



Appendix 12.1

LEGISLATION AND PLANNING POLICY

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Legislation

- 12.1.1. 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 Environment Act 2021;
 - 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.
- 12.1.2. The European Council Directive on the Conservation of Natural Habitats and of Wild Flora and Fauna, 1992, often referred to as the 'Habitats Directive', provides for the protection of key habitats and species considered of European importance. Annexes II and IV of the Directive list all species considered of community interest. The legal framework to protect the species covered by the Habitats Directive has been enacted under UK law through The Conservation of Habitats and Species Regulations 2017 (as amended).
- 12.1.3. In Britain, the WCA 1981 (as amended) is the primary legislation protecting habitats and species. SSSIs, representing the best examples of our natural heritage, are notified under the WCA 1981 (as amended) by reason of their flora, fauna, geology or other features. All breeding birds, their nests, eggs and young are protected under the Act, which makes it illegal to knowingly destroy or disturb the nest site during nesting season. Schedules 1, 5 and 8 afford protection to individual birds, other animals and plants.
- 12.1.4. The CRoW Act 2000 strengthens the species enforcement provisions of the WCA 1981 (as amended) and makes it an offence to 'recklessly' disturb a protected animal whilst it is using a place of rest or shelter or breeding/nest site.

Environment Act 2021: Upcoming Town and Country Planning Act

- 12.1.5. The Environment Act gained Royal Assent in November 2022. Whilst the premise of Biodiversity Net Gain (BNG) has been around prior to this, the Assent of the Act sets the Framework for future legislation to be changed. This will be in the form of the Town and Country Planning Act (TaCPA), specifically Schedule 14 of the TaCPA, which will make

Biodiversity Net Gain a condition of planning (not a planning condition). The target 'gain' is currently set at 10% but the Secretary of State has the ability to change this.

National Planning Policy

12.1.6. The National Planning Policy Framework (NPPF) was updated in December 2023 and sets out the Government's planning policies for England and how these should be applied.

12.1.7. Paragraph 11 states that:

"Plans and decisions should apply a presumption in favour of sustainable development."

Section 11 of the NPPF, paragraph 124, sub-section b states that planning policies and decisions should:

"recognise that some undeveloped land can perform many functions, such as for wildlife, recreation, flood risk mitigation, cooling/shading, carbon storage or food production"

12.1.8. Section 15 of the NPPF (paragraphs 180 to 194) considers the conservation and enhancement of the natural environment.

12.1.9. Paragraph 180 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, 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;

maintaining the character of the undeveloped coast, while improving public access to it where appropriate; 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"

12.1.10. Paragraph 181 states that plans should: distinguish between the hierarchy of international, national and locally designated sites; allocate land with the least environmental or amenity value, where consistent with other policies in this Framework; 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.

12.1.11. Paragraph 185 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.”

- 12.1.12. When determining planning applications, Paragraph 186 states that local planning authorities should apply 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 reasons and a suitable compensation strategy exists; and

development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.”

- 12.1.13. As stated in paragraph 187 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.”

- 12.1.14. Paragraph 188 states that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.

Local Planning Policy

Cherwell Local Plan 2011 - 2031 Part 1

12.1.15. 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; and
- 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 district's green infrastructure network will be maintained and enhanced by the implementation of several measures which are provided in detail in the landscape chapter.

Cherwell Local Plan Review 2040 – Consultation Draft

12.1.16. A consultation draft of the Cherwell Local Plan 2040 has been prepared and Cherwell District Council are inviting comments on the draft at the time of writing. Cherwell District Council aim to finalise the plan by late summer 2024. Relevant policies within the consultation draft local plan are detailed below.

12.1.17. Core Policy 11: Protection and Enhancement of Biodiversity states:

“All new development proposals will be expected to make a positive contribution to Cherwell’s nature recovery through the protection, restoration and expansion of protected sites, habitats and species. Facilitating their adaptation to climate change and improving connections between wildlife corridors and protected sites at a landscape scale, in line with the hierarchy of designations set out in legislation and the NRN zones:

- i. *Development which is likely to have an adverse effect on the integrity of a Special Area of Conservation (SAC), Special Protection Area (SPA) and/or Ramsar site will not be permitted*;*
- ii. *Development which is likely to have a significant adverse impact on nationally important sites, namely Sites of Special Scientific Interest (SSSI) and National Nature Reserves (NNRs), 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 NNRs and the loss can be mitigated to achieve a net gain in biodiversity/geodiversity, and*
- iii. *Development which would result in damage to or loss of a site of biodiversity or geological value of regional or local importance, in addition to irreplaceable habitats such as ancient woodland, and aged or veteran trees, will not be permitted unless the benefits of the development clearly outweigh the harm it would cause to the site. Any development with the potential to impact on a SAC, SPA and/or Ramsar site within the district will be subject to Habitats Regulations Assessment and will not be permitted unless it can be demonstrated that there will be no adverse effects on the integrity of the international site, either alone or in combination with other plans and projects, or that effects can be mitigated to avoid any effect on integrity. Development that would compromise the favourable condition or make it less likely that a favourable condition can be reached, of a SSSI, will only be permitted if the need for and the public benefits of the proposed development outweigh the loss.”*

“Development proposals will be expected to incorporate features to enhance biodiversity such as green and brown roofs, green walls, Sustainable Drainage Systems (SuDS), soft landscaping and nest boxes, in addition to retaining and where possible enhancing existing features of nature conservation value within the site. Existing ecological networks including those identified in the Green and Blue Infrastructure Strategy should be maintained to avoid habitat fragmentation and ensure habitat connectivity.

Relevant habitat and species surveys proportionate to the nature and scale of development proposed will be required to accompany planning applications that may affect a site, habitat or species of known or potential ecological value. Where, having followed the mitigation hierarchy, there is an unavoidable requirement for offsite biodiversity compensation to offset any harm as a result of the development, this should be proportionate in scale to the proposed development.

Planning conditions/obligations will be used to help deliver the Conservation Target Areas habitat and species targets and the wider Nature Recovery Network where appropriate. Any new development will be required to secure the long-term management and monitoring of biodiversity features created on-site and those created off-site to compensate for development impacts, through a Biodiversity Improvement and Management Plan.”

12.1.18. Core Policy 12: Biodiversity Net Gain states:

“Development will be required to demonstrate a minimum of 10% net gain in biodiversity (measured using the DEFRA biodiversity metric 3.1 or successor) by protecting and enhancing sites of biodiversity value or geological value and soils, in addition to recognising the wider benefits from natural capital and ecosystem services. At least 20% biodiversity net gain will be sought in the Nature Recovery Network Core and Recovery zones, and new urban extensions will be required to achieve 20% biodiversity net gain.

All major applications should be accompanied by a Biodiversity Net Gain Assessment and Ecological Enhancement Scheme, setting out how the site will be improved and maintained over a thirty-year period.

Delivery of biodiversity net gain should follow the mitigation hierarchy with gains delivered on site as first preference. Where the required delivery of biodiversity net gain is not possible on-site, gain should be delivered as close as possible on projects identified in the Green and Blue Infrastructure Strategy or within the core zone or recovery zone of the Nature Recovery Network, where they can secure the greatest benefits to Oxfordshire’s wildlife and ecosystems.”

12.1.19. Core Policy 13: Conservation Target Areas states:

12.1.20. *“Where development is proposed within or adjacent to a Conservation Target Area, biodiversity surveys and a report will be required to identify constraints and opportunities for biodiversity enhancement. Development that would have an adverse impact on the target habitats and species of a CTA will not be permitted. Where there is potential for development, the design and layout of the development, planning conditions or obligations will be used to secure biodiversity enhancement of the target habitats and species of the Conservation Target Area.”*

Biodiversity Actions Plans

- 12.1.21. 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.
- 12.1.22. 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.
- 12.1.23. 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.
- 12.1.24. 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.
- 12.1.25. 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 important sites, habitats and species and is referred to where relevant to the assessment.

¹ <https://www.oxfordshire.gov.uk/cms/sites/default/files/folders/documents/environmentandplanning/countryside/naturalenvironment/BAPnewsletterFINAL.pdf> [Accessed: 10/08/2021]

² http://modgov.cherwell.gov.uk/documents/s32798/Appendix%201%20-%20Cherwell%20BAP%202016-18_Final%20Draft.pdf [Accessed: 30/01/2024]