

Appendix 13-2

Leg and Planning Policy

TECHNICAL NOTE

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This Technical Note provides the legislation and planning policy context referenced within the Environmental Statement and associated ecology appendices. They are of relevance to the East MRT Site, the TVP P&R Site and the Combined Site, unless otherwise stated.

Legislation Context

The following legislation is relevant in the context of the East MRT Site, the TVP P&R Site and the Combined Site:

Conservation of Habitats and Species Regulations 2010 (as amended)

In relation to wildlife and nature conservation, two key Directives have been adopted by the European Community. These are (i) Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds ("The Birds Directive" formerly 79/409/EEC); and (ii) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ("The Habitats Directive"). These Directives provide for the protection of animal and plant species of European importance and the habitats which support them, particularly through the establishment of a network of protected sites.

The Habitats Directive is transposed into domestic law through the Conservation of Habitats and Species Regulations 2010 (as amended). These regulations first came into force on 1 April 2010 and consolidate the many changes that have been made to the domestic law over the years since the predecessor regulations made in 1994. The regulations provide for the designation and protection of European sites, the protection of European protected species and the adaptation of planning and other controls for the protection of European sites.

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.

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TECHNICAL NOTE

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 (paragraph 117) 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, 2012

The National Planning Policy Framework (NPPF) sets out how the planning system should protect and enhance nature conservation interests. It consolidates previous planning guidance (including Planning Policy Statement 9 (PPS9), the previous guidance on the protection of biodiversity through the planning system) into a single document. A key function of the NPPF is to promote a presumption in favour of sustainable development whilst ensuring that planning decisions should protect, and try to improve, wildlife and the habitats they live in. The framework sets out nationally important issues whilst leaving other planning matters to be decided upon by local authorities and communities through the presumption of sustainable development.

The NPPF (paragraph 109) states that, "*The planning system should contribute to and enhance the natural and local environment by:*

- *Protecting and enhancing valued landscapes, geological conservation interests and soils;*
- *Recognising the wider benefits of ecosystem services;*
- *Minimising impacts on biodiversity and providing net gains in biodiversity, where possible contributing to the Government's commitment to halt the overall decline in biodiversity,*

TECHNICAL NOTE

including by establishing coherent ecological networks that are more resilient to current and future pressures;

- *Preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability; and*
- *Remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate”.*

The NPPF also states that “When determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:

- *If significant harm 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;*
- *Proposed development on land within or outside a Site of Special Scientific Interest (SSSI) likely to have an adverse effect on a SSSI (either individually or in combination with other developments) should not normally be permitted. Where an adverse effect on the site’s notified special interest features is likely, an exception should only be made where the benefits of the development, clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special scientific interest and any broader impacts on the national network of SSSIs;*
- *Development proposals where the primary objective is to conserve or enhance biodiversity should be permitted;*
- *Opportunities to incorporate biodiversity in and around developments should be encouraged; and*
- *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”.*

The Government launched new Planning Practice Guidance to support the NPPF on 6 March 2014. The Guidance on the Natural Environment (ID:8) states that information on biodiversity impacts and opportunities should inform all stages of development. It refers to guidance in Government Circular 06/2005 (ODPM, 2005) with regards to protected species. Paragraph 99 of the Circular states “*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 the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.*”

The Planning Practice Guidance reiterates Section 40 of the NERC Act 2006, which places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity. Paragraph 117 of the NPPF also states that local authorities should seek to promote the preservation, restoration and re-creation of priority habitats and recovery of priority species populations, linked to national and local targets, through planning policies. Priority habitats and species referred to in the NPPF relate to species and habitats of principle importance listed in accordance with Section 41 of the NERC Act 2006.

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.

TECHNICAL NOTE

'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.*

TECHNICAL NOTE

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.

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*

TECHNICAL NOTE

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:



TECHNICAL NOTE

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 East MRT Site, the TVP P&R 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:

TECHNICAL NOTE

- 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. Those of relevant to the East MRT Site, the TVP P&R Site and the Combined Site are shown with an asterisk:

- 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

TECHNICAL NOTE

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. Those of relevance to the Proposed Development are shown with an asterisk:

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