

APPENDIX 7.1 – LEGISLATION AND PLANNING POLICY

Legislation

Specific habitats and species receive legal protection in the UK under various pieces of legislation, namely:

- The Wildlife and Countryside Act 1981 (as amended) (WCA);
- The Conservation of Habitats and Species Regulation 2010 (the ‘Habitats Regulations’);
- The Countryside and Rights of Way Act 2000;
- The Protection of Badgers Act 1992;
- The Hedgerows Regulations 1997;
- The Natural Environment and Rural Communities (NERC) Act 2006; and
- The Wild Mammals (Protection) Act 1996.

National Planning Policy

National Planning Policy Framework, 2019

The National Planning Policy Framework (NPPF) was published in February 2019 and sets out the Government's planning policies for England and how these should be applied. It replaces the first National Planning Policy Framework published in March 2012. Outline principles are set out below:

- Paragraph 11 states that:

“Plans and decisions should apply a presumption in favour of sustainable development.”
- Section 15 of the NPPF (paragraphs 170 to 177) considers the conservation and enhancement of the natural environment.
- Paragraph 170 states that planning and decisions should contribute to and enhance the natural and local environment by:
 - *“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);*
 - *recognising the intrinsic character and beauty of the countryside, 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

- *minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures”.*

- Paragraph 171 states that plans should distinguish between the hierarchy of international, national and locally designated sites; allocate land with the least environmental or amenity value; take a strategic approach to maintaining and enhancing networks of habitats and green infrastructure; and plan for the enhancement of natural capital at a catchment or landscape scale across local authority boundaries.

- Paragraph 174 states that in order to protect and enhance biodiversity and geodiversity, plans should:
 - *“Identify, map and safeguard components of local wildlife-rich habitats and wider ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity; wildlife corridors and stepping stones that connect them; and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation; and*

 - *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.”*

- When determining planning applications, Paragraph 175 states that local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:
 - “if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;

 - development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;

- development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons⁵⁸ 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.”
- As stated in paragraph 176 the following should be given the same protection as habitats sites:
 - “potential Special Protection Areas and possible Special Areas of Conservation;
 - listed or proposed Ramsar sites; and
 - sites identified, or required, as compensatory measures for adverse effects on habitats sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.”
- Paragraph 177 states that the presumption in favour of sustainable development does not apply where development requiring appropriate assessment because of its potential impact on a habitats site is being planned or determined.

Local Planning Policy

Cherwell Local Plan 2011 - 2031 Part 1

The Cherwell Local Plan 2011 - 2031 Part 1 sets out the long-term spatial vision for the District and contains policies to help deliver that vision. The key policies within the Local Plan relating to ecology are as follows:

Policy ESD10: protection and Enhancement of Biodiversity and the Natural Environment which will be achieved by the following:

- In considering proposals for Development, a net gain in biodiversity will be sought by protecting, managing, enhancing and extending existing resources, and by creating new resources.
- The protection of trees will be encouraged, with an aim to increase the number of trees in the District
- The reuse of soils will be sought. If significant harm resulting from a Development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or as a last resort, compensated for, then Development will not be permitted.

- Development which would result in damage to or loss of a site of international value will be subject to the Habitats Regulations Assessment process and will not be permitted unless it can be demonstrated that there will be no likely significant effects on the international site or that effects can be mitigated.
- Development which would result in damage to or loss of a site of biodiversity or geological value of national importance will not be permitted unless the benefits of the Development clearly outweigh the harm it would cause to the site and the wider national network of SSSIs, and the loss can be mitigated to achieve a net gain in biodiversity/geodiversity.
- Development which would result in damage to or loss of a site of biodiversity or geological value of regional or local importance including habitats of species of principal importance for biodiversity will not be permitted unless the benefits of the Development clearly outweigh the harm it would cause to the site, and the loss can be mitigated to achieve a net gain in biodiversity/geodiversity.
- Development proposals will be expected to incorporate features to encourage biodiversity, and retain and where possible enhance existing features of nature conservation value within the site. Existing ecological networks should be identified and maintained to avoid habitat fragmentation, and ecological corridors should form an essential component of green infrastructure provision in association with new Development to ensure habitat connectivity
- Relevant habitat and species surveys and associated reports will be required to accompany planning applications which may affect a site, habitat or species of known or potential ecological value.
- Air quality assessments will also be required for Development proposals that would be likely to have a significantly adverse impact on biodiversity by generating an increase in air pollution.
- Planning conditions/obligations will be used to secure net gains in biodiversity by helping to deliver Biodiversity Action Plan targets and/or meeting the aims of Conservation Target Areas. Developments for which these are the principal aims will be viewed favourably.
- A monitoring and management plan will be required for biodiversity features on-site to ensure their long term suitable management.

Policy ESD17: Green Infrastructure. The districts green infrastructure network will be maintained and enhanced by the implementation of several measures which are provided in detail in the landscape chapter.

Policy Bicester 10: Bicester Gateway: The policy requires the adequate investigation of, protection of and management of priority and protected habitats and species on site given the ecological value of the site, with biodiversity preserved and enhanced. An ecological survey should be undertaken, investigating the cumulative impacts of development at this

site and at other sites on the Local and District Wildlife Sites in the vicinity.

Policy Bicester 10

The North West Bicester Masterplan Supplementary Planning Document (SPD) sets out the key principles for the future Development of North West Bicester. The key policy within the SPD relating to ecology is Development Requirement (e) – Biodiversity which states:

- Biodiversity mitigation and enhancement shall be incorporated into Development proposals to provide a net biodiversity gain. As such it is not possible to mitigate for the impact of farmland birds on the site, off-site mitigation measures should be provided and all applications within the masterplan area should contribute to the provision of off-site mitigation.

Biodiversity Actions Plans

The UK Post-2010 Biodiversity Framework succeeded the UK BAP partnership in 2011 and covers the period 2011 to 2020. However, the lists of Priority Species agreed under the UK BAP still form the basis of much biodiversity work in the UK. The current strategy for England is 'Biodiversity 2020: A strategy for England's wildlife and ecosystem services' published under the UK Post-2010 UK Biodiversity Framework. Although the UK BAP has been superseded, Species Action Plans (SAPs) and Habitat Action Plans (HAPs) developed for the UK BAP remain valuable resources for background information on priority species under the UK Post-2010 Biodiversity Framework.

Most areas now possess a Local BAP (LBAP) to complement the national strategy where priority habitats and species are identified and targets set for their conservation. BAP's are the key nature conservation initiative in the UK, working at national, regional and local levels.

The Oxfordshire Biodiversity Action Plan focusses efforts on conserving the county's biodiversity on 36 Conservation Target Areas (CTAs)¹ which the site does not fall within. There are no specific priorities for the areas that are located outside of the CTAs, but biodiversity is still protected through legislation as well as national and local planning policy as described above.

¹<https://www.oxfordshire.gov.uk/cms/sites/default/files/folders/documents/environmentandplanning/countryside/naturalenvironment/BAPnewsletterFINAL.pdf>

The Cherwell Corporate Biodiversity Action Plan 2016-18² is Cherwell District Council's BAP and is partially delivered through the adopted Cherwell Local Plan 2011-2031 Part 1. It makes specific reference to assessing the impact of the North West Bicester Eco-Town Development on important sites, habitats and species and is referred to where relevant to the assessment.

² http://www.cherwell.gov.uk/media/pdf/i/q/Cherwell_Corporate_Biodiversity_Action_Plan_2016-18.pdf