

APPENDIX E LEGISLATION AND POLICY

E.1 LEGISLATION

Current key legislation relating to ecology includes the Wildlife and Countryside Act 1981 (as amended)⁸; The Conservation of Habitats and Species Regulations 2019 ('Habitats & Species Regulations')⁹, The Countryside and Rights of Way Act 2000 (CRoW Act)¹⁰, and The Natural Environment and Rural Communities Act, 2006¹¹.

The Environment Act, 2021

The Environment Act, 2021 mandates the requirement for new development in England to deliver a minimum 10% biodiversity net gain (BNG), as measured by the agreed metric (the current relevant version being the Defra metric 3.0), secured through planning condition as standard (as per schedule 14 of the Act). Approach to the delivery of BNG must follow the mitigation hierarchy, with avoidance of impact and on-site compensation/gains prioritised, ahead of the use of offsite biodiversity unit offsets, or the purchase of biodiversity credits.

The Act introduces the condition that no development may begin unless a biodiversity net gain plan has been submitted and approved by the local planning authority (LPA).

The Act also amends requirements of the NERC Act, 2006, adding the need to not just conserve, but enhance biodiversity through planning projects. Furthermore, it introduces the need for the LPA to have regard to relevant local nature recovery strategies and relevant species/protected site conservation strategies, when making their decision.

The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019

The Conservation of Habitats & Species Regulations replace The Conservation (Natural Habitats, etc.) Regulations 1994 (as amended)¹², and transpose Council Directive 92/43/EEC on the Conservation of Natural Habitats and Wild Fauna and Flora ('EU Habitats Directive')¹³, and Council Directive 79/409/EEC on the Conservation of Wild Birds ('Birds Directive')¹⁴ into UK law (in conjunction with the Wildlife and Countryside Act).

Regulation 43 and 47 respectively of the Conservation of Habitats & Species Regulations makes it an offence (subject to exceptions) to deliberately capture, kill, disturb, or trade in the animals listed in Schedule 2 (European protected species of animals), or pick, collect, cut, uproot, destroy, or trade in the plants listed in Schedule 5 (European protected species of plant). Development that would contravene the protection afforded to European protected species requires a derogation (in the form of a licence) from the provisions of the Habitats Directive.

Regulation 63 (1) states: 'A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which —

(a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects); and

(b) is not directly connected with or necessary to the management of that site;

must make an appropriate assessment of the implications for that site in view of that site's conservation objectives.'

Wildlife and Countryside Act 1981 (as amended)

The Wildlife and Countryside Act 1981 (as amended) is the principal mechanism for the legislative protection of wildlife in Great Britain. This legislation is the means by which the Convention on the Conservation of European Wildlife and Natural Habitats¹⁵ (the 'Bern Convention') and the Birds Directive and EU Habitats Directive are implemented in Great Britain.

The Countryside and Rights of Way Act 2000

The Wildlife and Countryside Act has been updated by the CROW Act. The CROW Act amends the law relating to nature conservation and protection of wildlife. In relation to threatened species it strengthens the legal protection and adds the word 'reckless' to the offences of damaging, disturbing, or obstructing access to any structure or place a protected species uses for shelter or protection, and disturbing any protected species whilst it is occupying a structure or place it uses for shelter or protection.

The Natural Environment and Rural Communities Act 2006

The Natural Environment and Rural Communities Act 2006 states that every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity. Biodiversity Action Plans provide a framework for prioritising conservation actions for biodiversity.

Section 41 of the Natural Environment and Rural Communities Act requires the Secretary of State to publish a list of species of flora and fauna and habitats considered to be of principal importance for the purpose of conserving biodiversity. The list, a result of the most comprehensive analysis ever undertaken in the UK, currently contains 1,149 species, including for example, hedgehog (*Erinaceus europaeus*), and 65 habitats that were listed as priorities for conservation action under the now defunct UK Biodiversity Action Plan¹⁶ (UK BAP). Despite the devolution of the UK BAP and succession of the UK Post-2010 Biodiversity Framework¹⁷ (and Biodiversity 2020 strategy¹⁸ in England), as a response to the Convention on Biological Diversity's (CBD's) Strategic Plan for Biodiversity 2011-2020¹⁹ and EU Biodiversity Strategy (EUBS)²⁰, this list (now referred to as the list of Species and Habitats of Principal Importance in England) will be used to guide decision-makers such as public bodies, including local and regional authorities, in implementing their duty under section 41 of the Natural Environment and Rural Communities Act 2006 'to have regard' to the conservation of biodiversity in England, when carrying out their normal functions.

Biodiversity Action Plans

Non-statutory Biodiversity Action Plans (BAPs) have been prepared on a local and regional scale throughout the UK over the past 15 years. Such plans provide a mechanism for implementing the government's broad strategy for conserving and enhancing the most endangered ('priority') habitats and species in the UK for the next 20 years. As described above the UK BAP was succeeded in England by Biodiversity 2020 although the list of priority habitats and species remains valid as the list of Species of Principal Importance for Nature Conservation.

Regional and local BAPs are still valid however and continue to be updated and produced.

Detail on the relevant BAPs for this site are provided in the main text of this report.

Legislation Relating to Nesting Birds

Nesting birds, with certain exceptions, are protected from intentional killing, destruction of nests and destruction/taking of eggs under the Wildlife and Countryside Act 1981 (as amended) and the CRow Act. Any clearance of dense vegetation should therefore be undertaken outside of the nesting bird season, taken to run conservatively from March to August (inclusive), unless an ecologist confirms the absence of active nests prior to clearance.

Legislation Relating to Bats

All UK bats and their roosts are protected by law. Since the first legislation was introduced in 1981, which gave strong legal protection to all bat species and their roosts in England, Scotland and Wales, additional legislation and amendments have been implemented throughout the UK.

Six of the 18 British species of bat have Biodiversity Action Plans (BAPs) assigned to them, which highlights the importance of specific habitats to species, details of the threats they face and proposes measures to aid in the reduction of population declines.

Although habitats that are important for bats are not legally protected, care should be taken when dealing with the modification or development of an area if aspects of it are deemed important to bats such as flight corridors and foraging areas.

The Wildlife & Countryside Act 1981 (WCA) was the first legislation to provide protection for all bats and their roosts in England, Scotland and Wales (earlier legislation gave protection to horseshoe bats only.)

All eighteen British bat species are listed in Schedule 5 of the Wildlife and Countryside Act, 1981 and under Annex IV of the Habitats Directive, 1992 as a European protected species. They are therefore fully protected under Section 9 of the 1981 Act and under Regulation 43 of the Conservation of Habitats and Species Regulations 2017, which transposes the Habitats Directive into UK law.

Consequently, it is an offence to:

- Deliberately capture, injure or kill a bat;
- Intentionally or recklessly disturb a bat in its roost or deliberately disturb a group of bats;

- Damage or destroy a bat roosting place (even if bats are not occupying the roost at the time);
- Possess or advertise/sell/exchange a bat (dead or alive) or any part of a bat; and
- Intentionally or recklessly obstruct access to a bat roost.

This legislation applies to all bat life stages.

The implications of the above in relation to the proposals are that where it is necessary during construction to remove trees, buildings or structures in which bats roost, it must first be determined that work is compulsory and if so, appropriate licenses must be obtained from Natural England.

E.2 PLANNING POLICY

National

National Planning Policy Framework

The National Planning Policy Framework (NPPF) 2021²¹ sets out the Government's planning policies for England, including how plans and decisions are expected to apply a presumption in favour of sustainable development. Chapter 15 of the NPPF focuses on conservation and enhancement of the natural environment, stating plans should 'identify and pursue opportunities for securing measurable net gains for biodiversity'.

It goes on to state: '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'. Alongside this, it acknowledges that planning should be refused where irreplaceable habitats such as ancient woodland are lost.

Regional

The London Plan²²

Policy G1 Green infrastructure

1. London's network of green and open spaces, and green features in the built environment such as green roofs and street trees, should be protected, planned, designed and managed as integrated features of green infrastructure.
2. Boroughs should prepare green infrastructure strategies that integrate objectives relating to open space provision, biodiversity conservation, flood management, health and wellbeing, sport and recreation.
3. Development Plans and Opportunity Area Planning Frameworks should:
 5. identify key green infrastructure assets, their function and their potential function
 6. identify opportunities for addressing environmental and social challenges through strategic green infrastructure interventions.

4. Development proposals should incorporate appropriate elements of green infrastructure that are integrated into London's wider green infrastructure network.

Policy G5 Urban greening

1. Major development proposals should contribute to the greening of London by including urban greening as a fundamental element of site and building design, and by incorporating measures such as high-quality landscaping (including trees), green roofs, green walls and nature-based sustainable drainage.
2. Boroughs should develop an Urban Greening Factor (UGF) to identify the appropriate amount of urban greening required in new developments. The UGF should be based on the factors set out in Table 8.2, but tailored to local circumstances. In the interim, the Mayor recommends a target score of 0.4 for developments that are predominately residential, and a target score of 0.3 for predominately commercial development. (excluding B2 and B8 uses).
3. Existing green cover retained on site should count towards developments meeting the interim target scores set out in (B) based on the factors set out in Table 8.2.

Policy G6 Biodiversity and access to nature

1. Sites of Importance for Nature Conservation (SINCs) should be protected.
2. Boroughs, in developing Development Plans, should:
 - a. use up-to-date information about the natural environment and the relevant procedures to identify SINCs and ecological corridors to identify coherent ecological networks
 - b. identify areas of deficiency in access to nature (i.e. areas that are more than 1km walking distance from an accessible Metropolitan or Borough SINC) and seek opportunities to address them
 - c. support the protection and conservation of priority species and habitats that sit outside the SINC network, and promote opportunities for enhancing them using Biodiversity Action Plans
 - d. seek opportunities to create other habitats, or features such as artificial nest sites, that are of particular relevance and benefit in an urban context
 - e. ensure designated sites of European or national nature conservation importance are clearly identified and impacts assessed in accordance with legislative requirements.
3. Where harm to a SINC is unavoidable, and where the benefits of the development proposal clearly outweigh the impacts on biodiversity, the following mitigation hierarchy should be applied to minimise development impacts:
 - a. avoid damaging the significant ecological features of the site
 - b. minimise the overall spatial impact and mitigate it by improving the quality or management of the rest of the site

- c. deliver off-site compensation of better biodiversity value.
- 4. Development proposals should manage impacts on biodiversity and aim to secure net biodiversity gain. This should be informed by the best available ecological information and addressed from the start of the development process.
- 5. Proposals which reduce deficiencies in access to nature should be considered positively.

Policy G7 Trees and woodlands

- 6. London's urban forest and woodlands should be protected and maintained, and new trees and woodlands should be planted in appropriate locations in order to increase the extent of London's urban forest – the area of London under the canopy of trees.
- 7. In their Development Plans, boroughs should:
 - a. Protect 'veteran' trees and ancient woodland where these are not already part of a protected site
 - b. Identify opportunities for tree planting in strategic locations
- 8. Development proposals should ensure that, wherever possible, existing trees of quality are retained [Category A and B]. If planning permission is granted that necessitates the removal of trees, there should be adequate replacement based on the existing value of the benefits of the trees removed, determined by, for example, i-tree or CAVAT or another appropriate valuation system. The planting of additional trees should generally be included in new developments – particularly large-canopied species which provide a wider range of benefits because of the larger surface area of their canopy.

London Environment Strategy 2018²³

The Mayor's Environment Strategy was published in May 2018. This document sets out the strategic vision for the environment throughout London. Although not primarily a planning guidance document, it does set strategic objectives, policies and proposals that are of relevance to the delivery of new development in a planning context, including:

Objective 5.1 Make more than half of London green by 2050

Policy 5.1.1 Protect, enhance and increase green areas in the city, to provide green infrastructure services and benefits that London needs now.

This policy states:

“New development proposals should avoid reducing the overall amount of green cover and, where possible, seek to enhance the wider green infrastructure network to increase the benefits this provides. [...] New developments should aim to avoid fragmentation of existing green space, reduce storm water run-off rates by using sustainable drainage, and include new tree planting, wildlife-friendly landscaping, or features such as green roofs to mitigate any unavoidable loss”.

This supports the ‘environmental net gain’ approach promoted by government in the 25 Year Environment Plan.

Proposal 5.1.1.d The London Plan includes policies to green streets and buildings, including increasing the extent of green roofs, green walls and sustainable drainage.

Objective 5.2 conserving and enhancement wildlife and natural habitats

Policy 5.2.1 Protect a core network of nature conservation sites and ensure a net gain in biodiversity

This policy requires new development to include new wildlife habitat, nesting and roosting sites, and ecologically appropriate landscaping will provide more resources for wildlife and help to strengthen ecological corridors. It states:

“Opportunities should be sought to create or restore priority habitats (previously known as UK Biodiversity Action Plan habitats) that have been identified as conservation priorities in London [and] all land managers and landowners should take BAP priority species into account”.

Local

Haringey Local Plan

Policy 5.1.1 SP13: Open Space and Biodiversity

New development shall protect and improve Haringey's parks and open spaces. All new development shall:

- Protect and enhance, and when and where possible, extend the existing boundaries of the borough's green built, designated Metropolitan Open Land, designated open spaces, green chains, allotments, river corridors and other open spaces from inappropriate development;
- Provide amenity space in accordance with the council's open space and recreational standards supplementary planning document (SPD);
- Manage the impact of such new developments in areas adjacent to designated open space;
 - Secure improvements, enhancements and management in both quality and access to existing green spaces;
 - Seek on-site or financial contributions towards open space from new developments as set out in the open space and recreational standards (SPD);
- Seek to secure opportunities for additional publicly accessible open space especially in those identified areas of open space deficiency e.g. in the east of the borough where the quality and amount of provision is poorer as set out in the council's open space and recreational standards SPD;
- Conserve the historic significance of the borough's designated historic parks and gardens.

REFERENCES

- ¹ Haringey Council, (2009); *Biodiversity Action Plan*. Haringey
- ² Institute of Lighting Professionals and Bat Conservation Trust, (2018); *Bats and Artificial Lighting in the UK; Bats and the Built Environment Series*.
- ³ Royal Horticultural Society (2016); *Perfect for Pollinators: Wildflowers*. RHS, London
- ⁴ Bauder (2015); *Technical Data Sheet: Bauder Biodiverse Substrate*. Bauder, Ipswich
- ⁵ Bauder (2015); *Flora 3 Seed Mix Leaflet*. Bauder, Ipswich
- ⁶ Stephen Panks, Nick White, Amanda Newsome, Jack Potter, Matt Heydon, Edward Mayhew, Maria Alvarez, Trudy Russell, Sarah J. Scott, Max Heaver, Sarah H. Scott, Jo Treweek, Bill Butcher & Dave Stone (2021). *Biodiversity Metric 3.1: Auditing and Accounting For Biodiversity – User Guide*. Natural England
- ⁷ Julia Baker, Rachel Hoskin & Tom Butterworth (2019); *Biodiversity Net Gain. Good practice principles for development: A practical guide*. CIRIA, London
- ⁸ HM Government, (1981); *Part I and Part II of Wildlife and Countryside Act (as amended)*. HMSO
- ⁹ HM Government, (2017); *The Conservation of Habitats and Species Regulations 2017*. Statutory Instrument 2017 no. 490 *Wildlife Countryside*. OPSI
- ¹⁰ HM Government, (2000); *The Countryside and Rights of Way Act*. HMSO
- ¹¹ HM Government, (2006); *Natural Environment and Rural Communities Act 2006*. HMSO
- ¹² HM Government, (1994); *The Conservation (Natural Habitats, &c.) Regulations*. HMSO
- ¹³ CEC (Council of the European Communities), (1992); *Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora*
- ¹⁴ The European Parliament And Of The Council, (30 November 2009); *Directive 2009/147/EC On The Conservation Of Wild Birds (Codified Version)*
- ¹⁵ CEC (Council of the European Communities), (1979); *Convention on the Conservation of European Wildlife and Natural Habitats (Bern, 19.IX.1979)*. EC
- ¹⁶ UK Biodiversity Action Plan (2007). *UKBAP Priority Species and Habitats*. <http://www.ukbap.org.uk/newprioritylist.aspx>
- ¹⁷ JNCC and Defra (on behalf of the Four Countries' Biodiversity Group) (2012). *UK Post-2010 Biodiversity Framework*. July 2012. Available from: <http://jncc.defra.gov.uk/page-6189>
- ¹⁸ Defra (2011). *Biodiversity 2020: A strategy for England's wildlife and ecosystem services*
- ¹⁹ Convention on Biological Diversity (CBD) (2010). *Decision X/2 Strategic Plan for Biodiversity 2011-2020, including Aichi Biodiversity Targets*. Available at <https://www.cbd.int/decision/cop/?id=12268>
- ²⁰ European Commission (2012). *Our life insurance, our natural capital: an EU biodiversity strategy to 2020* European Parliament resolution of 20 April 2012 on our life insurance, our natural capital: an EU biodiversity strategy to 2020 (2011/2307(INI))
- ²¹ GOV.UK. (2021). *National Planning Policy Framework*. [online] Available at: <https://www.gov.uk/government/publications/national-planning-policy-framework--2> [Accessed 13 June 2019].
- ²² Greater London Authority (2021) *The London Plan: The Spatial Development Strategy for Greater London (GLA)*
- ²³ Greater London Authority (2018). *London Environment Strategy 2018*. London: Greater London Authority.