

1 LEGISLATION AND PLANNING POLICY

1.1 General & Regionally Specific Policies

i Articles of British legislation, policy guidance and both Local Biodiversity Action Plans (BAPs) and the NERC Act, 2006 are referred to throughout this report. Their context and application is explained in the relevant sections of this report. The relevant articles of legislation are:

- Environment Act 2021;
- The National Planning Policy Framework (2021);
- ODPM Circular 06/2005 (retained as Technical Guidance on NPPF 2021);
- Local planning policies ESD9, ESD10 and ESD11 (Cherwell District Council North Oxfordshire);
- The Conservation of Habitats & Species (Amendment) (EU Exit) Regulations 2019 (as amended);
- The Wildlife and Countryside Act 1981 (as amended);
- EC Council Directive on the Conservation of Wild Birds 79/409/EEC;
- National Parks and Access to the Countryside Act 1949;
- The Protection of Badgers Act 1992;
- The Countryside and Rights of Way Act 2000;
- The Hedgerow Regulations 1997;
- The Natural Environment and Rural Communities (NERC) Act 2006;
- Local Biodiversity Action Plan for Oxfordshire

ii Specifically, ESD9 of the Cherwell District Council North Oxfordshire:

“Developers will be required to demonstrate that:

- *During construction of the development there will be no adverse effects on the water quality or quantity of any adjacent or nearby watercourse*
- *During operation of the development any run-off of water into adjacent or surrounding watercourses will meet Environmental Quality Standards (and where necessary oil interceptors, silt traps and Sustainable Drainage Systems will be included)*
- *New development will not significantly alter groundwater flows and that the hydrological regime of the Oxford Meadows SAC is maintained in terms of water quantity and quality*
- *Run-off rates of surface water from the development will be maintained at greenfield rates.”*

iii ESD10 states:

“Protection and enhancement of biodiversity and the natural environment 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.”*

iv ESD11 states:

“Where development is proposed within or adjacent to a Conservation Target Area biodiversity survey and a report will be required to identify constraints and opportunities for biodiversity enhancement. Development which would prevent the aims of a Conservation Target Area being achieved 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 to help achieve the aims of the Conservation Target Area.”

1.2 Bats and Great Crested Newts

- i Great crested newt and species of British bats are fully protected within UK Law under *Wildlife and Countryside Act 1981* (as amended) through their inclusion in Schedule 5. Under the Act, they are protected from:

- Intentional or reckless killing, injury, taking;
 - Damage to or destruction of or, obstruction of access to any place of shelter, breeding or rest;
 - Disturbance of an animal occupying a structure or place;
 - Possession or control (live or dead animals);
 - Selling, bartering or exchange of these species, or parts of.
- ii This law is reinforced by the UK's transposition of the EU Habitats Regulations under *The Conservation of Habitats & Species (Amendment) (EU Exit) Regulations 2019 (as amended)*. These Regulations also prohibit:
 - the deliberate killing, injuring or taking of great crested newt or bats;
 - the deliberate disturbance of any great crested newt or bat species in such a way as to be significantly likely to affect:
 - their ability to survive, hibernate, migrate, breed, or rear or nurture their young; or
 - the local distribution or abundance of that species.
 - damage or destruction of a breeding site or resting place;
 - the possession or transport of great crested newt or bats or any other part of.
- iii Under certain circumstances a licence may be granted by Natural England to permit activities that would otherwise constitute an offence. In relation to development, a scheme must have full planning permission before a licence application can be made.
- iv In addition, seven British bat species are listed as Species of Principal Importance (SPI) under the Natural Environment and Rural Communities (NERC) Act, 2006. These are barbastelle (*Barbastellus barbastellus*), Bechstein's (*Myotis bechsteinii*), noctule (*Nyctalus noctula*), soprano pipistrelle (*Pipistrellus pygmaeus*), brown long-eared (*Plecotus auritus*), greater horseshoe (*Rhinolophus ferrumequinum*) and lesser horseshoe (*Rhinolophus hipposideros*).
- v Under the National Planning Policy Framework 2019 the presence of any protected species is a material planning consideration. The Framework states that impacts arising from development proposals must be avoided where possible or adequately mitigated/compensated for and that opportunities for ecological enhancement should be sought.

1.3 Birds

- i The Wildlife and Countryside Act 1981 (as amended) is the Priority legislation affording protection to UK wild birds. Under this legislation all birds, their nests and eggs are protected by law and it is an offence, with certain exceptions, to recklessly or intentionally:
 - Kill, injure or take any wild bird;
 - Take, damage or destroy the nest of any wild bird while it is in use or being built;
 - Take or destroy the egg of any wild bird.
- ii For birds listed on Schedule 1 of the Act, it is an offence to disturb any bird while it is building a nest, is at or near a nest with young; or disturb the dependant young of such a bird.
- iii Species listed in Annex 1 of the EU Birds Directive 1994 (e.g. barn owl) are required to have special conservation measures taken to preserve their habitats and sites to be classified as Special Protection Areas (SPAs) where appropriate.

1.4 Reptiles

- i All reptile species are partially protected under Schedule 5 (Sections 9(1) and 9(5)) of the Wildlife and Countryside Act 1981 (as amended). This legislation protects these animals from:
 - Reckless or intentional killing and injury;
 - Selling, offering for sale, possessing or transporting for the purpose of the sale or publishing advertisements to buy or sell a protected species.

- i In addition to the above legislation, UK rare reptiles; sand lizards (*Lacerta agilis*) and smooth snakes (*Coronella austriaca*), are listed under The Conservation of Habitats & Species (Amendment) (EU Exit) Regulations 2019 (as amended). This makes it an offence to:
- Capture, kill, injure and disturb;
 - Take or destroying eggs;
 - Damage or destroy breeding/resting places;
 - Obstruct access to resting places; and
 - Possess, advertise for sale, sell or transport for sale, live or dead (part or derivative).
- ii Where these animals are confirmed as present on land that is to be affected by development guidance recommends that:
- The animals should be protected from injury or killing during construction operations;
 - Mitigation should be provided to maintain the conservation status of the species locally;
 - Under the National Planning Policy Framework 2019 the presence of any protected species is a material planning consideration. The Framework states that impacts arising from development proposals must be avoided where possible or adequately mitigated/compensated for and that opportunities for ecological enhancement should be sought.

1.5 Water Vole

- i Water voles (*Arvicola amphibius*) are protected under Schedule 5 Section 9 of the Wildlife & Countryside Act 1981 (as amended). It is an offence to intentionally kill, injure or capture a water vole, to intentionally or recklessly damage, destroy or obstruct access to any structure or place which water voles use for shelter or protection or to disturb water voles while they are using such a place.

1.6 White-clawed Crayfish

- i White-clawed crayfish (*Austropotamobius pallipes*) are protected under Schedule 5 of the Wildlife & Countryside Act 1981 (as amended) and under the Act it is an offence to intentionally take white-clawed crayfish from the wild and to sell them. This species is also protected under the Habitat Regulations 2010 (as amended), requiring the designation of Special Areas of Conservation to protect important populations of this species.

1.7 Otter

- i The European otter (*Lutra lutra*) is the only native UK otter species. It is fully protected under Schedule 5 of the Wildlife and Countryside Act 1981. This law is reinforced by the UK's transposition of the EU Habitats Regulations under The Conservation of Habitats & Species (Amendment) (EU Exit) Regulations 2019 (as amended). Together, these Regulations make it an offence to:
- capture, kill, disturb or injure otters (on purpose or by not taking enough care)
 - damage or destroy a breeding or resting place (deliberately or by not taking enough care)
 - obstruct access to their resting or sheltering places (deliberately or by not taking enough care)
 - possess, sell, control or transport live or dead otters, or parts of otters
- ii A convicted offence could get an unlimited fine and up to 6 months in prison.

1.8 Badgers

- i Badgers (*Meles meles*) and their setts are protected by the Protection of Badgers Act 1992. This makes it an offence to:
- intentionally capture, kill or injure a badger;
 - damage, destroy or block access to their setts;
 - disturb badgers in setts;
 - treat a badger cruelly;
 - deliberately send or intentionally allow a dog into a sett; and

- bait or dig for badgers.
- ii Case law for this species contains example prosecutions of imprisonment for six months and heavy fines.

1.9 Hedgehogs and Common Toads

- i Under the NERC Act 2006, the hedgehog (*Erinaceus europaeus*) and common toad (*Bufo bufo*) are categorised as a 'Species of Principal Importance' for biodiversity. Furthermore, both are local biodiversity action plan species (LBAP) for Oxfordshire. Listing as SPI reflects concerns that populations have suffered a rapid and sustained decline in the UK. As such, they are a material consideration during planning.

1.10 Hedgerows

- i All native hedgerows (including species-poor ones) are listed under Section 41 of the NERC Act (2006) and are a Local Biodiversity Action Plan (LBAP) habitat. All native hedgerows are considered to be of high conservation value.
- ii The Hedgerow Regulations (1997) classifies a hedgerow as 'important' if it:
 - Satisfies at least 1 of the criteria listed in Part II of Schedule 1
 - Has existed for 30 years or more
- iii Any person wishing to remove a hedgerow is required to submit a hedgerow removal notice to the LPA
- iv Items of Legislation that are pertinent regarding hedgerows include:
 - Hedgerow Regulations 1997
 - The countryside Rights of Way Act 2000
 - Natural Environment and Rural Communities Act (NERC) 2006
 - Planning Policy Statement (PPS) 9: Biodiversity and Geological Conservation
 - The UK Biodiversity Action Plan (UK BAP)
 - The Conservation of Habitats & Species Amendments (EU Exit) Regulations 2019 (as amended)