

# **Loddon Garden Village**

## **Technical Appendix 11.1: Relevant Legislation and Planning Policy**

Prepared on behalf of

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### 1. LEGISLATION

#### **The Environment Act 2021**

- 1.1 The Environment Act 2021 placed a requirement on the Secretary of State to make regulations setting out long-term targets for air quality, water, biodiversity, resource efficiency and waste reduction. It also required the Government to produce an Environmental Improvement Plan, to report on progress towards its goals annually, to meet the targets that are set in relation to the improvement of the natural environment and to produce remedial plans should this not be achieved.
- 1.2 In relation to water quality, the Act placed new duties on the Government, Environment Agency and sewerage undertakers to reduce the frequency and harm of discharges from storm overflows on the environment, and for monitoring the quality of watercourses affected by those overflows.
- 1.3 It also included a requirement for an independent Office for Environmental Protection (OEP) to be established, with responsibilities for monitoring and reporting on progress against environmental improvement plans and targets. The OEP also has investigation and enforcement powers against public authorities failing to comply with environmental law when exercising their functions.
- 1.4 The Act made provision for 10% biodiversity gain to become a condition of planning permission in England, through amendments to the Town and Country Planning Act 1990. These amendments came into force on the 12<sup>th</sup> February 2024 (delayed to 2<sup>nd</sup> April 2024 for 'small sites') and are implemented through a series of new statutory instruments collectively referred to in this document as the 'Biodiversity Net Gain Regulations' (detailed further below). The 10% biodiversity gain is measured through a biodiversity metric published by the Department of the Environment, Food and Rural Affairs (DEFRA) on behalf of the Secretary of State. The Act also establishes Biodiversity Net Gain as a requirement for Nationally Significant Infrastructure Projects (NSIPs).
- 1.5 The Act also strengthens the biodiversity duty placed on public authorities through amendments to the Natural Environment and Rural Communities Act 2006 Section 40, requiring such authorities to not only conserve but also enhance biodiversity when exercising their functions. Public authorities will also be required to publish summary reports of actions taken under Section 40 at least every five years.
- 1.6 The Act provides the legal basis for the creation of Local Nature Recovery Strategies (LNRs) for England (including specifying their content), and the preparation and publication of species conservation strategies and protected sites strategies.
- 1.7 The Act also created a new legal vehicle known as a 'Conservation Covenant' which is a voluntary, legally binding private agreement between landowners and responsible bodies (the latter designated by the Secretary of State) which conserve the natural or heritage features of

the land, enabling long-term conservation. Conservation Covenants are designed to ‘run with the land’ when it is sold or passed on and are intended to become a primary mechanism for the delivery of Biodiversity Net Gain (BNG).

- 1.8 The Act provides new powers for the Government to amend in future Regulation 9 and Part 6 of the Conservation of Habitats and Species Regulations 2017 (as amended) (the ‘Habitats Regulations’) – but “only if satisfied that the regulations do not reduce the level of environmental protection provided by the Habitats Regulations”.
- 1.9 Several aspects of protected species licencing have also been adjusted by the Act. These include the removal of several inconsistencies between the Habitats Regulations and the Wildlife & Countryside Act 1981 (as amended), ensuring that licences issued under the former piece of legislation also apply under the latter, and making it now possible for licences to be issued under Section 16(3) of the Wildlife & Countryside Act 1981 (as amended) for purposes of overriding public interest. The maximum term of a licence that can be issued by Natural England has also been extended from 2 to 5 years.

### **The Biodiversity Net Gain Regulations**

- 1.10 The Biodiversity Net Gain provisions of the Environment Act 2021 referred to above were implemented through several pieces of secondary legislation, collectively referred to in this document as the ‘Biodiversity Net Gain Regulations’, that came into force on 12 February 2024 (delayed to 2 April 2024 for sites meeting the published definition of a ‘small site’). The Biodiversity Net Gain Regulations are as follows:
  - The Biodiversity Gain (Town and Country Planning)(Modifications and Amendments)(England) Regulations 2024
  - The Biodiversity Gain (Town and Country Planning)(Consequential Amendments) Regulations 2024
  - The Biodiversity Gain Site Register Regulations 2024
  - The Biodiversity Gain Site Register (Financial Penalties and Fees) Regulations 2024
  - The Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024
  - The Biodiversity Gain Requirements (Exemptions) Regulations 2024
  - The Environment Act 2021 (Commencement No. 8 and Transitional Provisions) Regulations 2024
- 1.11 Collectively, these Regulations implement the requirement under the Environment Act 2021 for a 10% biodiversity gain, as measured by a metric, to become a condition of planning permission in England.
- 1.12 A publicly accessible register of Biodiversity Gain Sites was published on the date that these Regulations came into force, along with the Statutory Biodiversity Metric (produced by Defra on behalf of the Secretary of State) and associated guidance (see below).
- 1.13 The required biodiversity gain can be delivered on and/or offsite (subject to adherence to a biodiversity net gain hierarchy detailed in guidance – see below) and establishes the basis for purchasing off-site credits to meet the 10% obligation if required. In most cases the land used

to deliver biodiversity gain must be maintained for at least 30 years, and the biodiversity gain planning condition requires a Biodiversity Gain Plan to be submitted to and approved by the planning authority prior to commencement of development.

- 1.14 Off-site biodiversity gains must be secured either through a Section 106 Agreement or Conservation Covenant, and 'significant' on-site biodiversity gains must be secured either through a Section 106 Agreement or a planning condition.
- 1.15 The legislation also clarifies that the baseline biodiversity value of a site should be taken from the date on which planning consent is granted, unless otherwise agreed with the LPA. This excludes any activities undertaken without planning permission (or other relevant permissions) after 30 January 2020 which have had the effect of reducing the biodiversity value of the land. In such cases, "the pre-development biodiversity value is to be taken to be its biodiversity value immediately before the carrying on of the activities."
- 1.16 Through the above Regulations, the Government has established an initial list of 'irreplaceable habitats' that must be recorded in the metric if present on site but which cannot be 'traded' through the biodiversity net gain process. Defra has confirmed the intention to consult on this initial list of habitats during 2024 and adjust it if necessary.

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

- 1.17 The Conservation of Habitats and Species Regulations 2017 (as amended) (known as the "Habitats Regulations") were originally drawn up to 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. Following the UK's exit from the European Union, the Habitats Regulations – as amended by Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 – remain in force until such a time as they are superseded by new or updated domestic legislation.
- 1.18 The Habitats Regulations provide for the designation of both Special Protection Areas (SPAs) and Special Areas of Conservation (SACs) in the UK, which previously formed part of the Natura 2000 network of protected areas across Europe and are now part of the UK's "National Sites Network". New National Sites may be designated under the Regulations.
- 1.19 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*, Sand Lizard *Lacerta agilis*, Smooth Snake *Coronella austriaca* and all native species of bat.
- 1.20 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)**

- 1.21 The Wildlife and Countryside Act 1981 is a key 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)**

<b>Schedule</b>	<b>Protected Species</b>
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.

- 1.22 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**

- 1.23 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).

- 1.24 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 (as amended)**

- 1.25 The Natural Environment and Rural Communities (NERC) Act 2006 (as amended) 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.
- 1.26 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.
- 1.27 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.

### **The Water Environment Regulations 2017**

- 1.28 Currently, the overriding legislation relating to freshwater is the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017. The Regulations set out objectives to deliver a better water environment based upon achieving a 'good status' for freshwater bodies. The concept of 'good status' is a more rigorous measure of environmental quality than previous measures, which now takes into account not just the chemical status but also the ecological health and the extent of artificial physical modification to rivers.
- 1.29 The Regulations are based upon the concept of protecting water through the management of river basin districts (RBDs) and require the implementation of River Basin Management Plans (RBMPs). Regulation 33 requires public bodies to 'have regard' to the RBMP when making planning decisions, for example through the granting of planning permission with appropriate planning conditions and/or obligations. These could require measures to be implemented (e.g. Sustainable Urban Drainage Systems (SUDS), grey water recycling etc.) or funds to be provided for habitat enhancement schemes.
- 1.30 The Regulations also affect planning policy through the implementation of Programmes of Measures for each river basin district. This involves bringing together funding from various sources and co-ordination of the activities of organisations with an interest in the use of land and water, including developers.



## 2. SITES DESIGNATED FOR THE CONSERVATION OF NATURE

- 2.1 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)*

- 2.2 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 the UK.
- 2.3 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. Following the UK's exit from the EU, these now form part of the "National Sites" network rather than the EU Natura 2000 network.
- 2.4 Ramsar sites are wetlands of international importance designated under the Ramsar Convention held in Iran in 1971 and although not covered under the Habitats Regulations they 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, SACs and/or Sites of Special Scientific Interest (SSSIs).
- 2.5 To avoid confusion with the nationally designated sites described below, EPR refers to SACs and SPAs as 'International sites', given the reasons for their designation.
- 2.6 Any plan or project considered likely to affect an International site (SAC, SPA or Ramsar) 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 Conservation of Habitats and Species Regulations 2017 (as amended) and the National Planning Policy Framework (NPPF) 2024.
- 2.7 The 'competent authority' determining whether a plan or project should proceed 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.
- 2.8 Under the Conservation of Habitats and Species Regulations 2017 (as amended), the competent authority must determine in the first instance whether a proposed development is 'likely to have a significant effect on the International Site, either alone or in combination with other plans and projects'. This stage of the HRA process is known as 'screening', and 'measures intended to avoid or reduce the harmful effects' of the subject plan or project cannot be taken into account at this stage.
- 2.9 If a likely significant effect cannot be precluded (screened out) on the basis of objective information, the competent authority must undertake an 'Appropriate Assessment' to fully

assess these implications against the site's conservation objectives, to determine if there would be an adverse effect on the integrity of the affected International Site(s). A precautionary approach must be taken with respect to determining whether or not there would be an adverse effect, and the appropriate nature conservation body (in most cases Natural England) should be consulted. Except in certain exceptional circumstances prescribed by the Regulations where there are imperative reasons of overriding public interest for allowing a development to proceed and no alternative to achieving the objectives of these reasons that are less harmful to the International Site(s), the competent authority may not undertake or authorise the plan or project until they have established (based on the conclusions of the Appropriate Assessment) that the activity will not adversely affect the integrity of the International Site. This should be the case where no reasonable scientific doubt remains as to the absence of such effects.

2.10 Regulation 16A of the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 sets out the management objectives of the National Site Network, which can be summarised as follows:

- to maintain or, where appropriate, restore habitats and species listed in Annexes I and II of the Habitats Directive within the UK's territory to a favourable conservation status (FCS); and
- contribute to ensuring, in their area of distribution, the survival and reproduction of wild birds and securing compliance with the overarching aims of the Wild Birds Directive.

2.11 The appropriate authorities must also have regard to:

- the importance of protected sites in meeting the above objectives, including breeding, moulting, staging and wintering areas for in the case of migratory bird species;
- their importance for the coherence of the national sites network; and
- the threats of degradation or destruction (including deterioration and disturbance of protected features) on SPAs and SACs.

2.12 Government guidance<sup>1</sup> also states that competent authorities have a duty to help protect, conserve and restore the designated features of SACs and SPAs when carrying out their statutory work, including taking decisions that might affect a site. They also have a duty to consider how they can help to prevent the deterioration of the site's habitats from human activity or natural changes, including habitats that support designated species, and prevent significant disturbance of the site's designated species from human activity or natural changes.

2.13 Depending on which entity is responsible for authorising a plan or project, competent authorities can include (but are not limited to) local planning authorities, planning committees, the Secretary of State and statutory agencies such as Natural England and the Environment Agency.

### **Statutory Sites: National**

2.14 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

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<sup>1</sup> <https://www.gov.uk/guidance/duty-to-protect-protect-restore-european-sites>

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*

- 2.15 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. Natural England are responsible for assessing the condition of these areas and agreeing management plans for their conservation.
- 2.16 Public bodies have a duty to take reasonable steps to conserve and enhance the special features of sites of special scientific interest (SSSIs) when carrying out their statutory duties and giving others permission for works, such as reviewing planning applications.
- 2.17 Natural England has produced, for every SSSI in England, a list of 'Operations Requiring Natural England's Consent' (ORNECs). Activities listed as ORNECs cannot be carried out within the relevant SSSI unless Natural England has issued their written assent to the activity taking place.

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

#### *Local Nature Reserves*

- 2.18 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*

- 2.19 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. Guidance for selecting and designating such sites have been produced by Defra. These sites are not legally protected but are given some protection through the planning system. These sites may be declared as 'County Wildlife Sites' (CWSs), 'Sites of Importance for Nature Conservation' (SINCs), or 'Sites of Nature Conservation Importance' (SNICIs) in local 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 and related guidance.

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

- 2.20 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*

- 2.21 Fifty-six habitat types have been identified as Habitats of Principal Importance for the conservation of biodiversity in England under Section 41 (S41) of the NERC Act 2006. Although these habitats are not legally protected, the NPPF, Government Circular 06/05, good practice guidance, the NERC Act 2006 and the Environment Act 2021 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.
- 2.22 The S41 list also includes species as explained below under 'Species of Principal Importance in England'.

### *Networks of Natural Habitats*

- 2.23 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*

- 2.24 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.
- 2.25 Under the Hedgerow Regulations 1997, it is an offence to remove a hedgerow classed as 'important' under the criteria set out by the Regulations 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 their removal.

### *Tree Preservation Orders*

- 2.26 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 primarily put in place to preserve amenity or for landscape conservation reasons. 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 Levelling Up, Housing and Communities.

### *Ancient Woodland & Veteran Trees*

- 2.27 Ancient woodlands are defined in England as areas continuously wooded since at least 1600 AD (although certain open areas such as rides and glades within woodlands are also considered part of a woodland and brief periods of tree cover removal will not remove ancient woodland status). 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. For this reason, Natural England's Provisional Ancient Woodland Inventory (PAWI) draws a distinction between Ancient and Semi Natural Woodland (ASNW) and 'Plantation on an Ancient Woodland Site' (PAWS). The inventory also lists ancient pasture woodland.
- 2.28 Ancient woodland is not a statutory designation and does not provide legal protection, but local authorities are directed 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 irreplaceable habitats such as 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*.

### *Surface & Ground Waters*

- 2.29 Surface waters (including flowing and standing water) and ground water can directly and indirectly impact upon the conservation of nature.
- 2.30 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 (as amended)*

- 2.31 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.

### 3. SPECIES PROTECTION

#### Legally Protected Species

- 3.1 The species listed in the following subsections 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. Impact avoidance and/or mitigation measures may be required to address any predicted impacts upon protected species and may necessitate the obtaining of 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*

- 3.2 There are 18 species of bat native in the UK, seven of which are Species of Principal Importance in England under S41 of the NERC Act 2006. 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 Conservation of Habitats and Species 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.
- 3.3 Development proposals affecting bats or their roosts require a European Protected Species mitigation licence from Natural England.

#### *Great Crested Newt*

- 3.4 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 Conservation of Habitats and Species 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.

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

#### *Hazel Dormouse*

3.6 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 Conservation of Habitats and Species 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.

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

#### *European Otter*

3.8 The European Otter *Lutra lutra* 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 Conservation of Habitats and Species Regulations 2017 (as amended). Collectively, this legislation makes it an offence to:

- Intentionally or deliberately kill, injure or capture Otters;
- Intentionally, deliberately or recklessly disturb Otters in such a way as to be likely to significantly affect the ability of any significant group of Otters to survive, breed, or rear or nurture their young or the local distribution of or abundance of Otters;

- Intentionally or recklessly damage, destroy or obstruct access to places used by Otters for shelter or protection (whether they occupied or not) or intentionally or recklessly disturb an Otter whilst it is occupying such a place;
  - Damage or destroy a breeding site or resting place of an Otter;
  - Possess or transport an Otter (or any part thereof) unless under licence; and
  - Sell or exchange Otters.
- 3.9 Development proposals affecting the Otter require a European Protected Species licence from Natural England.

### *Reptiles*

- 3.10 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.
- 3.11 The Smooth Snake *Coronella austriaca* and the Sand Lizard *Lacerta agilis* are the rarest reptile species in Britain. In addition to the protection that is afforded to the widespread species of reptile listed above, these species are protected further under Schedule 5 (Sections 9.4b and 9.4c) of the Wildlife and Countryside Act 1981 (as amended). They are also European Protected Species protected under the Conservation of Habitats and Species Regulations 2017 (as amended). This legislation makes it an offence to:
- Intentionally or deliberately kill, injure or capture Sand Lizards or Smooth Snakes;
  - Intentionally, deliberately or recklessly disturb Sand Lizards or Smooth Snakes in such a way as to be likely to significantly affect the ability of any significant group of Sand Lizards or Smooth Snakes to survive, breed, or rear or nurture their young or the local distribution or abundance of either species;
  - Intentionally or recklessly damage, destroy or obstruct any place used by Sand Lizards or Smooth Snakes for shelter or protection, or intentionally or recklessly disturb a Sand Lizard or Smooth Snake whilst it is occupying such a place;
  - Damage or destroy a breeding site or resting place of a Sand Lizard or Smooth Snake;
  - Keep, sell, or exchange Sand Lizards or Smooth Snakes or their eggs; and
  - Deliberately take or destroy their eggs.
- 3.12 Development proposals affecting Smooth Snake or Sand Lizard require a European Protected Species mitigation licence from Natural England.



### *Water Vole*

- 3.13 The Water Vole *Arvicola terrestris* is a NERC Act 2006 S41 Species of Principal Importance in England. The legal protection for Water Voles was increased in 2008 to fully cover the species under Section 5 of the Wildlife and Countryside Act 1981 (as amended). The legislation makes it an offence to:
- Intentionally or deliberately (but not recklessly) kill, injure or take Water Voles;
  - Intentionally, deliberately or recklessly damage, destroy or obstruct access to any structure or place used by Water Voles for shelter or protection;
  - Intentionally, deliberately or recklessly disturb Water Voles whilst they occupy a structure or place used for that purpose;
  - Sell Water Voles or offer or expose for sale or transport for sale; and
  - Possess or control live or dead Water Voles or derivatives.
- 3.14 Developers who wish to maintain, build on or alter areas used by Water Voles must ensure that unnecessary damage is avoided and all reasonable steps are taken to minimise impacts on Water Voles and their burrows. The Wildlife and Countryside Act provides a defence against the offences listed above, provided the action is the incidental result of an otherwise lawful operation and could not reasonably have been avoided.
- 3.15 A licence to displace Water Voles must be obtained from Natural England before conducting any activities involving displacement operations (this is different to a conservation licence, which is required for survey methods that involve disturbing Water Voles or their burrows, or capturing them). To obtain a displacement licence, it is necessary to demonstrate that the activity/activities will result in a conservation benefit for Water Voles.

### *Birds*

- 3.16 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.
- 3.17 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.
- 3.18 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*

- 3.19 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.

- 3.20 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*

- 3.21 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.

### *White-Clawed Crayfish*

- 3.22 The White-Clawed Crayfish *Austropotamobius pallipes* is a NERC Act S41 Species of Principal Importance in England. Outside designated sites (e.g. SACs), the White-Clawed Crayfish receives limited protection under Schedule 5 (Sections 9.1, 9.5a and 9.5b) of the Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2017 (as amended) and the Salmon and Freshwater Fisheries Act 1975. This legislation does not provide strict protection of individual crayfish or their habitats but it does prevent prohibit the capture of this species without a licence. A conservation licence must therefore be obtained from Natural England before conducting any mitigation involving the capture and handling of this species.

### *European Eel*

- 3.23 The Eels Regulations 2009 (as amended in 2011) aim to combat the population decline of the European eel *Anguilla anguilla* through protection of migration routes and controls on the numbers of eels allowed to be taken. In order to protect migration routes, any structures which may prevent upstream or downstream migration of eels must be reported to the Environment Agency. Eel passages must be constructed where needed and maintained in a good condition.

### *Freshwater Fish*

- 3.24 The Salmon and Freshwater Fisheries Act 1975 protects freshwater fish, particularly salmon and trout. It prevents the destruction of spawning grounds and the obstruction of migratory passages through the building of weirs, dams etc.

## **Licences for Development**

- 3.25 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 development scenarios are discussed below.

### *European Protected Species Mitigation Licences*

- 3.26 A European Protected Species mitigation licence (EPSML) 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 Conservation of Habitats and Species Regulations 2017 (as amended); including *inter alia* all species of bats, Hazel Dormouse, Great Crested Newt, Sand Lizard, Smooth Snake, European Otter and Eurasian Beaver. Natural England must be satisfied that the following three tests are satisfied before it will issue a licence covering a European Protected Species:
- 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;
  - There is no satisfactory alternative; and
  - 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.

### *Other Protected Species Mitigation Licences*

- 3.27 Natural England can issue mitigation licences for reasons of “overriding public interest” in respect of animal and plant species listed on Schedules 5, 6 and 8 of the Wildlife and Countryside Act 1981 (as amended), excluding birds and European Protected Species (as these have separate licensing systems). In the context of development, the most relevant species are likely to include Adder, Grass Snake, Common Lizard, Slow-worm and several species of plant.
- 3.28 Applicants must demonstrate that the licence is for the purpose of overriding public interest, and also that there are “no other satisfactory solutions”. In practice, therefore, this type of licence is likely to be difficult to obtain for most types of development.

### *Conservation Licences*

- 3.29 In the context of development, conservation licences are normally only relevant to mitigation involving the capture of Water Voles or White-Clawed Crayfish. Conservation licences are granted to permit the trapping and translocation of these species on the condition that the development activity is properly planned and executed and thereby contributes to the conservation of the population of the species.

### *Badger Licences*

- 3.30 Licences to disturb Badgers and their setts in respect of development (including closure of setts if required) may be issued by Natural England, provided provisions are made to minimise disturbance.

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

- 3.31 943 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 (INNS)**

- 3.32 There are a number of species not ordinarily resident in the UK, such as Japanese Knotweed, Himalayan Balsam and others. 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 land owner, once they are aware that it is present, and the species is allowed to spread into adjoining areas, then this could potentially constitute an offence.
- 3.33 Japanese Knotweed is 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***

- 3.34 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.

## 4. PLANNING POLICY & GUIDANCE

### National Level

#### *National Planning Policy Framework 2024*

- 4.1 The National Planning Policy Framework (NPPF) 2024 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 195).
- 4.2 Section 15 of the NPPF provides guidance on conserving and enhancing the natural environment through the planning system, as summarised below.
- 4.3 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 and incorporating features which support priority or threatened species such as swifts, bats and hedgehogs;
  - 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.
- 4.4 Section 15 also requires planning policies and decisions to limit the impact of artificial light pollution on nature conservation.
- 4.5 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 ancient 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.

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

4.7 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.

4.8 Section 15 includes the following text on air quality:

- Planning policies and decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones, and the cumulative impacts from individual sites in local areas;
- Opportunities to improve air quality or mitigate impacts should be identified, such as through traffic and travel management, and green infrastructure provision and enhancement. So far as possible these opportunities should be considered at the plan-making stage, to ensure a strategic approach and limit the need for issues to be reconsidered when determining individual applications; and
- Planning decisions should ensure that any new development in Air Quality Management Areas and Clean Air Zones is consistent with the local air quality action plan.

4.9 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*

4.10 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.

### *Planning Practice Guidance*

- 4.11 Revised and updated Planning Practice Guidance (PPG) was launched by the Department for Communities and Local Government (now the Department for Levelling Up, Housing and Communities) 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.
- 4.12 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*.
- 4.13 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*

- 4.14 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*.
- 4.15 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

- 4.16 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

*Wokingham Borough Council Adopted Core Strategy (January 2010)*

- 4.17 The Wokingham Borough Council Adopted Core Strategy: Development Plan Document (January 2010) sets out the framework for the development of the borough, through a series of policies and strategies.

- 4.18 Of particular relevance to is Policy CP7 – Biodiversity, which states:

*“Sites designated as of importance for nature conservation at an international or national level will be conserved and enhanced and inappropriate development will be resisted. The degree of protection given will be appropriate to the status of the site in terms of its international or national importance.*

*Development:*

*A) Which may harm country designated sites (Local Wildlife Sites), whether directly or indirectly, or*

*B) Which may harm habitats or species of principle importance in England for nature conservation, veteran trees or features of the landscape that are of major importance for wild flora and fauna (including wildlife and river corridors), whether directly or indirectly, or*

*C) That compromises the implementation of the national, regional, country and local biodiversity action plans will be only permitted if it has been clearly demonstrated that the need for the proposal outweighs the need to safeguard the nature conservation importance, that no alternative site that would result in less or no harm is available which will meet the need, and;*

*i) Mitigation measures can be put in place to prevent damaging impacts; or*

*ii) Appropriate compensation measures to offset the scale and kind of losses are provided.”*

- 4.19 Policy CP8 – Thames Basin Heaths Special Protection Area states:

*“Development which alone or in combination is likely to have a significant effects on the Thames Basin Heaths Special Protection Area will be required to demonstrate that adequate measures to avoid and mitigate any potential adverse effects are delivered.”*

*Wokingham Borough Local Plan Update 2023-2040*

- 4.20 The Wokingham Borough Local Plan Update 2023-2040 was submitted to the Secretary of State for examination by an independent Planning Inspector in February 2025. Whilst not currently



enforced, consideration has been given to these emerging policies during the course of the impact assessment, and design of mitigation, compensation and enhancement strategies.

- 4.21 Policy NE1: Biodiversity and Geodiversity, sets out the expectations of development in respect of local biodiversity and states:

*“[...]”*

*2. Development proposals should demonstrate through a suitable level of ecological survey information and assessment how they conserve and enhance biodiversity and/or geodiversity including their long-term management.*

*3. Development will only be supported where it:*

*a) Avoids fragmentation of existing habitats and provides coherent ecological connectivity and permeability that is integrated and linked to the wider green and blue infrastructure network, through the restoration, enhancement and connection of: linear features such as wildlife corridors; stepping stones; and any nature recovery networks (including links to habitats outside the borough);*

*b) Incorporates beneficial biodiversity and/or geodiversity conservation features and enhances existing features through design, layout and landscaping;*

*c) Provides or retains appropriate buffer zones between development proposals and designated sites, protected species, priority species or priority habitats or main rivers, which are informed by detailed site-based assessment;*

*d) Seeks to eradicate or control any invasive non-native species present on site; and*

*e) Is compatible with any national, regional, county, and local biodiversity action plans, Local Nature Recovery Strategy and/or other strategic conservation management plans for species or habitats. [...]”*

- 4.22 Furthermore, it outlines the expectations of development where it is likely to have an impact on locally and nationally designated sites, as well as irreplaceable habitats.

- 4.23 Policy NE2: Biodiversity Net Gain confirms that development proposals must deliver a biodiversity net gain minimum of 10%, using the most recent statutory metric.

- 4.24 In the case of the Proposals, this is superseded by Policy SS13: Loddon Garden Village, which requires a measurable biodiversity net gain of at least 20%.

*Arborfield & Barkham Neighbourhood Plan 2019-2036*

- 4.25 The Arborfield & Barkham Neighbourhood Plan 2019-2036 (2020) sets out policies for proposed development within both Arborfield & Newland Parish and Barkham Parish.

- 4.26 Policy IRS3: Protection and enhancement of the natural environment and green spaces sets out expectations in relation to the environment, including the requirement to ensure no net loss of biodiversity, expectation to protect, enhance and extend wildlife corridors and avoidance of impacts through artificial lighting.

#### *Shinfield Parish Neighbourhood Plan*

- 4.27 The Shinfield Parish Neighbourhood Plan (2017) sets out policies for proposed development within Shinfield Parish.
- 4.28 Policy 6: Trees, hedgerows and Woodland outlines the requirement for development to, where appropriate, retain and protect hedgerows, Habitats of Principle Importance, ancient woodlands, Local Wildlife Sites and ponds.
- 4.29 Policy 7: Biodiversity outlines that new development must, where practical, create new Habitats of Principal Importance, provide enhancements such as wildlife boxes and wildlife corridors and consider enhancements for garden species such as Hedgehog.

### **Biodiversity Plans and Strategies**

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

### **National level**

- 4.32 The Government’s Environmental Improvement Plan 2023 is the first revision of the 25 Year Environment Plan published in 2018. It sets out ten goals aimed at restoring nature – of which the ‘apex goal’ is to halt the decline of biodiversity. The EIP 2023 includes targets and commitments to:
- Halt the decline in species abundance by 2030;
  - Restore or create more than 140,000 hectares of wildlife-rich habitat outside protected sites by 2028;
  - Improve the Red List Index for England by 2042;
  - Achieve favourable condition for 48% of designated features in Marine Protected Areas by 2028;
  - Complete update condition assessments for all SSSIs by 2028;
  - Increase tree canopy and woodland cover by 0.26% by 2028;
  - Reduce water pollution from agricultural nitrogen, phosphorus and sediments by at least 40% by 2038; and
  - Reduce phosphorus loadings from treated wastewater by 80% by 2038.
- 4.33 Other targets have been set in relation to, water demand, residual waste, air quality, and pollution from abandoned metal mines and agriculture.

- 4.34 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.
- 4.35 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**

### *Biodiversity Opportunity Areas (BOAs)*

- 4.36 Local Nature partnerships have in most areas of England now identified BOAs and produced documentation setting out the existing features of ecological importance within those areas, and a state of how opportunities to enhance biodiversity could be actioned. These provide a useful starting point when considering how individual planning applications might best go about contributing toward enhancements to the natural environment.

### *Local Nature Recovery Strategies (LNRSs)*

- 4.37 In pursuance of obligations under the Environment Act 2021, the Secretary of State for the Environment, Food and Rural Affairs identified 48 'strategy areas' that collectively cover the whole of England, and appointed a 'responsible authority' to produce an LNRS for each strategy area. An LNRS must contain a habitat map for the area and a statement of biodiversity priorities to include a descriptions of the opportunities that are available for recovering or enhancing biodiversity.
- 4.38 When complete, the LNRS for an area will effectively supersede earlier documents including local BAPs. The Defra Biodiversity Metric utilises multipliers to disincentivise development that causes the loss of habitats that are considered to be priorities under an LNRS for the area, and reward proposals that create or enhance them.

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