

Appendix I.1 Planning Policy and Legislation

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Prepared By: Johanna Stewart
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This Appendix provides the legislation and planning policy context referenced within the Environmental Statement. It is of relevance to both the Application Site and the Combined Site, unless otherwise stated.

Legislation Context

Conservation of Habitats and Species Regulations 2017

The original (1994) "Habitat Regulations" transposed the EC Habitats Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora (Council Directive 92/43/EEC) into national law. The Conservation of Habitats and Species Regulations 2017 consolidates the various amendments that have been made to the Regulations.

"European protected species" (EPS) are those which are present on Schedule 2 of the Conservation of Habitats and Species Regulations 2017. These habitats and species are subject to the provisions of Regulation 41 of those Regulations. All EPS are also protected under the Wildlife and Countryside Act 1981 (as amended). Taken together, these pieces of legislation make it an offence to:

- Intentionally or deliberately capture, injure or kill any wild animal included amongst these species
- Possess or control any live or dead specimens or any part of, or anything derived from these species
- deliberately disturb wild animals of any such species
- deliberately take or destroy the eggs of such an animal, or
- intentionally, deliberately or recklessly damage or destroy a breeding Site or resting place of such an animal, or obstruct access to such a place

For the purposes of paragraph (c), disturbance of animals includes 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 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.

Wildlife and Countryside Act 1981 (as amended)

The Wildlife and Countryside Act 1981 (as amended) consolidated and amended existing national legislation to implement the Convention on the Conservation of European Wildlife and Natural Habitats

(The Bern Convention) and the Birds Directive. There have been various amendments since the original enactment.

Schedules 1 and 5 of the Wildlife and Countryside Act 1981 (as amended) identify species of bird and other animal in relation to which the Act makes killing, injury, taking and disturbance an offence while Schedule 8 to the Act lists species of plant in relation to which the Act makes it an offence to intentionally pick, uproot or destroy.

The Natural Environment and Rural Communities Act 2006

The Natural Environment and Rural Communities Act 2006 (NERC) introduced changes intended to benefit rural communities and the environment. Section 40 of the NERC Act creates a duty on public bodies to have due regard for habitats and species of principal importance for biodiversity in England when exercising their duties; Section 41 requires the Secretary of State to maintain a list of such habitats and species. This is important in the context of planning decisions as the National Planning Policy Framework affords planning policy protection to the habitats of species listed by virtue of Section 41.

The Protection of Badgers Act, 1992

Although no badger setts are present within the Combined Site, the following legislation has been outlined for context.

Badgers are protected under the Protection of Badgers Act 1992. This makes it an offence to wilfully kill, injure, take, possess or cruelly ill-treat a badger, or to attempt to do so; or to intentionally or recklessly interfere with a sett. Sett interference includes disturbing badgers whilst they are occupying a sett, as well as damaging or destroying a sett or obstructing access to it. A licence can be granted by Natural England to permit works that would otherwise result in an offence (e.g. to allow sett closure where activities close by may otherwise result in disturbance or damage to the sett).

Wild Mammals Protection Act 1996 (as amended)

Under the Wild Mammals (Protection) Act 1996 it is an offence to cause unnecessary suffering to wild mammals, including crushing and asphyxiating. This Act is primarily concerned with animal welfare and aims to prevent cruelty. As a result, offences include those actions with the intent to inflict unnecessary suffering. A wild mammal includes any mammal which is not domestic or captive. Red foxes, wild deer and other mammals such as rabbits are therefore covered by the Act.

Planning Policy Context

The protection of ecological resources is promoted by planning statements and policies made at national and local levels, as contained within the following documents:

National Planning Policy Framework, 2018

The National Planning Policy Framework (NPPF) was published in July 2018. This document states that, "*Planning policies and decisions should contribute to and enhance the natural and local environment by:*

- *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);*
- *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;*
- *maintaining the character of the undeveloped coast, while improving public access to it where appropriate;*

- *minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;*
- *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*
- *remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate”.*

Paragraphs 174 – 177 relate specifically to habitats and biodiversity, stating that:

“To protect and enhance biodiversity and geodiversity, plans should:

- *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*
- *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*

When determining planning applications, local planning authorities should apply the following principles:

- *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;*
- *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;*
- *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*
- *development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.*

The following should be given the same protection as habitats sites:

- *potential Special Protection Areas and possible Special Areas of Conservation;*
- *listed or proposed Ramsar sites; and*
- *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.*

The presumption in favour of sustainable development does not apply where development requiring appropriate assessment because of its potential impact on a habitats site is being planned or determined.

The NPPF (paragraph 174) indicates that local authorities should take measures to “*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*” linking to national and local targets through local planning policies. Priority species are those species shown on the England Biodiversity List published by the Secretary of State in accordance with Section 41 of the NERC Act, 2006. Planning authorities have a duty under Section 40 of the NERC Act to have regard to priority species and habitats (also called Species and Habitats of Principal Importance) in exercising their functions including development control and planning.

Reading Borough Council: Core Strategy, 2008 (with alternation adopted 2015)

Reading Borough Council (2008): Reading Borough Local Development Framework. Core Strategy – Adopted January 2008. With Alterations Adopted 27th January 2015. Accessed: <http://www.reading.gov.uk/media/1046/Core-Strategy-Adopted-January-2008/pdf/Core-Strategy-Adopted-Jan08-Altered-Jan15.pdf>

Reading Borough Local Development Framework: Core Strategy was adopted in January 2008, with alterations adopted on 27th January 2015. This document sets out the overall planning strategy and important principles for development.

‘Living within Environmental Limits’ is one of the five ‘Guiding Principles’ set out within the strategy. This sets out the Environmental Objectives for the borough which include: ‘*Value, protect and enhance the amount and diversity of habitat and wildlife and other contributors to natural diversity*’.

Policies contained within the Core Strategy of particular relevance to this scheme include the following:

Policy CS8: Waterspaces:

‘Reading’s waterspaces will be protected, so that they can continue to contribute to local and regional biodiversity and ecology, local character and visual amenity, and the provision of accessible leisure and recreational opportunities.

Where development in the vicinity of waterways is acceptable, it will provide, [of relevance to ecology and biodiversity]:

- *A strengthened role for waterways as important landscape features, wildlife corridors and recreation opportunities; and*
- *Improved quality of waterway environment through protecting habitats and ensuring that habitat creation is balanced with access and urban uses.*

Policy CS34: Pollution and Water Resources:

‘Development will only be permitted where it would not be damaging to the environment through air, land, noise or light pollution; where it would preserve or ideally enhance ground and surface water quality; and where existing water resources, sewerage and wastewater treatment infrastructure are adequate to support the proposed development.

Proposals for development that are sensitive to the effects of air, noise or light pollution will only be permitted in areas where they will not be subject to high levels of such pollution, unless adequate mitigation measures are provided to minimise the impact of such pollution.

Development will be permitted on land affected by contamination where it can be demonstrated, to the satisfaction of the LPA, that the contamination can be satisfactorily remediated so that it is suitable for the proposed end use.'

Policy CS36: Biodiversity and Geology:

- (a) *Development should retain, protect and incorporate features of biodiversity or geological interest (including protected species and their habitats) found within the application site into their schemes.*

On sites with recognised biodiversity or geological value, development will not be permitted where there would be a direct or indirect adverse impact on the site, unless it can be clearly demonstrated that: -

- *The need for development clearly outweighs the need to protect the value of the site; and*
 - *Appropriate compensation, impact minimisation, mitigation and compensation are provided.*
- (b) *Local Nature Reserves and Wildlife Heritage Sites will be safeguarded and where possible, enhanced. Permission will not be granted for any development that would adversely affect a designated nature reserve or Wildlife Heritage Site.*
- (c) *Any development that would sever or threaten the integrity of an established wildlife link, as indicated on an adopted proposals map, will not be permitted. Where applicable, developments should be designed to protect, consolidate, extend and enhance the network of wildlife links and corridors in and adjoining the Borough, working with neighbouring authorities where appropriate.*

Policy CS38: Trees, Hedges and Woodlands:

Individual trees, groups of trees, hedges and woodlands will be protected from damage or removal, and the Borough's vegetation cover will be extended.

Reading Borough Council: Local Plan (draft)

Reading Borough Council (2017): Draft Reading Borough Local Plan, May 2017. Accessed: http://www.reading.gov.uk/media/7154/DraftReadingBoroughLocalPlan0517/pdf/Draft_Reading_Borough_Local_Plan_0517.pdf

Reading Borough Council Local Plan was released as a draft document for consultation on 1st May 2017. Whilst it has progressed slightly, adoption is not expected until early 2019.

CC1: Presumption in Favour of Sustainable Development

'A positive approach to considering development proposals will be taken that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework.'

CC3: Adaptation to Climate Change

'All developments will demonstrate how they have been designed to incorporate measures to adapt to climate change. The following measures [of relevance to ecology / biodiversity] shall be incorporated into development:

- *Proposals involving both new and existing buildings shall demonstrate how they have been designed to maximise resistance and resilience to climate change for example by including measures such as solar shading, heating and ventilation of the building and appropriately coloured materials in areas exposed to direct sunlight, green and brown roofs, etc; and*
- *Use of trees and other planting, where appropriate as part of a landscape scheme, to provide shading of amenity areas, buildings and streets and to help to connect habitat, designed with*



plants that are carefully selected, managed and adaptable to meet the predicted changed climatic conditions'.

EN11 Waterspaces

Reading's waterspaces will be protected, so that they can continue to contribute to local and regional biodiversity and ecology, local character and visual amenity, the provision of accessible leisure and recreational opportunities and, where appropriate, navigation. Where development in the vicinity of waterways is acceptable, it will provide [of relevance to ecology / biodiversity]:

- *A strengthened role for waterways as important landscape features, wildlife corridors and recreation opportunities*
- *Development set at least ten metres back from the waterway wherever practicable to protect its biodiversity significance; and*
- *Improved quality of waterway environment through protecting habitats and ensuring that habitat creation is balanced with access and urban uses.*

EN12: Biodiversity and the Green Network

The identified Green Network, the key elements of which are shown on the Proposals Map, shall be maintained, protected, consolidated, extended and enhanced. Permission will not be granted for development that affects the sites with identified interest or fragments the overall network. The Green Network comprises:

- *Sites with identified biodiversity interest - Local Wildlife Sites, Local Nature Reserves, Biodiversity Opportunity Areas, protected and priority species and their habitats, Priority and Biodiversity Action Plan habitats, and the River Thames and its tributaries (including the River Kennet and the Kennet and Avon Canal); and*
- *Areas with potential for biodiversity value and which stitch the Green Network together – designated Local Green Space and open spaces, and existing and potential Green Links.*

New development shall demonstrate how the location and type of open space, landscaping and water features provided within a scheme have been arranged such that they maintain or link into the existing Green Network and contribute to its consolidation. Such features should be designed to maximise the opportunities for enhancing this network. All new development should maximise opportunities to create new assets and links into areas where opportunities are as yet unidentified on the Proposals Map.

On all sites, development should not result in a net loss of biodiversity and geodiversity, and should provide a net gain for biodiversity wherever possible. Development should:

- *Protect and where possible enhance features of biodiversity interest on and adjacent to the application site, incorporating and integrating them into development proposals where practicable; and*
- *Provide new tree planting, wildlife friendly landscaping and ecological enhancements (such as wildlife ponds, bird and bat boxes) where practicable.*

In exceptional circumstances where the need for development clearly outweighs the need to protect the value of the site, and it is demonstrated that the impacts cannot be: 1) avoided; 2) mitigated or; 3) compensated for on-site; then new development will provide off-site compensation to ensure that there is "no net loss" of biodiversity. Provision of off-site compensation shall be calculated in accordance with nationally or locally recognised guidance and metrics.

EN14: Trees, Hedges and Woodlands

Individual trees, groups of trees, hedges and woodlands will be protected from damage or removal where they are of importance, and Reading's vegetation cover will be extended. The quality of waterside vegetation will be maintained or enhanced.



New development shall make provision for tree planting within the application site, particularly on the street frontage, or off-site in appropriate situations, to improve the level of tree coverage within the Borough, to maintain and enhance the character and appearance of the area in which a site is located, to provide for biodiversity and to contribute to measures to reduce carbon and adapt to climate change.

Wokingham Borough Council: Core Strategy

Wokingham Borough Council (2010): Wokingham Borough Local Development Framework Adopted Core Strategy Development Plan Document. January 2010. Accessed:
<http://www.wokingham.gov.uk/planning/planning-policy/local-plan-and-planning-policies/>

Wokingham Borough Council Core Strategy policy document determines the future development of the borough until March 2026. Policies contained within the Core Strategy of particular relevance to this scheme include the following:

CP1: Sustainable Development:

Planning permission will be granted for development proposals that comply with the following, (of relevance to this report):

- *Maintain or enhance the high quality of the environment; and*
- *Limit any adverse effects on water quality (including ground water).*

CP3: General Principles for Development:

Planning permission will be granted for development proposals that comply with the following, (of relevance to this report):

- *Have no detrimental impact upon important ecological, heritage, landscape (including river valleys) or geological features or water courses; and*
- *Maintain or enhance the ability of the site to support fauna and flora including protected species.*

CP7: Biodiversity:

Sites designated as of importance for nature conservation at an international or national level will be conserved and enhanced and inappropriate development will be resisted. The degree of protection given will be appropriate to the status of the site in terms of its international or national importance.

Development:

- (a) Which may harm county designated sites (Local Wildlife Sites in Berkshire), whether directly or indirectly, or*
- (b) Which may harm habitats or, species of principle importance in England for nature conservation, veteran trees or features of the landscape that are of major importance for wild flora and fauna (including wildlife and river corridors), whether directly or indirectly, or*
- (c) That compromises the implementation of the national, regional, county and local biodiversity action plans*

Will be only permitted if it has been clearly demonstrated that the need for the proposal outweighs the need to safeguard the nature conservation importance, that no alternative site that would result in less or no harm is available which will meet the need, and:

- *Mitigation measures can be put in place to prevent damaging impacts; or*
- *Appropriate compensation measures to offset the scale and kind of losses are provided.*

Biodiversity Action Plans

The UK Biodiversity Action Plan and the following local Biodiversity Action Plans are also applicable to development of the MRT East Site and the Combined Site:

- Reading Biodiversity Action Plan; and
- Wokingham Biodiversity Action Plan.

UK Biodiversity Action Plan

The UK Biodiversity Action Plan (BAP) was the UK's national biodiversity strategy, prepared in response to the Earth Summit and the Convention on Biological Diversity (CBD) in 1992. Part of it was a description of the UK's biological resources and an outline of how to conserve them.

UK BAP priority species and habitats were identified as those that were the most threatened and required conservation action. The original lists of UK BAP priority species and habitats were created between 1995 and 1999, and subsequently updated in 2007.

As biodiversity policies have evolved at a national and international level and following devolution in 1998, priorities have shifted away from the UK BAP. England's biodiversity strategy is now set out in 'Biodiversity 2020: A strategy for England's wildlife and ecosystem services', which was published by Defra in August 2011.

Four areas are targeted for action in the Strategy in order to halt the loss of England's biodiversity by 2020 and to contribute to international commitments. These are:

- A more integrated large-scale approach to conservation on land and at sea;
- Putting people at the heart of biodiversity policy;
- Reducing environmental pressures; and
- Improving our knowledge.

Although the introduction of England's Biodiversity Strategy means that national priorities have developed and shifted away from the UK BAP, the focus on certain species and habitats remains. The UK BAP lists of priority species and habitats were used to draw up the NERC Act's Section 41 list of species and habitats of principal importance in England.

Berkshire Biodiversity Strategy: The Natural Environment in Berkshire: Biodiversity Strategy 2014 - 2020

Berkshire Local Nature Partnership (2014): <http://berkshirelnp.org/index.php/what-we-do/strategy/biodiversity-action-plan>

The Berkshire Local Nature Partnership (LNP) have developed the Berkshire Biodiversity Strategy (The Natural Environment in Berkshire: Biodiversity Strategy 2014 – 2020). This document will assist England in achieving its target of halting the loss of biodiversity, by working at a local level to identify and implement opportunities to protect the natural environment. The Berkshire Biodiversity Strategy incorporates aspects of targets from the England Biodiversity Strategy, which can be achieved in Berkshire. It is both a statement of the current state of nature in Berkshire and a strategy for protecting and enhancing our natural environment (Berkshire LNP, undated).

Reading Biodiversity Action Plan

Reading Borough Council (2006): The Reading Biodiversity Action Plan. Accessed: http://www.reading.gov.uk/media/5972/Reading-Biodiversity-Action-Plan/pdf/Reading_BAP_February_062.pdf

Reading Biodiversity Action Plan (2005 – 2015) contains full detailed action plans for the following priority habitats and species:

- Urban;
- Semi-natural Grassland;
- Parkland and Veteran trees;
- Broadleaved Woodland;
- Ancient and/ or species rich Hedgerows;
- Ponds (Standing Open Water) and Reedbeds;
- Rivers and other waterways;
- Black poplar;
- Loddon lily;
- Glow worm;
- Stag beetle;
- Bats;
- Water vole;
- Black redstart;
- House sparrow;
- Sand martin;
- Great crested newts;
- Slow worm.

Wokingham Biodiversity Action Plan

Wokingham Borough Council (2014): Biodiversity Action Plan 2012 – 2024. Accessed:
<http://wokingham.moderngov.co.uk/Data/Executive%20-%20Individual%20Member%20Decisions/201402180945/Agenda/266686.pdf>

The Wokingham Biodiversity Action Plan contains five Habitat Action Plans covering the following broad habitat types:

- Communities, Towns and Villages;
- Woodland;
- Grassland and hedgerow;
- Wetland; and
- Heathland.