as amended). Collectively, this legislation makes it an offence to:

- Intentionally or deliberately kill, injure or capture Great Crested Newts;
- Intentionally, deliberately or recklessly disturb Great Crested Newts in such a way as to be likely to significantly affect the ability of any significant group of Newts to survive, breed, or rear or nurture their young or the local distribution of or abundance the species;
- Intentionally or recklessly damage, destroy or obstruct any place used by Great Crested Newts for shelter or protection, or intentionally or recklessly disturb a Great Crested Newt whilst it is occupying such a place;
- Damage or destroy a breeding site or resting place of a Great Crested Newt; and
- Possess, sell or transport a Great Crested Newt, or anything derived from it.

Development proposals affecting the Great Crested Newt require a European Protected Species mitigation licence from Natural England.

Intentional or reckless behaviour leading to an offence being committed as detailed above may result in maximum penalties of:

- Up to £5,000 fine per offence committed;
- A custodial sentence of up to six months instead of, or in addition to, a fine; and/or
- Items of equipment involved in committing the offence may be seized and detained.

In addition to the above penalties, it is likely that any EPS mitigation licence obtained for a site will be revoked whilst any wildlife offence is investigated. This will lead to immediate temporary and, depending on investigation outcomes, possible permanent restrictions on site works, as well as associated cost.



## *Hazel Dormouse*

The Hazel Dormouse *Muscardinus avellanarius* is a Species of Principal Importance in England. It is legally protected under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) and is afforded significant further protection as a European Protected Species under the Habitats Regulations 2017 (as amended). Collectively, this legislation makes it an offence to:

- Intentionally or deliberately kill, injure or capture Dormice;
- Intentionally, deliberately or recklessly disturb Dormice in such a way as to be likely to significantly affect the ability of any significant group of Dormice to survive, breed, or rear or nurture their young or the local distribution of or abundance of the species;
- Intentionally or recklessly damage, destroy or obstruct access to places used by Dormice for shelter or protection (whether occupied or not) or intentionally or recklessly disturb a Dormouse whilst it is occupying such a place;
- Damage or destroy a breeding site or resting place of a Dormouse;
- Possess or transport a Dormouse (or any part thereof) unless under licence; and
- Sell or exchange Dormice.

Development proposals affecting the Dormouse require a European Protected Species mitigation licence from Natural England.

## *Reptiles*

All four of the widespread British species of reptile, namely the Common Lizard *Zootoca vivipara*, Slow-worm *Anguis fragilis*, Grass Snake *Natrix helvetica* (previously *Natrix natrix*) and Adder *Vipera berus*, are Species of Principal Importance in England. They are protected under Schedule 5 (Sections 9.1, 9.5a, 9.5b) of the Wildlife & Countryside Act 1981 (as amended) from intentional killing, injury and trade.

The habitat of the four widespread reptiles is not legally protected; however the replacement of habitat lost through development may be required through the planning system. Mitigation for these species is not subject to licensing by Natural England but should nonetheless be planned to minimise disturbance and potential project delays.

## *Birds*

49 species of bird are listed as Species of Principal Importance in England. All wild birds are protected under the Wildlife and Countryside Act 1981 (as amended), making it an offence, with certain exceptions (e.g. game birds), to intentionally kill, injure or take any wild bird and to take, damage or destroy their nests or eggs.

Schedule 1 of the Wildlife and Countryside Act 1981 (as amended) affords extra protection for certain species and applies harsher penalties for offences. Any intentional or reckless disturbance of a Schedule 1 bird, whilst it is nesting or rearing dependent young, constitutes an offence.

Regulation 10 of the Conservation of Habitats and Species Regulations 2017 (as amended) requires appropriate authorities and conservation bodies, in the exercise of their functions, to take such steps that they consider appropriate in order to secure “*the preservation, maintenance and re-establishment*”

*of a sufficient diversity and area of habitat for wild birds in the United Kingdom, including by means of the upkeep, management and creation of such habitat (...)*”.

### *European Badger*

The Protection of Badgers Act 1992 offers considerable protection to both badgers and badger setts. This legislation was enacted to protect the European Badger *Meles meles* against baiting and not as a means of species recovery as it is common in England. It is an offence to cruelly treat, kill or take Badgers, but it is also illegal to intentionally or recklessly damage or disturb a badger sett while it indicates signs of current use by a Badger.

The Government website contains information to help developers and their proponents avoid sett disturbance and to identify setts that are in current use. It is important to maintain adequate foraging territory in development proposals affecting badgers as the destruction or severance of large areas of foraging territory could also be taken to include habitat loss. Licences to disturb Badgers and their setts in respect of development may be issued by Natural England provided provisions are made to minimise disturbance.

### *Wild Mammals*

All wild mammals are protected against cruelty under the Wild Mammals (Protection) Act 1996, which makes it an offence to mutilate, kick, beat, nail or otherwise impale, stab, burn, stone, crush, drown, drag or asphyxiate any wild mammal with intent to inflict unnecessary suffering.

## **Licences for Development**

Licences are required to permit activities prohibited under wildlife legislation, namely the disturbance or capture of protected species or damage to their habitats. Natural England is the licensing authority in England. Licences are only issued for certain purposes, which are set out in the legislation, and only where there is a valid justification. The licences most relevant to the proposals are discussed below.

### *European Protected Species Mitigation Licences*

A European Protected Species mitigation licence (EPSL) is required from Natural England to undertake any development that is reasonably likely to result in an offence in respect of a European Protected Species protected under Schedule 2 of the Habitats Regulations 2017 (as amended); including inter alia all species of bats, Hazel Dormouse, Great Crested Newt and European Otter. Natural England must be satisfied that the following three tests are satisfied before it will issue a licence covering a European Protected Species:

1. The proposal is necessary to preserve public health or public safety, or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment;
2. There is no satisfactory alternative; and
3. The proposal will have no detrimental effect to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

### *Badger Licences*

Licences to disturb Badgers and their setts in respect of development may be issued by Natural England, provided provisions are made to minimise disturbance.

### **Species of Principal Importance in England**

943 species have been identified as being of Principal Importance for the conservation of biodiversity in England under Section 41 (S41) of the NERC Act 2006. The S41 list includes species found in England which have been identified as requiring action under the now superseded UK Biodiversity Action Plan 2007 (plus the Hen Harrier).

While many of these species may not be legally protected (some are protected under the legislation described above), there is a clear responsibility on local planning authorities to further their conservation. These species can be a material consideration in development control decisions and so developers are advised to take reasonable measures to avoid or mitigate impacts to prevent the net loss of these species, and to enhance their habitats where possible. Additional guidance to developers is typically provided in local level planning policies.

### *Invasive Non-Native Species*

There are a number of species not ordinarily resident in the UK, such as Japanese Knotweed *Reynoutria japonica*. Those which pose a significant threat, if uncontrolled, to our ecology and economy are listed under Schedule 9 of the Wildlife and Countryside Act 1981 (as amended). For an offence to be committed, a species must be released or allowed to escape into the wild. For example, if a plant listed on Schedule 9 is not adequately controlled by a landowner, once they are aware that it is present, and the species is allowed to spread into adjoining areas, then this could constitute an offence.

Certain species are also classed as 'controlled waste' under the Environment Protection Act 1990 (as amended) and if taken off site it must be disposed of safely at a licensed landfill site. Soil containing rhizome material should also be regarded as contaminated and treated accordingly.

### *Species Control Orders*

A new schedule 9A was inserted into the Wildlife and Countryside Act 1981 (as amended) by Sections 23 to 25 of the Infrastructure Act 2015. This gives environmental authorities (in England the Secretary of State, Environment Agency, Natural England and the Forestry Commission) the power to offer 'species control agreements' to landowners in respect of invasive and/or non-native species, such as Japanese Knotweed. If the landowner does not comply with a species control agreement, or refuses to enter into one, the environmental authority may issue a 'species control order', requiring the owner to eradicate or control the species, or to allow the environmental authority access to carry out these operations themselves.

If the owner does not comply with the species control order, the maximum penalty if convicted is a fine of up to £40,000 and/or imprisonment for up to 51 weeks. The environmental authority can also recover costs for carrying out the necessary work themselves.

## PLANNING POLICY & GUIDANCE

This section set out the main planning policy and government guidance that relates to the conservation of nature at all levels of government.

### National Level

#### *National Planning Policy Framework 2019*

The National Planning Policy Framework (NPPF) 2019 sets out the Government's planning policies for England and how these should be applied in local-level policy and decision making. The NPPF has a clear "presumption in favour of sustainable development" (paragraph 11), with economic, social and environmental objectives. This presumption does not apply where a plan or project has failed the 'appropriate assessment' test under the Habitats Regulations (paragraph 177).

Section 15 of the NPPF provides guidance on conserving and enhancing the natural environment through the planning system, as summarised below.

Firstly, planning policies and decisions should contribute to and enhance the natural and local environment by applying the following key principles:

- 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);
- minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;
- recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland; and
- preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability.

Section 15 also requires planning policies and decisions to limit the impact of artificial light pollution on nature conservation.

Secondly, when determining planning applications, local planning authorities should apply the following key principles:

- if significant harm resulting from a development cannot be avoided, adequately mitigated or (as a last resort) compensated for, then planning permission should be refused;
- proposed development that is likely to have an adverse effect on a SSSI (either individually or in combination with other developments) should normally be refused;
- planning permission should normally be refused for development resulting in the loss or deterioration of irreplaceable habitats, including ancient woodland and aged or veteran trees, unless there are 'wholly exceptional reasons' and a suitable compensation strategy exists; and

- development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.

In the case of SSSIs and irreplaceable habitats, exceptions may be made if it can be clearly demonstrated that the benefits of the development, in that location, clearly outweigh the costs in terms of loss or adverse impacts.

Section 15 specifies that listed or proposed Ramsar sites, potential European sites, and sites identified or required as compensatory measures for adverse effects on designated/listed or potential/proposed European and Ramsar sites should be given the same protection as designated European sites.

The NPPF also sets out principles for plan-making, including the allocation of land with the least environmental or amenity value, and taking a strategic approach to maintaining and enhancing networks of habitats and green infrastructure by identifying, mapping and safeguarding components of local wildlife-rich habitats, wider ecological networks, wildlife corridors and stepping stones, and those areas identified by national and local partnerships for habitat management, enhancement, restoration or creation.

#### *Government Circular 06/05: Biodiversity and Geological Conservation*

The Government produced Circular 06/05 to provide guidance on the application of the law to the conservation of nature. Although the document is in the process of being updated, Paragraphs 98 and 99 remain relevant as they set out the following principles and obligations:

- The presence of protected species is a material consideration when determining a development proposal;
- Local authorities should consult with Natural England before granting permission, and consider imposing planning conditions or obligations to secure the long-term protection of the species;
- The presence of protected species, and the extent to which they may be affected by the proposed development, must be established before permission is granted;
- Given the delay and cost that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development.

#### *MHCLG Planning Practice Guidance*

Revised and updated Planning Practice Guidance (PPG) was launched by the Department for Communities and Local Government (now the Ministry of Housing, Communities and Local Government, MHCLG) as a web-based tool in March 2014 to accompany the NPPF. The webpages are set out in a Q&A format. The PPG consolidates and supersedes existing guidance on a range of planning-related topics, clarifies some of the statements made in the NPPF, and provides links to relevant legislation and other sources of advice.

The Guidance outlines a number of important principles in relation to nature conservation and biodiversity, including the need to integrate biodiversity into all stages of the planning process and to consider opportunities to enhance biodiversity and contribute to the Government's commitments and targets set out in *Biodiversity 2020: A strategy for England's wildlife and ecosystem services*.

The guidance also requires that “an ecological survey will be necessary in advance of a planning application if the type and location of development are such that the impact on biodiversity may be significant and existing information is lacking or inadequate”, and recommends that “local planning authorities should only require ecological surveys where clearly justified, for example if they consider there is a reasonable likelihood of a protected species being present and affected by development.”

### *Other guidance*

In addition to the Planning Practice Guidance, various other forms of guidance and standards are available in relation to biodiversity and the development process. Of particular note is *British Standard BS42020:2013 Biodiversity – Code of practice for planning and development*, published in August 2013, which replaces *Planning to Halt the Loss of Biodiversity (PAS 2010): Biodiversity conservation standards for planning in the United Kingdom*.

This document is designed to complement the NPPF and is aimed at organisations concerned with ecological issues throughout the planning process, including local authorities, developers, planners and ecological consultants. It sets out step-by-step recommendations on how to incorporate biodiversity considerations at all stages of the planning process, with a focus on the provision of consistent, high quality and appropriate ecological information, effective decision making, and high standards of professional conduct and competence.

## **Regional Level**

Regional plans (such as the South East Plan Regional Spatial Strategy) have been revoked, but some specific policies have been saved. The only policy saved from the South East Plan is Policy NRM6, which relates to the Thames Basin Heaths Special Protection Area (TBH SPA).

## **Local Level**

### *Guildford Borough Local Plan: Strategy and Sites 2015-2034 (adopted April 2019)*

The Former Wisley Airfield site is allocated for a residential led mixed-use development under Policy A35 of the Local Plan. The following policies are of particular relevance to nature conservation:

#### *Policy P5: Thames Basin Heaths Special Protection Area*

This policy sets out the approach to the protection of the SPA, the basis of which is set out in the Thames Basin Heaths Special Protection Area Delivery Framework from the Thames Basin Heaths Joint Strategic Partnership Board. The full policy text is set out below.

“(1) Permission will only be granted for development proposals where it can be demonstrated that doing so would not give rise to adverse effects on the ecological integrity of the Thames Basin Heaths Special Protection Area (SPA), whether alone or in combination with other development. Where one or more adverse effects on the integrity of the SPA will arise, measures to avoid and mitigate these effects must be delivered and secured in perpetuity. These measures are unlikely to be acceptable unless agreed with Natural England in accordance with South East Plan policy NRM6.

(2) The following principles apply:

a) There is an “exclusion zone” set at 400m linear distance from the SPA boundary. Permission will not be granted for development that results in a net increase in residential units within this zone. Proposals for other types of development within this zone must undertake Habitats Regulations Assessment to demonstrate that they will not harm the integrity of the SPA.

b) There is a “zone of influence” between 400m and 5km linear distance from the SPA boundary. Where net new residential development is proposed within the zone of influence, avoidance and mitigation measures must be delivered prior to occupation of new dwellings and in perpetuity. Measures must be based on a combination of 1) the provision, improvement and/or maintenance of Suitable Alternative Natural Greenspace (SANG) and 2) Strategic Access Management and Monitoring (SAMM).

c) Residential development of over 50 net new dwellings that falls between five and seven kilometres from the SPA may be required to provide avoidance and mitigation measures. This will be assessed on a case-by-case basis and in consultation with Natural England.

(3) The following principles apply to the provision of SANG:

a) A minimum of 8 hectares of SANG land (after discounting to account for current access and capacity) should be provided per 1,000 new occupants.

b) Developments must fall within the catchment of the SANG that provides avoidance, except developments of fewer than 10 net new residential units.

c) The Council will collect developer contributions towards avoidance and mitigation measures, including SANG (unless bespoke SANG is provided) and SAMM.

d) Developments may secure or provide bespoke SANG. Proposals for new SANGs are unlikely to be acceptable unless agreed by Natural England. Large developments may be required to provide bespoke SANG.

(4) Where further evidence demonstrates that the integrity of the SPA can be protected using different distance thresholds or with alternative measures (including standards of SANG provision different to those set out in this policy), the Council will agree these in consultation with Natural England.”

#### *Policy ID4: Green and blue infrastructure*

This policy sets out the Council’s approach to planning for all green and blue infrastructure in the Borough, including parks and open spaces, private gardens, agricultural fields and allotments, hedges, trees and woodlands, green roofs and walls, watercourses, reservoirs and ponds. The full policy text is set out below.

“(1) The Council will maintain, conserve and enhance biodiversity and will seek opportunities for habitat restoration and creation, particularly within and adjacent to Biodiversity Opportunity Areas (BOAs). The Council will produce a Green and Blue Infrastructure Supplementary Planning Document (SPD) setting out how this approach will be implemented.

(2) New development should aim to deliver gains in biodiversity where appropriate. Where proposals fall within or adjacent to a BOA, biodiversity measures should support that BOA's objectives. The SPD will set out guidance on how this can be achieved.

(3) The designated sites in the following hierarchy are shown on the Policies Map or as subsequently updated:

(a) European sites: Special Protection Areas (SPA) and Special Areas of Conservation (SAC)

(b) National sites: Sites of Special Scientific Interest (SSSI)

(c) Local sites: Sites of Nature Conservation Importance (SNCI) and Local Nature Reserves.

(4) Permission will not be granted for development proposals unless it can be demonstrated that doing so would not give rise to adverse effects on the integrity of European sites, whether alone or in combination with other development. Any development with a potential impact on SPA or SAC sites will be subject to a Habitats Regulations Assessment.

(5) Permission will only be granted for development proposals within or adjacent to national sites where it can be demonstrated that doing so would not be harmful to the nature conservation interests of the site and its function as an ecological unit.

(6) Permission will not be granted for proposals that are likely to materially harm the nature conservation interests of local sites unless clear justification is provided that the need for development clearly outweighs the impact on biodiversity. Where this test is met, every effort must be made to reduce the harm to the site through avoidance and mitigation measures.

(7) The ecological, landscape and recreational value of watercourses will be protected and enhanced. Development proposals that are likely to have an adverse impact on the functions (including across their catchments) and setting of watercourses and their corridors will not be permitted. Proposals must demonstrate how they will support the achievement of Water Framework Directive objectives and have followed guidance from the Environment Agency on implementation of the River Basin Management Plan and flood risk management, and followed guidance in any local catchment management plans. In particular, developers should take any steps necessary to avoid any downstream adverse impact on water quality objectives that may arise from their proposed development.

(8) Open space (encompassing all open space within urban areas, land designated as Open Space on the Policies Map and all land and water that provides opportunities for recreation and sport as identified in the most recent Open Space, Sport and Recreation Assessment) will be protected from development in accordance with the NPPF."

### *Guildford Borough Local Plan Adopted 2003: Saved Policies*

The following nature conservation-related policies from the 2003 Local Plan have been saved and remain in effect.

#### *Policy NE4: Species Protection*

"Planning permission will not be granted for any development that would be liable to cause any demonstrable harm to a species of animal or plant or its habitat, protected under British law unless conditions are attached requiring the developer to take steps to secure their protection."



*Policy NE5: Development Affecting Trees, Hedges and Woodlands*

“Development will not be permitted if it would damage or destroy trees protected by a Tree Preservation Order or in a conservation area unless the removal would:

1. Be in the interests of good arboricultural practice; or
2. The need for the development outweighs the amenity value of the protected trees.

If the removal of any trees is permitted as part of a development, a condition may require that an equivalent number (or more) of new locally native trees be planted either on or near the site.”

*Policy NE6: Undesignated Features of Nature Conservation Interest*

“In considering proposals for development on undesignated sites where there is found to be a significant wildlife interest, the council will seek to preserve and enhance the features of ecological value.”

*Emerging Guildford Borough Local Plan: Development Management Policies (Issues, Options and Preferred Options Version, April 2020).*

The above version of the emerging Development Management Policies document was subject to consultation from 03/06/20 to 22/07/20. This includes four draft ‘preferred option’ policies relating to nature conservation: P6 Biodiversity in New Developments; P7 Biodiversity Net Gain; P8 Woodland, trees, hedgerows and irreplaceable habitat; and P9 Priority Species and Habitats on Undesignated Sites. Key points from the draft policies include:

- Developments within or adjacent to a Biodiversity Opportunity Area (BOA) to support the achievement of the objectives of the BOA;
- Tree planting to focus on the connection of new or existing tree canopies;
- Schemes to include features in or on building structures that support wildlife wherever possible;
- Built features to be permeable to wildlife;
- Schemes to be designed to avoid light pollution;
- Biodiversity net gain means a minimum gain of 20% using Defra’s Biodiversity Metric;
- New habitats delivered under Biodiversity Net Gains to be secured and maintained for at least 30 years;
- Development resulting in the loss, damage or deterioration of irreplaceable habitats will be refused, unless there are wholly exceptional reasons and the exceptional benefits of the proposals outweigh the loss of the habitats;
- Proposals for development on or adjacent to sites where there is a priority species or habitat to preserve and enhance the relevant ecological features; and
- The mitigation hierarchy should be applied.

The Development Management Policies local plan is at an early stage of the consultation process and policy wording is likely to change, but it is given weight in the planning process.

*Guildford Borough Strategic Development Framework Supplementary Planning Document (SPD) (Adopted 21 July 2020)*

The Strategic Development Framework SPD sets out a “guide for future masterplanning, planning and development of the strategic sites”, including Former Wisley Airfield. It is a material consideration in the determination of planning applications.

The general Design Principles of the SPD require a ‘sensitive approach’ to biodiversity and ecology that minimises the impact on the Borough’s biodiversity and habitats and provides net gains. The Site Specific Guidance for Former Wisley Airfield notes that “*the presence of an SNCI on site will be a key consideration, with the impact of development on ecology and habitat requiring full assessment through an Environmental Impact Assessment*”. The SPD also advises that “*tree, shrub and plant species should draw inspiration from the existing vegetation on the site and within the locality, paying careful attention to those native species which are evidently thriving, and which support local wildlife.*”

*Draft Lovelace Neighbourhood Plan 2019-2034 (Referendum Version, August 2020)*

The Lovelace Draft Neighbourhood Plan has been reviewed by an Independent Examiner and modifications have been recommended. These will be consulted on in 2021.

Draft Policy LNPEN2: Biodiversity and Natural Habitats is set out below:

“Developers must demonstrate measurable net gains to wildlife and biodiversity through habitat creation and enhancement. The European designated environmental sites within Lovelace require maximum protection for biodiversity and natural habitats. Developments which would increase significantly recreational use or otherwise adversely affect the European designated Thames Basin Heath Special Protection Area (TBHSPA) after taking into account mitigation and avoidance measures will not be supported.

All new development must meet the following requirements:

- a) New residential development is not permitted within 400m of the TBHSPA in compliance with the South East Plan (2009) (Policy NRM6).
- b) All developments must demonstrate no significant loss or harm to protected or other priority species.
- c) Any proposed relocation of habitat must demonstrate that the scheme cannot be designed to accommodate the habitat in its existing location.
- d) All developments are required to retain and enhance well-established species-rich features of the landscape, including ancient woodland, mature trees, hedgerows, ponds, and existing waterways.
- e) Any trees removed or lost as a result of development, other than those that are dead, dying or dangerous and of no ecological importance, should be replaced at a ratio of 2:1. Development affecting ancient trees should follow standing advice on ancient woodland and veteran trees.
- f) All development must ensure compliance with the regional approach to protection of the TBHSPA and in respect of residential development provide or contribute to SANG and SAMM as set out in GLPSS Policy P5 and the TBHSPA Avoidance Strategy SPD.
- g) Any new development must take into consideration the M25/A3 Junction 10 upgrade and ensure the replacement TBHSPA land is not impacted upon.”

Policy LNPEN4: Light Pollution is also of relevance to nature conservation:

“Artificial lighting on new developments must take account of the ecological impact on the rural countryside in Lovelace and employ mitigation measures to limit visible light in intrinsically dark areas of countryside. All new developments in Lovelace must conform with the Dark Skies Principles below unless it is demonstrated to be necessary and appropriate to depart from these principles.

- a) The lighting levels and type must be in character with the area and the surrounding environment.
- b) The development’s external lighting, including type of light source, level of lighting and duration of lit period must not significantly harm wildlife.
- c) Lighting must not have an adverse impact on the TBHSPA.
- d) “Part-Night Lighting” should be employed to mitigate the impact on wildlife unless this can be demonstrated to have an impact on personal safety.”

Policy LNPEN5: Air Quality and Traffic states the following in respect of nature conservation:

“Developments which significantly increase traffic movements in Lovelace such as to increase the level of air pollutants above European and UK legal limits or would have an adverse impact on the European designated sites by way of pollution, reduced air quality or increased nitrogen levels, will not be supported.

Major developments of 100 or more dwellings must (...) Provide an ecological impact assessment for the development site and its immediate surrounding area to assess the effects of developments, in particular traffic, on biodiversity, with special regard to the TBHSPA (...) and provide a Construction and Environmental Plan (CEMP) to manage the planning and implementation of construction and ongoing traffic with regard to the rural environment and the TBHSPA.”

## **BIODIVERSITY PLANS AND STRATEGIES**

The NERC Act 2006 places a duty on local authorities to have due regard to biodiversity when exercising their normal functions, and the NPPF requires planning policies to “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 measureable net gains for biodiversity” (paragraph 174). These targets are set out in a range of biodiversity plans and strategies from the international through to the district level.

An overview of the key biodiversity plans and strategies in the UK, and their implications for development, are set out below.

### **National level**

The *UK Biodiversity Action Plan 2007* (UK BAP) has been superseded by the *UK Post-2010 Biodiversity Framework* and individual national biodiversity strategies. The UK Framework sets out the overarching vision, strategic goals and priority activities for the UK’s work towards international biodiversity targets (known as the ‘Aichi Targets’), as agreed by 192 parties at the UN Convention on Biological Diversity in 2010.

In England, *Biodiversity 2020: A strategy for England's wildlife and ecosystem services* is the national biodiversity strategy, which has the stated mission "(...) to halt overall biodiversity loss, support healthy well-functioning ecosystems and establish coherent ecological networks, with more and better places for nature for the benefit of wildlife and people." In order to focus activity and assess performance in achieving this mission, Biodiversity 2020 sets out objectives relating to terrestrial and marine habitats and ecosystems, species and people.

## **Local level**

The previous Surrey BAP was implemented by the Surrey Biodiversity Partnership prior to 2012, and has now been superseded by an approach led by the Biodiversity Working Group of the Surrey Nature Partnership, based around a network of Biodiversity Opportunity Areas (BOAs), identified as the areas which would benefit the most from targeted conservation work and biodiversity enhancements.

The Surrey Nature Partnership has produced several guidance documents, including:

- 'Irreplaceable Habitats' Guidance for Surrey (August 2020);
- Surrey in the Nature Recovery Network (February 2020);
- Tree planting for climate change mitigation in Surrey: a Surrey Nature Partnership Position Statement (January 2020);
- Biodiversity Opportunity Areas: the basis for realising Surrey's ecological network (September 2019), including Policy Statements for each BOA;
- Biodiversity and Planning in Surrey (March 2019), including lists of legally protected and Section 41 habitats species found in the county, along with a list of statutory and non-statutory protected sites;
- Natural Capital Investment Plan for Surrey (March 2018); and
- The State of Surrey's Nature (2017), including Species of Conservation Concern data tables for plants, invertebrates and vertebrates.

## **Delivering Net Gain**

Opportunities should also be sought to achieve a net gain (i.e. enhancement) of biodiversity. Support for biodiversity enhancement is provided in the Public Authority 'Biodiversity Duty' under the NERC Act 2006 and in the key principles of the NPPF, and increasingly in local level planning policy. It will become a mandatory requirement when the proposed Environment Bill 2020 comes into force.

Enhancement projects may not just benefit biodiversity. There are many functional benefits to be won from strategically planned green infrastructure projects such as semi-natural urban green spaces, sustainable urban drainage schemes (SUDS) and green roofs. Planning conditions and obligations are increasingly being used to mandate biodiversity enhancement on or off a development site, either through design or financial support.