

Date: 10/03/2023

Our reference: 094662/KB/001



**Surrey**  
Wildlife Trust

School Lane, Pirbright,  
Woking, Surrey, GU24 0JN  
01483 795449  
planning@surreywt.org.uk

[surreywildlifetrust.org/epas](https://surreywildlifetrust.org/epas)

By email: [tplan@elmbridge.gov.uk](mailto:tplan@elmbridge.gov.uk)

Dear Clare,

**Planning reference: 2022/3796**

**Proposals: Development of 2 detached blocks comprising 33 flats with new vehicular access, associated parking, cycle storage, refuse storage and amenity areas with hard and soft landscaping, and associated engineering and infrastructure works, following demolition of existing houses.**

**Site Address: 16-18 Oatlands Drive Weybridge Surrey KT13 9JL**

Thank you for consulting with Surrey Wildlife Trust with regards to the above planning application. Our advice is restricted to ecological issues and does not prejudice further representation Surrey Wildlife Trust may make as a non-statutory organisation on related, or other, issues. We also do not comment on whether a planning application should be granted, or refused, but rather provide a technical review of the ecological information that has been submitted to ensure that all ecological aspects have been appropriately considered prior to determination or discharging of conditions.

The Local Planning Authority (LPA) has a duty to conserve biodiversity in line with the planning and legislative context. Relevant legislation and planning policies are detailed in Appendix 1. We have reviewed the relevant application documents submitted on the planning portal, and other relevant publicly available information, and assessed these against published best practice guidance to determine whether submitted information was sufficient for the LPA to assess the planning application. Following this, we assessed the proposals against relevant legislation and planning policy and recommended an appropriate course of action to ensure the LPA is fulfilling its duty to conserve biodiversity.

This consultation response is valid for one year. Should further project information or amended designs be provided or submitted to the planning portal we may need to update our response accordingly. Our advice and recommendations are detailed below.

We have reviewed the following reports:

- Design & Access Statement, author unknown, December 2022
- Tree Survey and Impact Assessment, Keen Consultants, 9<sup>th</sup> December 2022
- Ecological Report, AA Environmental Ltd., December 2022

### Summary of Recommendations

A summary of our advice and recommendations is provided in Table 1. The detail is provided further in this document. Please let us know if you would like to discuss any of these further.



**Table 1 Summary of Recommendations Table**

Planning Stage	Recommendation
Prior to determination	Clarification of characterisation of bat roost(s)
	Great crested newt presence/likely absence surveys
	Consult Natural England with regards to possible impacts on South West London Waterbodies
	Biodiversity Net Gain Assessment Metric 3.1 Calculation Tool
Prior to commencement	Sensitive Lighting Management Plan
	Eradication of Indian balsam
	Detailed protection measures for adjacent HPI woodland
	Landscape and Ecological Management Plan (LEMP)
	Construction Environmental Management Plan (CEMP)
Prior to occupation	N/A
General Recommendations	Precautions should be taken during construction to ensure no harm to terrestrial mammals (include in CEMP)
	Demolition of number 16 can only take place under a bat mitigation licence (can only be applied for once planning permission received, and ecological conditions are discharged)
	Precautions should be taken if removing ash tree with low suitability to support roosting bats (include in CEMP)
	Demolition, and vegetation and site clearance should take place outside of breeding bird season, or following nesting bird checks (include in CEMP)
	Suggested biodiversity enhancements should be included within the final design (include in LEMP)

### Protected species - Badger

The legal protection afforded to badger is presented in Appendix 1.

The above referenced Ecological Report has identified the likely absence of active badger setts within and adjacent to the development site. However, badgers are likely to be present locally.

The applicant should ensure that construction activities on site have regard to the potential presence of terrestrial mammals to ensure that these species do not become trapped in trenches, culverts, or pipes. All trenches left open overnight should include a means of escape for any animals that may fall in.

If badger activity is detected, works should cease and advice from a suitably experienced ecologist sought to prevent harm to this species.

If any close-boarded fencing is to be used at the site, we recommend that holes of 20cmx20cm are included in the base to allow badger to move freely through the site.

## Protected species - Bats

The legal protection afforded to bats is presented in Appendix 1.

The applicant should be made aware of the requirement for them to apply for a bat mitigation licence from Natural England where development activities may cause an offence. The licence can only be applied for once planning permission has been granted.

### ***Buildings***

The above referenced Ecological Report has confirmed the presence of an active bat roost in a building (number 16) within the development site and that this roost would be subject to loss or disturbance as a result of development. Works would therefore be contrary to the above referenced legislation in absence of derogation licensing.

It is unclear from the report whether the two houses and the summer house on-site were considered to be of high, moderate, low, or negligible suitability to support roosting bats, and therefore, that the amount of survey effort (two surveys, two surveyors) was sufficient to be confident in the absence of bat roosts in all buildings but number 16; and that no larger roosts (e.g. hibernation) are likely to be present in number 16. **We would therefore recommend that the LPA seeks clarification from the applicant's ecologist that they are confident that the survey effort was sufficient for them to characterise the identified roost, and that the presence of other roost locations within the site is unlikely.**

Following this, and should it be minded to grant this planning application, the LPA should advise the applicant that they will be required to:

- Obtain a mitigation licence from Natural England following the receipt of planning permission and prior to any works which may affect bats commencing.
- Undertake all the actions which will be detailed in the Method Statement which must support a mitigation licence.

This will help ensure that the proposed development is in compliance with the statutory provisions of the above referenced legislation.

### ***Trees***

One ash tree within the site was considered to be of low suitability to support roosting bats.

Should it be necessary to fell or prune this tree, a precautionary approach to works should be implemented.

### ***Sensitive lighting***

Nocturnal species including bats are known to be present at the development site. These species are sensitive to any increase in artificial lighting of their roosting and foraging places and commuting routes.

Paragraph 185 of the NPPF (2021) states that planning policies and decisions should *"limit the impact of light pollution from artificial light on ... dark landscapes and nature conservation."*

The applicant should ensure that the proposed development will result in no net increase in external artificial lighting at primary bat foraging and commuting routes across the development site, in order to comply with above referenced legislation and the recommendations in BCT & ILP (2018) Guidance Note 08/18. Bats and artificial lighting in the UK. Bats and the Built Environment. Bat Conservation Trust, London & Institution of Lighting Professionals, Rugby.

**We advise that compliance with this best practice guidance is secured through a Sensitive Lighting Management Plan submitted to the LPA for approval in writing prior to commencement of development.**

#### **Protected species – Breeding birds**

The legal protection afforded to birds is detailed in Appendix 1.

**The applicant should take action to ensure that development activities such as demolition and vegetation or site clearance are timed to avoid the bird nesting season of early March to August inclusive.**

If this is not possible and no large areas of dense vegetation are affected, the site could be inspected for active nests by an ecologist within 24 hours of any clearance works. If any active nests are found they should be left undisturbed with a buffer zone around them, until it can be confirmed by an ecologist that the nest is no longer in use.

#### **Protected species – Great crested newt**

The legal protection afforded to great crested newt is detailed in Appendix 1. We are aware that Elmbridge Borough Council holds a NatureSpace Great Crested Newt District Licence.

The applicant should be made aware of the requirement for them to apply for a great crested newt mitigation licence from Natural England where development activities may cause an offence. The licence can only be applied for once planning permission has been granted.

The proposed development appears to affect suitable great crested newt aquatic and terrestrial habitat. Suitable terrestrial and breeding habitat for great crested newt also exists locally. There is therefore a reasonable likelihood of great crested newt being present and adversely affected by the proposed development.

The above referenced Ecological Report has identified two waterbodies within the development site that have been assessed as having poor suitability for great crested newt using the Habitat Suitability Index (HSI). However, in a review of the Habitat Suitability Index, Buxton et al (2021)<sup>1</sup> states that *“HSI was never intended to be used as a surrogate for pond occupancy, but was intended as a risk register of potential great crested newt presence, identifying ponds and appropriate habitat”*. It concludes that *“it would be unwarranted to assume absence from a low HSI score”*.

Killing, injuring or disturbance of great crested newt present would be contrary to the above referenced legislation. It is currently uncertain whether the proposed development would result in breach of the above referenced legislation.

In line with the legislation and planning policy and guidance, detailed in Appendix 1, the LPA has a duty to consider impacts to newts when assessing applications and due to the lack of surveys the LPA does not have sufficient information on which to base a decision under Regulation 55(9)(b). The LPA cannot be sure that the applicant will be able to maintain the population at favourable condition status as the presence and status of populations are not known and therefore appropriate avoidance, mitigation and compensation measures cannot be determined.

**We advise that prior to determination of the current planning application, the LPA should require the applicant to submit great crested newt presence/likely absence**

---

<sup>1</sup> Buxton, A. Tracey, H and Downs, N (2021) How reliable is the habitat suitability index as a predictor of great crested newt presence or absence. Herpetological Journal, Volume 31 (April 2021).

**surveys in line with best practice guidance or give further justification as to why these are not required.**

#### **Invasive non-native species**

In order to comply with the relevant legislation, the applicant will need to ensure they do not cause any invasive non-native species to spread as a result of the works associated with the development.

**To prevent its spread any Indian balsam present should be eradicated using qualified and experienced contractors and disposed of in accordance with the Environmental Protection Act (Duty of Care) Regulations 1991. Further information on this species can be obtained from the GB Non-native Species Secretariat at [www.nonnativespecies.org](http://www.nonnativespecies.org).**

#### **Protected habitat – Lowland mixed deciduous woodland: Habitat of Principal Importance**

The protection afforded to lowland mixed, deciduous woodland; a Habitat of Principal Importance is detailed in Appendix 1.

The NPPF (2021) makes it clear (para 179) that plans should “*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*”. Loss or deterioration of a Habitat of Principal Importance would not therefore be in accordance with these objectives.

Lowland mixed deciduous woodland HPI appears to be present immediately adjacent to the site boundary.

**We recommend that should the LPA be minded to grant planning permission, they request adequate protection measures for the lowland mixed, deciduous woodland are detailed in an Arboricultural Impact Assessment, Method Statement and Tree Protection Plan.**

#### **Protected habitat – Statutory designated site**

Section 28G(2) of the Wildlife and Countryside Act 1981, as amended, states that LPAs have a duty to “*take reasonable steps, consistent with the proper exercise of the authorities functions, to further the conservation and enhancement of the flora, fauna ... by reasons of which the site is of special scientific interest [SSSI].*”

Section 24(1) of the Conservation of Habitats and Species Regulations 2017, as amended, states that “*where it appears to the appropriate nature conservation body that a notice of a proposal ... relates to an operation which is or forms part of a plan or project which is likely to have a significant effect on a European site (either alone or in combination with other plans or projects), and is not directly connected or necessary to the management of that site, it must make an appropriate assessment of the implications for that site in view of that site’s conservation objectives.*”

Section 24(2) of the same legislation goes on to say “*in light of the conclusions of the assessment, it may give consent for the operation only after having ascertained that the plan or project will not adversely affect the integrity of the site.*”

The National Planning Policy Framework (NPPF) 2021 (paragraph 180) states “*development on land within or outside a SSSI, 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 proposed development site is located within 2.4km of South West London Waterbodies Special Protection Area (SPA) and Ramsar Site.

**As per the guidance published by Natural England 2021 (Natural England's Impact Risk Zones for Sites of Special Scientific Interest (For use by Local Planning Authorities to assess planning applications for likely impacts on SSSIs/SACs/SPAs & Ramsar sites and determine when to consult Natural England) User Guidance v4.0. Natural England, Peterborough), where a proposed development has the potential to impact upon a protected site such as a SPA, the LPA should consult Natural England for advice on how impacts might be avoided or mitigated.**

#### **Requirement to demonstrate a measurable biodiversity net gain**

Documentation submitted in support of this application suggests that the proposed development will result in a 5.64% gain in habitat units. However, the documentation submitted only shows the 'Headline Results' of the Biodiversity Metric 3.1 Calculation Tool and does not provide a detailed assessment of how the conditions of both baseline and created habitats was assessed. It is therefore difficult for the LPA to accurately assess the feasibility of this net gain being achieved.

**We therefore advise that prior to determination the LPA requests that the applicant provides an appropriately detailed biodiversity net gain assessment, including the Calculation Tool in Excel format and Habitat Condition Assessments, to demonstrate a measurable biodiversity net gain and how this gain will be secured.**

#### **Biodiversity enhancements**

Biodiversity enhancements required under the NPPF (2021) are detailed in Appendix 1.

This development offers opportunities to restore or enhance biodiversity and such measures will assist the LPA in meeting the above obligation and also help offset any localised harm to biodiversity caused by the development process. The development should progress in line with Paragraphs 4.17 to 4.19 in the above referenced Ecological Report and incorporate the following:

- Bird and bat boxes erected on or integral within the new building and/or on mature trees
- Native shrub, and tree planting
- Wildflower grassland
- Biodiverse roofs
- Buffer zone between adjacent watercourse and the development including riparian species planting
- Boundary hedgerows and post and rail fencing to ensure hedgehogs and other wildlife can move freely through the site
- Hedgehog houses
- Bug hotels
- Bird feeders
- Log piles
- Pollinator nest sites

Native species or species of known biodiversity benefit are recommended when planting new trees and shrubs. Preferably these should be of local provenance from seed collected, raised, and grown only in the UK, suitable for site conditions and complementary to the surrounding

natural habitat. Planting should focus on nectar-rich flowers and/or berries as these can also be of considerable value to wildlife.

**Any additional enhancements required following full appraisal of the proposed development site for the presence of great crested newt should also be incorporated into the development.**

#### **Landscape and Ecological Management Plan (LEMP)**

A Landscape and Ecological Management Plan (LEMP) details the management measures required to deliver the biodiversity net gain identified in the biodiversity net gain assessment.

**Should the LPA be minded to grant planning permission for this proposed development, we recommend that the LPA requires the development to be implemented in accordance with an appropriately detailed landscape and ecological management plan (LEMP).**

This document should be submitted to and approved in writing by the LPA prior to the commencement of development. The LEMP should be based on the proposed impact avoidance, mitigation and enhancement measures specified in the above referenced report and should include, but not be limited to the following:

- a) Description and evaluation of features to be managed
- b) Ecological trends and constraints on site that might influence management
- c) Aims and objectives of management
- d) Appropriate management options for achieving aims and objectives
- e) Prescriptions for management actions, together with a plan of management compartments
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period)
- g) Details of the body or organisation responsible for implementation of the plan
- h) Ongoing monitoring and remedial measures
- i) Legal and funding mechanisms by which the long-term implementation of the plan will be secured by the applicant with the management body(ies) responsible for its delivery.
- j) Monitoring strategy, including details of how contingencies and/or remedial action will be identified, agreed, and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

#### **Construction Environmental Management Plan (CEMP)**

Given the presence of ecological receptors on site, there is a risk of causing ecological harm resulting from construction activities. **Should the LPA be minded to grant permission for the proposal the applicant should be required to implement the development only in accordance with an appropriately detailed CEMP. This document will need to be submitted to and approved by the LPA in writing, prior to the commencement of the development.** The CEMP should include, but not be limited to:

- a) Map showing the location of all ecological features
- b) Risk assessment of the potentially damaging construction activities
- c) Practical measures to avoid and reduce impacts during construction
- d) Location and timing of works to avoid harm to biodiversity features
- e) Responsible persons and lines of communication
- f) Use of protective fencing, exclusion barriers and warning signs.

I hope this information is helpful in assisting your consideration of the application. Please contact [planning@surreywt.org.uk](mailto:planning@surreywt.org.uk) if you require any further clarifications with regards to the above.

Kind regards,

**Author** Karen Bartlett BSc (Hons) MSc - Conservation Officer

**Reviewer:** Robert Hutchinson BSc (Hons) MSc CEcol MCIEEM – Manager of SWT Ecology Planning Advice Service



## Appendix 1: National Planning Policy and Legislation

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

Provides for the protection of Natura 2000 sites (SACs, SPAs and Ramsar sites), European Protected Species and habitats. European Protected Species are protected from:

- Deliberate capture, injury or killing.
- Deliberate disturbance of a European Protected Species, such that it impairs their ability to breed, reproduce or rear their young, hibernate or migrate or significantly affect their local distribution or abundance.
- Deliberately take or destroy effect.
- Damage or destroy a breeding site or resting place.
- Keep, transport, sell or exchange any live, dead or part of a European Protected Species.

European Protected Species include, but are not limited to:

- Great crested newt
- Natterjack toad
- Otter
- Smooth snake
- Sand lizard
- All bat species
- Hazel dormouse

The LPA should be aware of its legal duty under Regulation 9(3) of Conservation of Habitats and Species Regulations 2017, as amended, which states that “*a competent authority in exercising any of its functions, must have regard to the requirements of the Directives so far as they may be affected by the exercise of those function*”.

Also, under Regulation 55 (9b) of the above regulations, the LPA must apply the following three tests when deciding whether to grant planning permission where a Protected Species (bats) may be harmed, in line with of the Conservation of Habitats and Species Regulations 2017, as amended.

- The activity must be for imperative reasons of overriding public interest or for public health and safety;
- There must be no satisfactory alternative;
- Favourable conservation status of the species must be maintained.

Natural England has stated that they would expect these three tests to be adequately considered by the LPA before planning permission is granted. Natural England will require evidence from the applicant that the LPA has considered the three tests and how they were met, before a mitigation licence can be issued. Where a mitigation licence is required to avoid breach of legislation, development cannot proceed even where a valid planning permission is granted.

### Wildlife and Countryside Act 1981 (as amended)

Key piece of legislation consolidating existing wildlife legislation to incorporate the requirements of the Bern Convention and Birds Directive. It includes additional protection measures for species listed under the Conservation of Habitats and Species Regulations 2017

(as amended) and includes a list of species protected under the Act. It also provides for the designation and protection of Sites of Special Scientific Interest (SSSI).

Development which would adversely affect a SSSI is not acceptable except only in special cases, where the importance of a development outweighs the impact on the SSSI when planning conditions or obligations would be used to mitigate the impact. Developments likely to impact on a SSSI will likely require an Environmental Impact Assessment (EIA).

The Impact Risk Zones (IRZs) dataset is a GIS tool which details zones around each SSSI according to the particular sensitivities of the features for which it is notified and specifies the types of development that have the potential to have adverse impacts. Natural England uses the IRZs to make an initial assessment of the likely risk of impacts on SSSIs and to quickly determine which consultations are unlikely to pose risks and which require more detailed consideration. Local Planning Authorities (LPAs) have a duty to consult Natural England before granting planning permission on any development that is in or likely to affect a SSSI.

Further information on specific legislation relating to species protected under the Wildlife and Countryside Act 1981 (as amended) is detailed below, under Protection of Protected Species and Habitats.

### **Environment Act (2021)**

The Environment Act (2021) achieved Royal Assent in November 2021.

The Environment Act (2021) makes a provision for biodiversity net gain to be a condition of planning permission in England, however, it is not anticipated that a 10% biodiversity net gain will be mandatory until 2023. When it does become mandatory, planning applications will need to demonstrate a 10% biodiversity net gain can be met. A biodiversity net gain plan must be submitted and must include:

- (a) information about the steps taken or to be taken to minimise the adverse effect of the development on the biodiversity of the onsite habitat and any other habitat
- (b) the pre-development biodiversity value of the onsite habitat,
- (c) the post-development biodiversity value of the onsite habitat,
- (d) any registered offsite biodiversity gain allocated to the development and the biodiversity value of that gain in relation to the development,
- (e) any biodiversity credits purchased for the development.

It should be noted however, that the NPPF (2021) as set out below does require a project to provide a measurable net gain for biodiversity.

### **Countryside and Right of Way Act 2000**

Amends and strengthens the Wildlife and Countryside Act 1981 (as amended). It also details habitats and species for which conservation measures should be promoted.

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

Section 40 of the Act places a duty on local planning authorities to conserve and enhance biodiversity in England whilst carrying out their normal functions. Section 41 comprises a list of Habitats of Principal Importance (HPIs) and Species of Principal Importance (SPIs) which should be considered.

The LPA will need to have particular regard to any relevant local nature recovery strategies, and any relevant species conservation strategy or protected site strategy prepared by Natural England.

### **Hedgerows Regulations 1997**

Under these regulations it is an offence to intentionally or recklessly remove, or cause or permits another person to remove, a hedgerow. Important hedgerows are defined in Section 4 of the Regulations. This includes hedgerows that have existed for over 30 years or satisfies at least one criteria listed in Part II of Schedule 1.

### **Wild Mammals (Protection) Act 1996**

Under this act wild mammals are protected from the intentional unnecessary suffering by crushing and asphyxiation.

### **ODPM Circular 06/05: Biodiversity and Geological Conservation – Statutory Obligations and Their Impact within the Planning System (2005)**

The Government's Office of the Deputy Prime Minister (ODPM) Circular 06/05 (ODPM 2005) presents the legal requirement for planning authorities with regard to statutory designated sites. Planning approval should not be granted where impacts to statutory designated sites that are not connected to the site maintenance for nature conservation, or will have a significant effect on the site's conservation objectives and/or affect the site's integrity. Permission may be granted if the proposed development overrides public interest.

The presence of a protected species is a material planning consideration. The Circular clearly outlines that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted. Otherwise, all relevant considerations may not have been addressed in making the decision.

### **Biodiversity Opportunity Areas (BOAs)**

In order to assist in delivering the government's Biodiversity 2020 strategy, the Surrey Nature Partnership has identified seven BOAs where improved habitat management, habitat restoration and recreation of HPs is the key focus to enhancing the connectivity of habitats for SPIs to deliver biodiversity objectives at a landscape scale. The location of these is presented in the South East Biodiversity Strategy's website. The project promotes a collaborative approach across a number of regional and local organisations.

Developments within or adjacent to BOAs should be designed in consideration of the BOA objectives, which are provided at:

- <https://surreynaturepartnership.org.uk/our-work/>

The BOAs include:

- Thames Basin Heaths comprising Chobham Common North & Wentworth Heaths, Chobham South Heaths, Colony Bog, Bagshot Heath & Deepcut Heaths, Ash, Brookwood & Whitmoor Heaths, Woking Heaths;
- Thames Basin Lowlands comprising Wanborough & Normandy, Woods & Meadows, Clandon to Bookham Parkland, Esher & Oxshott Commons, Ashted & Epsom Wood Pasture, Princes Coverts & Horton Country Park;
- Thames Valley comprising Windsor Great Park, Runnymede Meadows & Slope, Staines Moor & Shortwood Common, Thorpe & Shepperton, Molesey & Hersham;
- North Downs comprising North Downs Scarp; The Hog's Back, North Downs Scarp and Dip; Guildford to the Mole Gap, North Downs Scarp; Mole Gap to Reigate, North Downs; Epsom Downs, North Downs; Banstead Wood & Chipstead Downs, North Downs Scarp; Caterham, North Downs Scarp; Woldingham,

- Wealden Greensands comprising Puttenham & Crooksbury, Farnham Heaths, Thursley, Hankley & Frensham Heaths, Devil's punch-bowl & Hindhead Heaths, Hascombe, Winkworth & Hydon's Heath and Woodland, Blackheath, Chilworth & Farley Heaths, Winterfold & Hurtwood Greensand Ridge, Leith Hill, Wotton, Abinger & Holmwood Greensand Ridge, Limpsfield Heaths, Reigate Heaths, Holmthorpe & Bay Pond
- Low Weald comprising Chiddingfold & West Weald Woodlands, Cranleigh Woodlands, Wallis Wood, Vann Lake & Ockley Woodland, Glover's Wood & Edolph's Copse, Newdigate Wood, Earlswood & Redhill Commons;
- River Valleys comprising Hogsmill, Eden Brook, River Blackwater, River Wey, River Mole, River Thames,

## Protection of protected species and habitats

### Amphibians

Natterjack toad, pool frog and great crested newt are protected under the Conservation of Habitats and Species Regulations 2017 (as amended). They are also afforded additional protection under the Wildlife and Countryside Act 1981 (as amended).

Natterjack toad, common toad, great crested newt and northern pool frog are also SPIs.

### Reptiles

Smooth snake and sand lizard are protected under the Conservation of Habitats and Species Regulations 2017 (as amended). They are afforded additional protection under the Wildlife and Countryside Act 1981 (as amended).

Adder, grass snake, common lizard and slow-worm are all protected from killing and injury under the Wildlife and Countryside Act 1981 (as amended). All UK reptile species are SPIs.

### Birds

All wild birds are protected under the Wildlife and Countryside Act 1981 (as amended). This includes damage and destruction of their nests whilst in use, or construction. Species listed under Schedule 1 of the Act, such as barn owl, are afforded protection from disturbance during the nesting season.

The following 50 bird species are SPIs: lesser redpoll, aquatic warbler, marsh warbler, skylark, white-fronted goose, tree pipit, scaup, bittern, dark-bellied brent goose, stone-curlew, nightjar, hen harrier, northern harrier, hawfinch, corncrake, cuckoo, Bewick's swan, lesser spotted woodpecker, corn bunting, cirl bunting, yellowhammer, reed bunting, red grouse, herring gull, black-tailed godwit, linnet, twite, Savi's warbler, grasshopper warbler, woodlark, common scoter, yellow wagtail, spotted flycatcher, curlew, house sparrow, tree sparrow, grey partridge, wood warbler, willow tit, marsh tit, dunnoek, Balearic shearwater, bullfinch, roseate tern, turtle dove, starling, black grouse, song thrush, ring ouzel and lapwing.

### Badger

Badger is protected under the Protection of Badgers Act 1992. Under this legislation it is an offence to kill or injure a badger; to damage, destroy or block access to a badger sett; or to disturb badger in its sett. The Act also states the conditions for the Protection of Badgers licence requirements.

## Bats

All bat species are protected under the Conservation of Habitats and Species Regulations 2017 (as amended), as detailed above. Bats are further protected under the Wildlife and Countryside Act 1981 (as amended), making it an offence to:

- Deliberately or recklessly damage or destroy any structure or place which bat(s) use for shelter or protection.
- Disturb bat(s) while occupying a structure or place which it uses for shelter or protection.
- Obstruct access to any structure or place which they use for shelter or protection.

Furthermore, seven bat species are SPIs, covered under Section 41 of the NERC Act 2006. These include western barbastelle, Bechstein's, noctule, soprano pipistrelle, brown long-eared, lesser horseshoe and greater horseshoe.

## Hazel dormouse

Hazel dormouse is protected under the Conservation of Habitats and Species Regulations 2017 (as amended). It is afforded additional protection under the Wildlife and Countryside Act 1981 (as amended), including obstruction to a place of shelter or rest.

Hazel dormouse is also a SPI.

## Hedgerow

Under the Hedgerows Regulations 1997 it is against the law to remove or destroy certain hedgerows without permission from the LPA, which are also the enforcement body for offences created by the Regulations. LPA permission is normally required before removing hedges that are at least 20 m in length, more than 30 years old and contain certain plant species. The authority will assess the importance of the hedgerow using criteria set out in the regulations. The regulations **do not** apply to hedgerows within the curtilage of, or marking a boundary of the curtilage of, a dwelling house.

Hedgerow is a HPI.

## Otter

Otter is protected under the Conservation of Habitats and Species Regulations 2017 (as amended) and is afforded additional protection under the Wildlife and Countryside Act 1981 (as amended). Otter is also a SPI.

## Water vole

Water vole is fully protected from capture, killing or injury; damage, destruction or blocking access to a place of shelter; disturbance whilst in a place of shelter or possessing, selling any part of a water vole, dead or alive under the Wildlife and Countryside Act 1981 (as amended).

Water vole is also a SPI.

## Other mammals

West European hedgehog, brown hare, mountain hare, pine marten, harvest mouse, polecat and red squirrel are all SPIs.

The following mammals are listed under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended): wildcat, brown hare (Schedule 5A), mountain hare (Schedule 5A), pine marten and red squirrel.

## **Invertebrates**

Fifty-six terrestrial and freshwater invertebrate species are listed under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended). These include Reddish buff, Norfolk hawk, Purple emperor, High brown fritillary, Northern brown argus, White-clawed crayfish, Pearl-bordered fritillary, DeFolin's lagoon snail, Chequered skipper, Fairy shrimp, Rainbow leaf beetle, New Forest cicada, Southern damselfly, Large heath, Small blue, Wartbiter, Fen raft spider, Ivell's sea anemone, Mountain ringlet, Ladybird spider, Marsh fritillary, Spangled diving beetle, Mole cricket, Field cricket, Duke of Burgundy, Silver-spotted skipper, Medicinal leech, Lesser silver water beetle, Moccas beetle, Wood white, Violet click beetle, Large copper, Freshwater pearl mussel, heath fritillary, Glanville fritillary, Glutinous snail, Starlet sea anemone, Large tortoiseshell, Brackish hydroid, Swallowtail, Bembridge beetle, Barberry carpet, Silver-studded blue, Adonis blue, Chalk hill blue, Fiery clearwing, Sandbowl snail, Black hairstreak, White-letter hairstreak, Black-veined moth, Sussex emerald, Brown hairstreak, Northern hatchet-shell, Lulworth skipper, Tadpole shrimp, New Forest burnet.

A total of 398 invertebrates are Species of Principal Importance. These include: beetles (including stag beetle), butterflies (high brown fritillary, large heath, small blue, white-letter hairstreak, brown hairstreak, damselflies (southern damselfly), moths (marsh moth), ants, bees etc. Impacts to SPI must be considered by the LPA when assessing planning applications.

## **Non-native invasive plant species**

Schedule 9 of the Wildlife and Countryside Act 1981 (as amended) is a list of non-native plant species for which Section 14 of the Act applies. It is an offence to plant, or otherwise cause to grow in the wild species listed under Schedule 9 of the act. These include, but are not limited to:

- Himalayan balsam
- Cotoneaster sp.
- Japanese knotweed
- Giant hogweed

## ***Habitats of Principal Importance***

Section 41 of the NERC Act 2006 details 56 HPs, of which the following could be present in south-east England: Lowland calcareous grassland, Lowland dry acid grassland, Lowland meadows, Lowland Heathland, Open Mosaic Habitats on Previously Developed Land, Lowland fens, Lowland raised bog, Reedbeds, Lowland beech and yew woodland, Lowland mixed deciduous woodland and Wet woodland.

Impacts to HPI are of material planning consideration.

## ***Ancient woodland and veteran trees***

The NPPF 2021 states that 'Planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats, including ancient woodland and the loss of aged or veteran trees found outside ancient woodland, unless the need for, and benefits of, the development in that location clearly outweigh the loss'. In addition, Natural England's standing advice for ancient woodland indicates that a 15 m buffer is retained between ancient woodland and any works or development. Ancient woodlands, and ancient and veteran trees, may also be protected by Tree Preservation Orders.

## National Planning Policy Framework (2021)

Details the Government’s planning policies for England and how these should be applied, particularly to contribute to the Government’s commitment to halt the decline of biodiversity. When assessing planning applications, LPAs should have regard to conserving and enhancing biodiversity by applying a number of principals, including:

- Avoiding impacts to biodiversity through appropriate site selection.
- Mitigating residual impacts.
- Encouraging the preservation and enhancement of biodiversity.
- Preventing the development of protected sites, such as SSSIs.
- Refusing permission where habitats that cannot be recreated, such as ancient woodland, would be lost.
- Encouraging good design that limits light pollution.

Relevant paragraphs in the NPPF (2021) are detailed below.

Paragraph Number	Detail
174	<p>“Planning policies and decisions should contribute to and enhance the natural and local environment by...minimising impact on and providing net gains for biodiversity”</p> <p>Protection of sites of biological values</p> <p>Preventing new and existing development from adverse impacts to soil, air, water or noise</p> <p>Development should help improve local conditions</p>
175	<p>Maintenance and enhancement of networks of habitats and green infrastructure; plan for the enhancement of natural capital at a catchment or landscape scale</p>
179	<p>“To protect and enhance biodiversity and geodiversity, plans should:</p> <p>a) 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</p> <p>b) 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 <b>securing measurable net gains for biodiversity.</b>”</p>
180	<p>“When determining planning applications, local planning authorities should apply the following principles:</p> <p>a) 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;</p> <p>b) 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</p>



Paragraph Number	Detail
	<p>scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;</p> <p>c) 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</p> <p>d) 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.”</p>
185	<p>“Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:</p> <p>...</p> <p>c) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.”</p>