Date: 24/03/2023

Our reference: 339553/NW/001

By email: planconsult@waverley.gov.uk

Surrey Wildlife Trust

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

surreywildlifetrust.org/epas

Dear Rachel Lawrence,

Planning reference: WA/2023/00294

Proposals: Outline application with all matters reserved except access for erection of up to 162 dwellings (including 30% affordable dwellings) built in up to 3 phases including access road pedestrian and cycle accesses parking public open space biodiversity enhancement and landscaping and other associated infrastructure and works.

Site Address: LAND CENTRED COORDINATES 505938 138328 KNOWLE LANE CRANLEIGH

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:

- Ecological Appraisal (EA), aspect ecology, January 2023
- Arboricultural Impact Assessment (AIA), aspect arboriculture, December 2022
- Design and Access Statement, January 2023
- Biodiversity Net Gain (BNG) Assessment, aspect ecology, January 2023

- Phasing Plan, Richards urban design, 09.12.22
- Illustrative Masterplan, Richards urban design, 09.12.22
- Landscape Strategy Plan, David Williams Landscape Consultancy, November 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 on which trees with bat potential are to be impacted by the proposed development Additional bat presence/likely absence surveys if trees with moderate bat roosting potential are impacted Further clarification from the ecologist that they have assessed the likely impacts to bats across the entire proposed site Further clarification, which may include further presence / absence surveys, from the ecologist that they have assessed the likely impacts to hazel dormouse across the entire proposed site Additional GCN population surveys and consideration of survey for additional ponds within 500m
Prior to commencement	Sensitive Lighting Management Plan Reptile mitigation strategy Landscape and Ecological Management Plan (LEMP) Construction Environmental Management Plan (CEMP)
Prior to occupation	n/a
General Recommendations	Include in LEMP: Biodiversity enhancements Include in CEMP: Pre works survey and best practice for badger Soft felling of impacted trees with low bat roosting potential Consideration of breeding birds adequate protection measures for the lowland mixed, deciduous woodland HPI

Protected species - badger

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

Section 5.4 of the above referenced EA report is redacted; this may relate to badgers and associated confidential information. We note the Parish Council comments regarding known badger evidence in the area. Therefore, we would be happy to review and provide a consultation response on the badger survey information if this can 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.

Buildings

The above referenced report appears appropriate in scope and methodology and has identified the likely absence of active bat roosts within the development site: the only building on site (B1 a barn) was assessed in May 2021 to have negligible potential to support roosting bats. We therefore advise that bats do not appear to present a constraint to the proposed development.

However, bats are highly mobile and move roost sites frequently. Unidentified bat roosts may still present. A precautionary approach to works should therefore be implemented.

Works affecting potential roost features should be dismantled by hand to ensure any bats which may be sheltering beneath them will not be harmed. These works should ideally be timed to avoid the hibernation season (November to February inclusive). It will also be important to advise roofers removing tiles to lift each carefully before removal and to check the underside does not have a bat clinging to it before moving the tile away. Tiles should be lifted rather than slid along. Workers should keep watch for fur and should be informed that bats take up to half an hour to rouse from the deep sleep that they enter each day called torpor and hence can easily be damaged before they are able to move when disturbed. If a bat is seen work should cease immediately and advice sought from Natural England or a qualified specialist.

In line with the NPPF (2021), paragraph 179, the applicant should therefore be encouraged to incorporate bat roosting opportunities as integral design features within the built development.

Trees

The above referenced EA report identifies trees T1 to T8 as having low potential to support roosting bats and trees T9 and T10 to have moderate potential to support roosting bats. A single bat emergence survey was undertaken of trees T4, T6 and T9 on the 1st September 2022 during which no bats were found to have emerged. Trees with moderate bat roosting potential should be subject to two separate survey visits between May to September, with at least one survey between May and August (note: the ecologist's recommendations for a precautionary approach to felling moderate potential trees in not in line with best practice guidance).

The AIA report shows that, although the majority of trees will be retained, a number of trees will be lost to create the proposed new access from Knowle Road and several other trees will be lost or 'pruned'. Due to the difference in numbering of trees in the EA and AIA reports it is not clear which trees with bat potential will be removed. For example, tree T9 (as labelled in the EA report) is close to the access route and tree T10 (as labelled in the EA report) appears to be within an area of housing. Both T9 and T10 were assessed as having moderate bat roosting potential and, due to their locations, may be impacted by the proposed works.

Therefore, we recommend the LPA seeks clarification on which trees with bat potential are to be impacted by the proposed development. If trees with moderate bat roosting potential are impacted then we advise that prior to determination of the current planning application, the LPA should require the applicant to submit the additional bat presence/likely absence surveys in accordance with best practice survey guidelines in order to avoid contravention of above referenced legislation.

Impacted trees with low bat roosting potential can be felled under precautionary approach including soft felling techniques.

Sensitive Lighting

The proposed development is located approximately 4.5km from the Chiddingfold Forest SSSI, known to support barbastelle and Bechstein's bat. Nocturnal species including bats are known to be present at the development site; the EA report includes bat activity surveys which recorded barbastelle, brown long-eared bat, Myotis bats as well as Common and Soprano pipistrelles. These species (in particular barbastelle bats) are sensitive to any increase in artificial lighting of their roosting and foraging places and commuting routes. They are also sensitive to fragmentation or changes to their commuting and foraging routes. We note that the bat transect and static detector monitoring did not appear to include the majority of the central section of the site and the boundary alongside Knowle Road where the new access will be created (see Plan 6165/ECO4). **We would therefore advise the LPA to seek further clarification from the ecologist that they have assessed the likely impacts to bats across the entire development site prior to determination.**

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.

If, after further clarification, the ecologist considers this project could have an influence on barbastelle bats, an outline lighting management plan should be prior to determination.

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 – hazel dormouse

The legal protection afforded to hazel dormouse is detailed in Appendix 1.

The applicant should be made aware of the requirement for them to apply for a hazel dormouse 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 habitat for hazel dormouse. A dormouse survey utilising 72 tubes was undertaken between August and November 2021, the ecologist advises that this provides sufficient survey effort.

However, we note that the dormouse survey did not appear to include the eastern part of the central section of the site and the boundary alongside Knowle Road where the new access will be created (see Plan 6165/EC05). This section of hedgerow does not appear to have been specifically assessed for it's suitability for hazel dormouse. The survey does score sufficient points on the index of probability, which allocates a score to the most suitable months which can be amended by the survey effort in terms of numbers of tubes deployed (score of 23 with 20 being required). However, the survey did miss a significant proportion of the earlier months of the survey season and best practice advice is that '*It is best to leave [tubes] out for the entire season, from March onwards, for checking in November*' (The dormouse Conservation Handbook 2nd Edition, English Nature, 2006).

In line with the legislation and planning policy and guidance, detailed in Appendix 1, the LPA has a duty to consider impacts to hazel dormouse 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 of the species is not known and therefore appropriate avoidance, mitigation and compensation measures cannot be determined.

We would therefore advise the LPA to seek further clarification, which may include further presence / absence surveys, from the ecologist that they have assessed the likely impacts to hazel dormouse across the entire development site prior to determination.

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 (GCN) terrestrial habitat. Suitable terrestrial and breeding habitat for great crested newt also exists locally. The above referenced EA report identified 8 ponds within 250m of the proposed development. Natural England's Standing advise is that '*Surveys up to 250 metres are usually sufficient, but developers may need to increase this to 500 metres if there are no obvious barriers to newts dispersing into the wider environment*'; MAGIC mapping shows additional ponds within 500m (for example one approximately 380m to the south of the development) which do not appear to be separated from the site by significant barriers.

Four of the identified ponds (P1, P2, P5 and P7) were surveyed on the 29th of June 2021 for GCN eDNA; ponds P1 and P2 were found to be positive for the species, whilst ponds P5 and P7 were negative (indicating likely absence, although the survey was conducted very close to the recommended optimal timeframe limit of 30th June for eDNA surveys). Ponds P3 and P4 could not be accessed and pond P6 was dry. The ecologist states '*it is recommended that further surveys are carried out during March-June to assess the size class of the population present as this will inform the extent of any required mitigation, such as whether fencing of*

areas in which this species might occur is required, and whether a European Protected Species licence application should be made'.

There is therefore a reasonable likelihood of great crested newt being present and adversely affected by the proposed development. 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 population surveys in line with best practice guidance.

We also advise that this further GCN survey revisits pond P6, as this may hold water earlier in the season, makes further attempt to access ponds P3 and P4 and considers whether additional ponds within 500m should also be surveyed.

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 – Other Mammals

The Ecological Appraisal has identified the presence of a rabbit warren on the site. It is the responsibility of the applicant and their appointed ecologist to ensure the project, if granted, is delivered in line with the Wild Mammals (Protection) Act 1996. If there is concern on the potential impact to rabbits, then we would advise that we are re-consulted to review an approach.

Protected species - reptiles

The protection afforded to reptiles is presented in Appendix 1.

Ecological surveys submitted identified the presence of a low population of slow worm, these were recorded in the southern field, the majority of which will be lost to housing and a drainage basin. Appropriate mitigation is therefore required to ensure reptiles are adequately protected, in line with the legislation.

The ecologist proposes that a precautionary approach, including a destructive search, be implemented for reptiles with any individuals found '*carefully rescued by the supervising ecologist and relocated to suitable nearby habitat'*. This is not considered appropriate as it is not clear where reptiles would be moved to, how this habitat area would be safeguarded from development impacts and whether any enhancements are required. In addition, we advise

there is a risk for a destructive search, without any pre-work program to capture and translocate slow worms given the size of the proposed development and loss of habitat known to support slow worm. For the access road (full aspect) the risk for adverse reptile impact is lower (based on the survey distribution map) but phases 2 and 3 will directly impact the areas where slow worms have been recorded.

Should the LPA be minded to grant planning permission, we recommend that a reptile mitigation strategy be submitted to and approved in writing by the LPA at the reserved matters stage. The strategy will need to be prepared by a suitably qualified ecologist and appropriate to the local context. The reptile mitigation strategy should include, but not be limited to following:

a) Location and map of the proposed translocation site
b) Assessment of the habitats present, including their ecological function to reptiles
c) Assessment of the translocation site reptile population size, evidenced by recent reptile surveys following best practice, and an assessment of habitat quality
d) Analysis of reptile carrying capacity of translocation site
e) Details of management measures that are required
f) 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 reptile mitigation strategy
h) Ongoing monitoring and remedial measures
i) Legal and funding mechanisms by which the long-term implementation of the reptile mitigation strategy 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.

Protected habitat – Lowland mixed deciduous woodland Habitat of Principle Importance

The protection afforded to lowland mixed, deciduous woodland, a Habitat of Principle Importance (HPI) is detailed in Appendix 1. There are patches of deciduous woodland immediately adjacent to the site boundaries.

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 Principle Importance would not therefore be in accordance with these objectives.

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 the Arboricultural Impact Assessment, Method Statement and Tree Protection Plan.

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.

The above referenced BNG Assessment appears appropriate in scope and methodology and indicates that the proposed development can achieve BNG of greater than 10% for both habitat and hedgerow units. We appreciate that this is predominantly an outline planning application, and as such firm plans for layout and landscaping are not yet produced, however, we advise the LPA that the applicant has demonstrated through an appropriately detailed document that the development has feasibility for measurable net gain.

We therefore advise that should the LPA be minded to approve this planning application they prepare a condition to secure the biodiversity net gain that has been identified in the biodiversity net gain assessment. This will be required at the reserved matters stage.

Biodiversity Enhancements

Requirements for 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 Section 6.2 of the above referenced Ecological Appraisal and incorporate the following:

- Providing bird and bat boxes erected on or integral within the new buildings or retained trees as detailed above.
- Areas of wildflower planting
- Hedgehog domes
- Habitat piles
- Bee bricks
- Hedgerow enhancement for brown hairstreak butterfly
- 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.

The proposed ecological enhancements should be included within a Landscape and Ecological Management Plan (LEMP).

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 if you require any further clarifications with regards to the above.

Kind regards,

Author Nicky Williamson BSc (Hons) MSc MCIEEM - 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 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, Ashtead & 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, 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 hawker, 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 HPIs, 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	"Planning policies and decisions should contribute to and enhance the natural and local environment by…minimising impact on and providing net gains for biodiversity" Protection of sites of biological values Preventing new and existing development from adverse impacts to soil, air, water or noise Development should help improve local conditions
175	Maintenance and enhancement of networks of habitats and green infrastructure; plan for the enhancement of natural capital at a catchment or landscape scale
179	"To protect and enhance biodiversity and geodiversity, plans should: 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 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 **securing measurable net gains for biodiversity**."
180	"When determining planning applications, local planning authorities should apply the following principles: 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; 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; 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 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

Paragraph Number	Detail
	part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.”
185	“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: … c) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.”