

Legislation and Policy

1.1. Legislation and Agreements

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

- 1.1.1. The Conservation of Habitats and Species Regulations 2017 (as amended) (hereafter referred to as 'the Habitats Regulations') transposes European Union Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora into national law. These regulations provide for the designation and protection of 'European Sites', the protection of 'European Protected Species' and the adaptation of planning controls for the protection of such sites and species. 'European Protected Species' are listed on Schedule 2 of the regulations. Under the regulations, public bodies have a duty in exercising their functions to have regard to Directive 92/43/EEC.
- 1.1.2. Broadly speaking, the Habitats Regulations make it an offence for any person to:
- deliberately capture, injure or kill any wild animal of a European protected species;
 - deliberately disturb wild animals of any such species;
 - deliberately take or destroy the eggs of such an animal; or
 - damage or destroy a breeding site or resting place of such an animal.
- 1.1.3. Disturbance of animals includes any disturbance which is likely to impair their ability:
- to survive, to breed or reproduce, or to rear or nurture their young; or
 - in the case of animals of a hibernating or migratory species, to hibernate or migrate; or
 - to affect significantly the local distribution or abundance of the species to which they belong.
- 1.1.4. Furthermore, it is an offence for any person:
- to be in possession of, or to control;
 - to transport;
 - to sell or exchange; or
 - to offer for sale or exchange any European protected species.

The Wildlife and Countryside Act 1981

- 1.1.5. The Wildlife and Countryside Act 1981 (as amended) (hereafter referred to as 'the WCA') provides protection to wild fauna (Schedule 5), flora, and fungi (Schedule 8) as well as to Sites of Special Scientific Interest (SSSI). The WCA also provides legislation regarding control of Invasive Non-Native Species (INNS) (Schedule 9).
- 1.1.6. With respect to protected fauna, Section 9 of the WCA broadly makes it an offence for any person to:
- intentionally kill, injure or take any wild animal listed in Schedule 5;
 - possess or control any live or dead wild animal included in Schedule 5;

- intentionally or recklessly damage or destroy any structure or place which any wild animal specified in Schedule 5 uses for shelter or protection;
- intentionally or recklessly disturb any such animal while it is occupying a structure or place which it uses for shelter or protection; or
- intentionally or recklessly obstruct access to any structure or place which any such animal uses for shelter or protection.

The Protection of Badgers Act 1992

1.1.7. The Protection of Badgers Act 1992 makes it an offence for any person to:

- wilfully kill, injure, take a badger (*Meles meles*);
- possess or control a badger either dead or alive;
- cruelly ill-treat a badger or dig for a badger; or
- damage, destroy, or obstruct access to a badger sett or disturb a badger while it is occupying a sett.

The Natural Environment and Rural Communities Act 2006

1.1.8. The Natural Environment and Rural Communities (NERC) Act 2006 imposes an obligation on all public bodies, including local authorities under section 40(1) of the Act, which states: “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.” Section 41 requires the Secretary of State to work with Natural England to publish a list of habitats and species that are a priority for local authorities to take into account, for example when assessing planning applications. This species list is published on Schedule 41 by Natural England¹.

The Environment Act 2021

1.1.9. The Environment Act became law on 9 November 2021 and introduces a framework to improve and protect the natural environment, overseen by the newly created Office for Environmental Protection. The Act introduces new statutory requirements, including the duty for local authorities to create new local nature recovery strategies.

1.1.10. The Act also introduces a new mandatory requirement for developments to achieve measurable biodiversity net gain. A two-year transition period for this requirement is included in the Act, with provision for secondary legislation to set a date for the requirement to come into force. It is likely this will be late 2023 or later, so will not apply to this Project at this stage. Once in force, all planning permissions in England (subject to exemptions) must be granted subject to a new general pre-commencement condition that requires approval of a biodiversity gain plan. The planning authority would only approve the biodiversity gain plan if the biodiversity value attributable to a development exceeds the pre-development biodiversity value of the onsite habitat by 10%.

¹ Natural England (accessed February 2022). Access to Evidence: Section 41 Species – Priority Actions Needed (BS2020-008) <http://publications.naturalengland.org.uk/publication/4958719460769792>.

1.1.11. Defra's statutory biodiversity metric is used to determine biodiversity gain.

Legislation Specific to Species/Species Groups

Fungi

1.1.12. A number of fungi species are afforded protection in the UK under the Schedule 8 of the WCA at all life stages.

1.1.13. This legislation makes it an offence to:

- intentionally or recklessly (if under the WCA) pick, uproot or destroy certain species; or
- sell, offer or expose certain species to sale.

1.1.14. A total of 61 fungi species are listed under Section 41 (England) of the NERC Act 2006. Under the Act, public bodies have a duty to have regard to conserving biodiversity as part of policy or decision making. Conserving biodiversity can include restoring or enhancing a population or habitat.

Plants

1.1.15. A number of plant species are European protected species and are afforded protection in the UK under the Habitats Regulations and under Schedule 8 of the WCA at all life stages.

1.1.16. These pieces of legislation make it an offence to:

- intentionally or recklessly (if under the WCA) / deliberately (if under Habitats Regulations) pick, uproot or destroy certain species; or
- sell, offer or expose certain species to sale.

Invertebrates

1.1.17. A number of invertebrate species are listed under Section 41 (England) of the NERC Act 2006. Under the Act, public bodies have a duty to have regard to conserving biodiversity as part of policy or decision making. Conserving biodiversity can include restoring or enhancing a population or habitat.

Amphibians

1.1.18. The great crested newt (*Triturus cristatus*, GCN) is a European protected species afforded protection in the UK under the Habitats Regulations and is fully protected under Schedule 5 of the WCA. Taken together, these pieces of legislation make it an offence to:

- intentionally, deliberately or recklessly capture, kill or injure a GCN;
- possess, control or transport GCN;
- damage or destroy a resting place or breeding place for GCN;
- deliberately disturb wild animals of an European protected species, in particular any disturbance which is likely to:
 - impair their ability to survive, to breed or reproduce, or to rear or nurture their young, or

- impair their ability in the case of hibernating or migratory species, to hibernate or migrate; or
- affect significantly the local distribution or abundance of the species to which they belong.
- intentionally or recklessly obstruct access to any structure or place used for shelter or protection by a GCN; or
- intentionally or recklessly disturb a GCN while it is occupying a structure or place which it uses for that purpose.

Reptiles

- 1.1.19. The four common British reptiles, common lizard (*Zootoca vivipara*), slow-worm (*Anguis fragilis*), grass snake (*Natrix helvetica*) and adder (*Vipera berus*) are protected under the WCA. They are protected against intentionally or recklessly killing and injuring (but not taking), and against sale.
- 1.1.20. All native reptiles are also listed under Section 41 (England) of the NERC Act 2006. Under the Act, public bodies have a duty to have regard to conserving biodiversity as part of policy or decision making. Conserving biodiversity can include restoring or enhancing a population or habitat.

Birds

- 1.1.21. The nests and eggs of all wild birds are protected under the WCA, making it an offence to take, damage or destroy a nest of any wild bird while it is being built and to take or destroy the egg of any wild bird. The nesting season for birds is generally considered to be March to August inclusive.
- 1.1.22. Birds which are listed under Schedule 1 of the WCA are afforded additional protection. As such, it is an offence to intentionally or recklessly disturb bird species listed on Schedule 1 and their young at, on or near an 'active' nest.
- 1.1.23. A number of bird species are also listed under Section 41 (England, 49 species) of the NERC Act. Under the Act, Local Authorities have a duty to have regard to conserving biodiversity as part of policy or decision making. Conserving biodiversity can include restoring or enhancing a population or habitat.

Bats

- 1.1.24. All bat species belonging to the *Vespertilionidae* and *Rhinolophidae* families are European protected species and are afforded protection in the UK under the Habitats Regulations. In addition, these species are protected under Schedule 5 of the WCA. Taken together, these pieces of legislation make it an offence to:
- intentionally, deliberately or recklessly capture, take, kill or injure bats;
 - possess, control or transport bats;
 - damage or destroy a resting place or breeding place for bats;
 - deliberately disturb bats, in particular any disturbance which is likely to:
 - impair their ability to survive, to breed or reproduce, or to rear or nurture their young, or

- impair their ability to hibernate (or migrate in the case of migratory species); or
 - affect significantly the local distribution or abundance of any bat species
 - intentionally or recklessly obstruct access to any structure or place used for shelter or protection by a bat; or
 - intentionally or recklessly disturb a bat while it is occupying a structure or place which it uses for that purpose.
- 1.1.25. A number of species of bat are also listed under Section 41 (England) of the NERC Act 2006 (seven species in England). Under the Act, public bodies have a duty to have regard to conserving biodiversity as part of policy or decision making. Conserving biodiversity can include restoring or enhancing a population or habitat.

Invasive Species

- 1.1.26. Invasive species are listed on Schedule 9 of the WCA. The Act places restrictions on invasive species listed on Schedule 9. As such, it is illegal to plant or otherwise cause to grow in the wild any plant listed in Schedule 9 of the Act. It is not, however, an offence to have any species listed on Schedule 9 growing on private land provided it is managed appropriately.

1.2. National Policy

National Planning Policy Framework 2025

- 1.2.1. The National Planning Policy Framework 2025² (the NPPF) sets out planning policy guidance to inform Local Plans set out by Local Planning Authorities. Paragraphs 187 to 195 address conservation and enhancement of the natural environment, habitat, and biodiversity
- 1.2.2. Paragraphs 187 and 191 in particular emphasise the need for developments to contribute to the protection and enhancement of sites of biodiversity value; to identify, map, and safeguard local wildlife rich habitats and wider ecological networks, and; to promote the conservation, restoration, and enhancement of priority habitats, ecological networks, and priority species.
- 1.2.3. Paragraph 193 emphasises important principles local authorities should follow when determining planning applications. Of particular importance to the Project are paragraphs 193a and 193c:
- 193a) *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;*
- 193c) *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.*
- 1.2.4. Wholly exceptional reasons are further clarified by this example in a footnote in the NPPF: “for example, infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills), where the public benefit would clearly outweigh the loss or deterioration of habitat.”

² Ministry of Housing, Communities and Local Government (2025). National Planning Policy Framework.

1.3. Regional Policy

Suffolk Local Biodiversity Action Plan

- 1.3.1. The Suffolk Local Biodiversity Action Plan, by the Suffolk Biodiversity Partnership³, sets out eight strategic actions to guide and assess county wide policy and strategic plans, monitoring of planning applications, and share information through seminars and training sessions. Following the publication of the UK Post-2010 Biodiversity Framework (2012) the UK BAP has been replaced by priority habitats and species; a full list of priority habitats and species for Suffolk has been published for consideration for conservation and enhancement at the local level⁴.

1.4. Local Policy

West Suffolk Local Plan

- 1.4.1. The Emerging West Suffolk Local Plan⁵ is currently under review and is expected to supersede the current legislation once adopted.
- 1.4.2. Paragraph 4.2.35 of the West Suffolk Local Plan Submission Draft (Regulation 19) 2024 states that *“Development proposals should seek to conserve and enhance the biodiversity and geological interests of the area and in particular ensure that protected species and habitats including those of principal importance in the UK and locally (priority habitats and species) will be protected and, where possible, enhanced.”*
- 1.4.3. The Local Plan currently comprises the former Forest Heath District Council (FHDC) area Local Plan Documents. Documents making up the current local plan include:
- Forest Heath Core Strategy (2010); and
 - Joint Development Management Policies (2015).
- 1.4.4. Policy CS 2 of the former FHDC Core Strategy addresses the natural environment and states that *“Areas of landscape, biodiversity and geodiversity interest and local distinctiveness within the District will be protected from harm and their restoration, enhancement and expansion will be encouraged and sought through a variety of measures”*.
- 1.4.5. Policies DM10, 11, 12, 13 and 14 of the Joint Development Management Policies (2015) address the natural environment and protected species, with paragraph 4.1 stating *“Development proposals should seek to conserve or enhance the biodiversity and geological interests of the area and in particular ensure that protected species and habitats including*

³ Suffolk Biodiversity Partnership (May 2012). Suffolk Local Biodiversity Action Plan. http://www.suffolkbis.org.uk/sites/default/files/biodiversity/prioritiespecieshabitats/actionplans/Planning_BAP_Final%2018%20May%202012.pdf

⁴ Suffolk Biodiversity Information Service (accessed February 2025). Priority species and habitats. <http://www.suffolkbis.org.uk/biodiversity/speciesandhabitats>

⁵ West Suffolk Council (accessed February 2025). Emerging West Suffolk Local Plan https://www.westsuffolk.gov.uk/planning/Planning_Policies/local_plans/ws-local-plan-review.cfm.

those set out in UK and local Biodiversity Action Plans (BAPs) will be protected and, where possible, enhanced.”