

Date: 03/06/2024

Our reference: 110623/NW/001



**Surrey**  
Wildlife Trust

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

Dear Carol-Ann O'Kane,

**Planning reference: 2024/0122**

**Proposals: Formation of irrigation reservoir.**

**Site Address: Burhill Golf Club, Burhill, Hersham, Walton-On-Thames, KT12 4BX**

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 in order for the LPA to assess the planning application. Following this, we assessed the proposals against relevant legislation and planning policy and recommended 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, then we may need to update our response accordingly.

Our advice and recommendations are detailed below.

We have reviewed the following reports:

- Preliminary Ecological Appraisal, ecology by design, January 2020
- Ecological Impact Assessment (EclA) (non-EIA), ecology by design, March 2024
- GREAT CRESTED NEWT (GCN) EDNA SURVEY, United Environmental Services (UES), 11<sup>th</sup> May 2021
- Biodiversity Net Gain (BNG) Assessment, UES, 5<sup>th</sup> January 2024
- BS5837:2012 Arboricultural Survey Impact Assessment & Arboricultural Method Statement, RMT Tree Consultancy Ltd, 14<sup>th</sup> December 2023
- Landscape Proposals Plan Overview Plan, mdlandscape, 05/01/2024
- BNG Metric 4.0



## 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 regarding tree removal and that a ground level tree assessment for bats has been undertaken for all impacted trees Further presence/likely absence surveys for great crested newt and reptiles Clarification of extent of and likely impacts to wet woodland HPI Submission of minimum information requirements for biodiversity net gain
Prior to commencement	Landscape and Ecological Management Plan (LEMP) Construction Environmental Management Plan (CEMP)
Prior to occupation	n/a
General Recommendations	No net increase in lighting Site clearance to take place outside of breeding bird season or following nesting bird checks Invasive species management Biodiversity enhancement features (Include in LEMP)

### Protected species - badger

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

Sections of the ecology reports have been redacted; it is assumed this relates to badgers due to confidentiality issues. Therefore, we are unable to provide comment with regards to this species; we would be happy to review should unredacted versions be made available to us.

### 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.

The above referenced arboricultural report identifies trees T18 and T19 which are recommended for removal and groups G17 and G20 for part removal, plus works to trees T1, T3, T4 and T7.

The above referenced EclA states that “*there are four trees on site (T1 – T4). T1 and T2 are mature, medium sized oak (Quercus robur) trees. T3 is a small oak and T4 is a small cherry (Prunus sp.). None of these trees have suitable features for roosting bats*”, however, the tree numbers and species do not correlate to the arboricultural report. In addition, the BNG Assessment refers to the removal of four trees including two young crab apple, however, the arboricultural report does not list any crab apple trees.

The development site and adjacent areas offer optimal habitat for bat roosting, foraging and commuting. None of the trees on site has been subject to detailed bat roost potential

evaluation. The proposed development would appear to result in works to these trees which would result in loss or disturbance to active bat roosts where present. There is therefore a reasonable likelihood of bats being present and affected by the proposed development.

**Should be LPA be minded to grant permission for the proposed development, clarification that all impacted trees have been subject to a bat preliminary ground level roost assessment, undertaken by a suitably experienced ecologist in line with best practice guidance, should be undertaken prior to determination.**

### ***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 191 of the NPPF (2023) 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 the development site, in order to comply with above referenced legislation and the recommendations in BCT & ILP (2023) Guidance Note 08/23. *Bats and artificial lighting at night*. Bat Conservation Trust, London & Institution of Lighting Professionals, Rugby’.**

### **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 vegetation or site clearance are timed to avoid the bird nest season of early March to August inclusive.**

If this is not possible and only small 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.

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 terrestrial habitat. Suitable terrestrial and breeding habitat for great crested newt also exists locally and records indicate local presence. There is therefore a reasonable likelihood of great crested newt being present and adversely affected by the proposed development.

In the EclA, the ecologist recommends that the 2021 eDNA surveys (which were negative for five waterbodies) should be updated. In addition, we would recommend that update surveys include all suitable waterbodies (note below average is still considered to be suitable for great crested newt) within 500m where there is landscape connectivity to the site. Killing, injuring or disturbance of great crested newt present would be contrary to the above referenced legislation. It is therefore not known if 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 the species is not known and therefore appropriate avoidance, mitigation and compensation measures cannot be demonstrated to be effective or appropriate.

**We advise that prior to determination of the current planning application, the LPA should require the applicant to submit the additional GCN presence/likely absence surveys in line with best practice guidance.**

#### **Protected species – European hedgehog**

The protection afforded to European hedgehog is detailed in Appendix 1.

Measures to enhance sites of European hedgehog include:

- Ensuring the species can move across the landscape by creating gaps into all close-boarded fencing
- Creating habitat connectivity across the landscape
- Creating a wild corner with minimal habitat management
- Incorporating hedgehog homes into development.

#### **Protected species - reptiles**

The protection afforded to reptiles is presented in Appendix 1.

The above referenced report proposes that avoidance of adverse impacts to reptiles will be achieved through implementation of an impact avoidance and mitigation plan. However, in absence of appropriate population size and diversity survey data, the applicant cannot know what mitigation is appropriate. Any mitigation plan implemented is not evidence based and cannot be demonstrated to be effective or appropriate.

The proposed development cannot, therefore, be seen to avoid killing or injuring of individuals or result in the restoration or enhancement of the local reptile population or their habitat.

**We advise that prior to determination of the current planning application, the LPA should require the applicant to submit the additional reptile presence/likely absence surveys in line with best practice guidance.**

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

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 in order to comply with the relevant legislation.

**To prevent the spread *Rhododendron ponticum* 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)**

Note, that two additional non-native invasive plant species were recorded in close proximity to the site, but not within the red line boundary; these are New Zealand pigmyweed *Crassula helmsii* and Himalayan balsalm *Impatiens glandulifera*. Appropriate measures should be taken to ensure these are not spread and ideally eradicated.

### Protected habitat – Habitat of Principle Importance

The protection afforded to wet woodland, a Habitat of Principle Importance is detailed in Appendix 1.

The NPPF (2023) makes it clear (para 185) 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 Principle Importance would not therefore be in accordance with these objectives.

The EclA identifies an area of wet woodland within the proposed development site. However, this has also been mapped as broadleaved plantation woodland within the EclA assessment.

**We recommend the LPA seeks clarification on the impacts to and extent of wet woodland HPI within the proposed site (this should include ecological assessment of the woodland habitat against the JNCC criteria).**

### Protected habitat nearby

Although the proposed development will not adversely impact protected habitat, the following Habitats of Principle Importance were recorded in close proximity:

- Lowland mixed deciduous woodland (to the east of the proposed site)

**We recommend that should the LPA be minded to grant planning permission, the LPA request details of how the Lowland mixed deciduous woodland habitat will be adequately protected from development prior to commencement.** This could be done through the implementation of a Construction Environment Management Plan (CEMP). Further details are provided below.

### 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.”*

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) 2023 (paragraph 186) 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 falls within the Impact Risk Zone (IRZ) for Esher Common SSSI. The IRZ for this protected site states *“Large non residential developments outside existing settlements/urban areas where net additional gross internal floorspace is > 1,000m<sup>2</sup> or footprint exceeds 0.2ha”*.

We note that Natural England have been consulted and they raise NO Objection with regards to the development not having significant adverse impacts on statutorily protected nature conservation sites or landscapes.

### Requirement to demonstrate a measurable biodiversity net gain

The requirement for the LPA to have regard for biodiversity net gain is detailed in the NPPF (2021) in Appendix 1.



We note this application was received on 22/01/2024 and validated on 20/03/2024.

**Minimum Information Requirements**

In line with guidance for biodiversity net gain ([Biodiversity net gain - GOV.UK \(www.gov.uk\)](https://www.gov.uk)), for a development which the applicant believes would be subject to the biodiversity net gain condition there are minimum national information requirements (as set out in [Article 7 of The Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015](#) which the applicant must provide. These are listed in Table 2.

**Table 2 Minimum national information requirements related to biodiversity net gain**

Information requirement	Submitted (Y=yes, N=no)
Confirmation that the applicant believes that planning permission, if granted, the development would be subject to the biodiversity gain condition	N
The pre-development biodiversity value(s), either on the date of application or earlier proposed date (as appropriate)	The date given in the BNG Assessment habitat survey is 13/07/2022*
Where the applicant proposes to use an earlier date, this proposed earlier date and the reasons for proposing that date;	N
The completed metric calculation tool showing the calculations of the pre-development biodiversity value of the onsite habitat on the date of application (or proposed earlier date) including the publication date of the biodiversity metric used to calculate that value	N** (Metric 4.0)
A statement whether activities have been carried out prior to the date of application (or earlier proposed date), that result in loss of onsite biodiversity value ('degradation'), and where they have: <ul style="list-style-type: none"> <li>• a statement to the effect that these activities have been carried out;</li> <li>• the date immediately before these activities were carried out;</li> <li>• the pre-development biodiversity value of the onsite habitat on this date;</li> <li>• the completed metric calculation tool showing the calculations, and</li> <li>• any available supporting evidence of this;</li> </ul>	N
A description of any irreplaceable habitat (as set out in column 1 of the Schedule to the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024) on the land to which the application relates, that exists on the date of application, (or an earlier date); and	N
Plan(s), drawn to an identified scale and showing the direction of North, showing onsite habitat existing on the date of application (or earlier proposed date), including any irreplaceable habitat (if applicable).	N*

**\* There are discrepancies between the habitat survey in the BNG Assessment and information in other reports submitted with this application; these should be resolved prior to determination:**

- The tree removal within the BNG Assessment and arboricultural report do not correlate.

- The baseline habitats mapped within the BNG Assessment do not correlate to those within the EclA report; of particular note is the discrepancy between ‘wet woodland’ which is a HPI and broadleaved woodland plantation and other neutral grassland versus poor semi-improved grassland.
- On-site habitats should be only those within the development redline boundary (Area A includes habitats outside of the redline boundary but not the access track which is within the red line boundary).

\*\* For mandatory biodiversity net gain, the use of the Statutory metric is required.

**We would advise that the LPA is provided with the following:**

- **Statement as to whether application is subject to the biodiversity gain condition**
- **Completed Statutory Metric (Excel format)**
- **Statement as to whether activities have been carried out prior to the date of application (or earlier proposed date)**
- **Plan showing clarified onsite baseline habitats**

### **Biodiversity Enhancements**

Requirements for biodiversity enhancements required under the NPPF (2023) 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 Section 5.5 and incorporate the following:

- Providing bird and bat boxes erected on mature trees within the land ownership boundary.
- Creation of two hibernacula for reptiles and amphibians.
- Using native species or species of known biodiversity benefit when planting new trees and shrubs, preferably of local provenance from seed collected, raised and grown only in the UK, suitable for site conditions and complimentary to surrounding natural habitat. Planting should focus on nectar-rich flowers and/or berries as these can also be of considerable value to wildlife.

### **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 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 of the 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 protected fences, 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** Nicky Williamson BSc (Hons) MSc MCIEEM - Conservation Officer



## 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.

### **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 HPis 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, ciril 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, dunnock, 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 2023 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 (2023)**

The National Planning Policy Framework was revised in response to the Levelling-up and Regeneration Bill: reforms to national planning policy consultation on 19 December 2023 and sets out the government's planning policies for England and how these are expected to be applied. This revised Framework replaces the previous National Planning Policy Framework published in March 2012, revised in July 2018, updated in February 2019, revised in July 2021 and updated in September 2023.

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.

Relevant paragraphs in the NPPF (2023) are detailed below.

Paragraph Number	Detail
180	<p>Planning policies and decisions should contribute to and enhance the natural and local environment by:</p> <p>(a) 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);</p> <p>(b) 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;</p> <p>(c) maintaining the character of the undeveloped coast, while improving public access to it where appropriate;</p> <p>(d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;</p> <p>(e) 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. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and</p> <p>(f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.</p>
183	<p>“When considering applications for development within National Parks, the Broads and Areas of Outstanding Natural Beauty, permission should be refused for major development 64 other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of:</p> <p>(a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;</p> <p>(b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and</p> <p>(c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.”</p>
186	<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 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 67 and a suitable compensation strategy exists; and</p>

Paragraph Number	Detail
	(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.”
187	<p>“The following should be given the same protection as habitats sites:</p> <p>(a) potential Special Protection Areas and possible Special Areas of Conservation;</p> <p>(b) listed or proposed Ramsar sites 68 ; and</p> <p>(c) 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.”</p>
188	<p>“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.”</p>