From: Neil Duffield
Sent: 25 July 2022 16:17
To: Hilary Saunders <h.saunders@northyorkmoors.org.uk>

Subject: RE: 22/0249 Low Farm, Sneaton E11107-45 Nymnp BNG 25-07-22

Afternoon Hilary,
Further to your Authorities request the client has obtained a Biodiversity Net Gain Assessment (BNG).
The documents attached are the Numerical matrix and a written assessment explaining methodology etc.

The Matrix shows a 21.36% improvement to the total Habitat Units.
Current Baseline 1.99
Habitat Creation 2.41
In addition the new Hedging gives 0.82 Hedge Units delivered where non existed.
As summarised on page 5 of the Assessment.

We believe this information confirms the development satisfies Strategic policies G and H and

Policies ENV 1 and 8.

Should you have any queries please let me know.
Kind regards
Neil

BIODIVERSITY NET GAIN ASSESSMENT

Low Farm, Sneaton

July 2022

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Author	Jake Walker BSc (Hons)	
Status	**Date**	**Approved by:**
Final	25-07-2022	Ione Bareau MCIEEM

Sites:

Low Farm
Sneaton
Whitby
YO22 5HS

Dates:

Site walkover: 16th June 2022

Client:

Mr Dennis Stainthorpe
3 White Cottages
Sneaton
Whitby
YO22 5HS

Client's agent:

Louis Stainthorpe
Bell Snoxell Building Consultants Ltd
Mortar Pit Farm
Sneatonthorpe
Whitby
YO22 5JG

Planning Authority:

North York Moors National Park Authority

Our ref:

17/290

Contents

1 Summary

A Biodiversity Net Gain (BNG) metric has been undertaken at Low Farm, Sneaton for a proposed residential development.

The development will result in the loss of vacant/derelict land/bareground, sparely vegetated land that has been colonised by ruderal/ephemeral species, allotments and modified grassland.

Proposed habitats post-development will consist of developed land; sealed surface, modified grassland (garden areas laid to lawn) and newly planted urban trees and hedgerows. Overall, the proposed development will result in a 21.36% gain in area units and a 100% increase in hedgerow units.

Guidance for habitat creation and management can be found in Section 8: Habitat creation and management.

2 Introduction

MAB Environment and Ecology Ltd was commissioned by Bell Snoxell to compile a Biodiversity Net Gain Design Report for Low farm, Sneaton to accompany a planning application for residential development.

The site comprises a farmyard within Sneaton Village; consisting of dilapidated barns, sealed surface and waste ground. The site is located at OS Grid Ref NZ895077. The site location is shown on Figure 1.

The objectives of this report are to:

- Establish baseline conditions on-site.
- Provide habitat baseline plan, and proposed design plans.
- Determine feasibility of the development achieving Biodiversity Net Gain (BNG)
- Provide a BNG Monitoring and Management Plan (MMP)

Ecologists from MAB Environment and Ecology Ltd are members of the Chartered Institute of Ecology and Environmental Management (CIEEM) and follow the Institute's Code of Professional Conduct when carrying out ecological work.

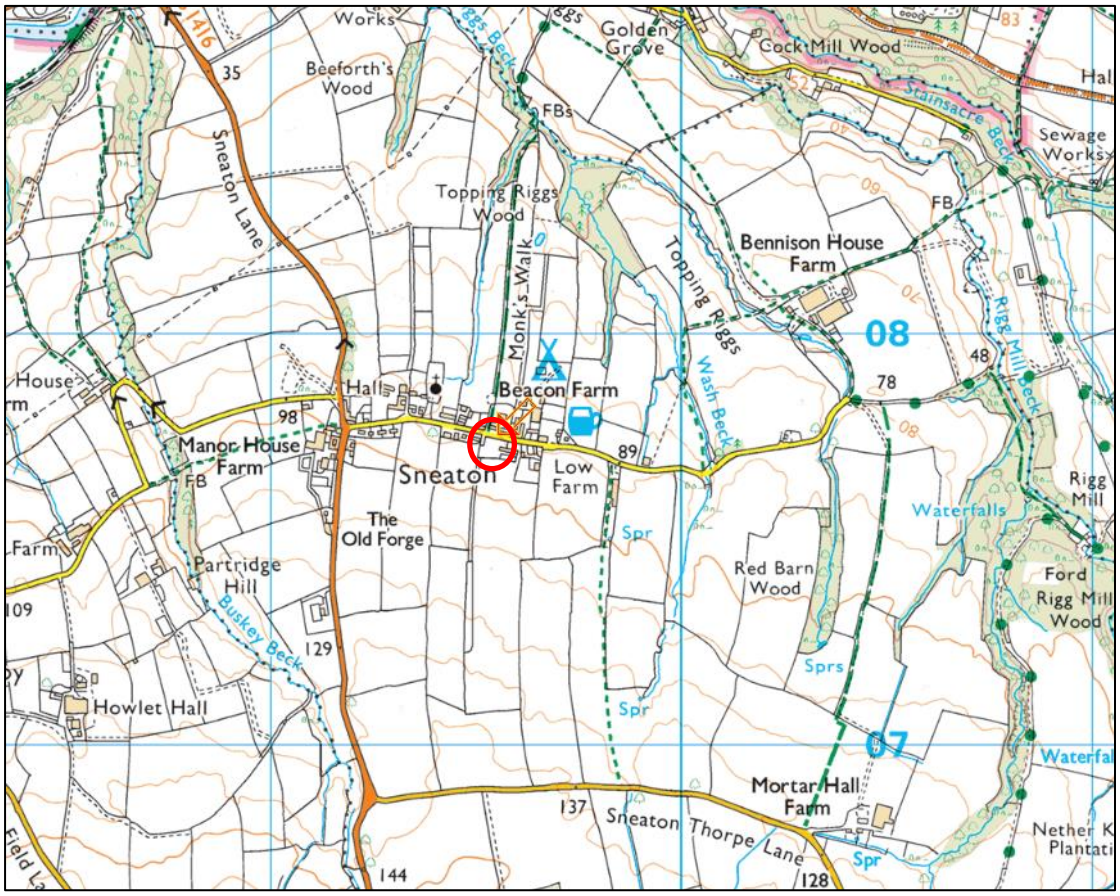

Figure 1: Low Farm, Sneaton 1:2500

3 Methodology

3.1 Desktop study

3.1.1 DEFRA's interactive MAGIC map was used for a baseline assessment of available environmental information of over 300 datasets including Priority Habitats & Species inventories, Designations, Environmental & Historic Landscape Agreements, SSSI impact zones, and Wildlife Licenses.

3.1.2 Aerial imagery from Google Earth and government websites 'MAGIC' and were used to search for ponds within 250m of the site.

3.2 Field survey, Mapping, and Metric Calculations

3.2.1 Baseline site surveys were undertaken in July 2022 by Jake Walker who is a consultant ecologist and a qualifying member of CIEEM. He has worked for MAB since 2020 and holds a Class Survey Licence WLM-A34 (Bat Survey Level 1) registration number 2021-51430-CLS-CLS.

3.2.2 UK HABS habitat survey of the site was conducted following standard published guidelines (Butcher et al, 2020). This involved a walkover of the site, mapping all habitats present which fell into the appropriate Minimum Mapping Units (MMU). MMU's were decided upon pre survey. Small scale MMU's = Area 25m^2, linear feature 5m. Large scale MMU = Area 400m^2, Linear feature 20m. Species proportions were recorded where possible using the DAFOR scale where D is dominant, A is abundant, F is frequent, O is occasional and R rare. The survey was extended to include records of protected or notable fauna and the habitats were evaluated for their potential to support such fauna. Any invasive plant species listed on Schedule 9 of the Wildlife and Countryside Act were also recorded.

3.2.3 Spatially accurate digital baseline and proposed habitat maps were created using QGIS3. UK Habs symbology was used to show habitat types, and linear features within the site; OS Mastermaps were used in conjunction with British National Grid OSG:2700 co-ordinate system to obtain accurate habitat dimensions.

3.2.4 Biodiversity Metric 3.1 was used to determine baseline metric calculations and biodiversity scores post-development.

4 Limitations

There were no limitations regarding survey data or BNG calculations.

5 Baseline ecological conditions

5.1 Current Site conditions

The site consists of a former farmyard, with areas of developed land, buildings and waste ground. The functionality of the site has changed throughout the years, moving from an active farmyard, to scrap storage and allotments, as a result, much of the site has been impacted/disturbed. There are several areas of bare ground due to vehicle disturbance; additionally, there are areas of gravelled ground that have been colonised by ruderal/epithermal species. An earth mound on the western boundary of the site has been abandoned, with dense nettle dominating this area. sycamore saplings and a semi-mature ash tree, which is infected with ash dieback are present within the site. Table 1 shows the identified habitats on-site.

Table 1: Baseline habitats.

Baseline habitats and conditions			
Date of data collection & surveyor	Jake walker BSc (Hons): 13/07/2022		
Habitat	**Condition**	**Area (ha)**	**BNG Units**
Modified grassland (g4)	Moderate	0.0646	0.26
Artificial unvegetated surface	N/A - other	0.0582	0
Vacant/derelict land/bare ground	Moderate	0.1213	0.49
Ruderal/ephemeral	Moderate	0.0653	0.26
Developed land; sealed surface	N/A - other	0.08366	0
Allotments	Moderate	0.0656	0.26
Urban tree (small)	Poor	0.0122	0.05
Urban tree (medium)	Moderate	0.08366	0.67

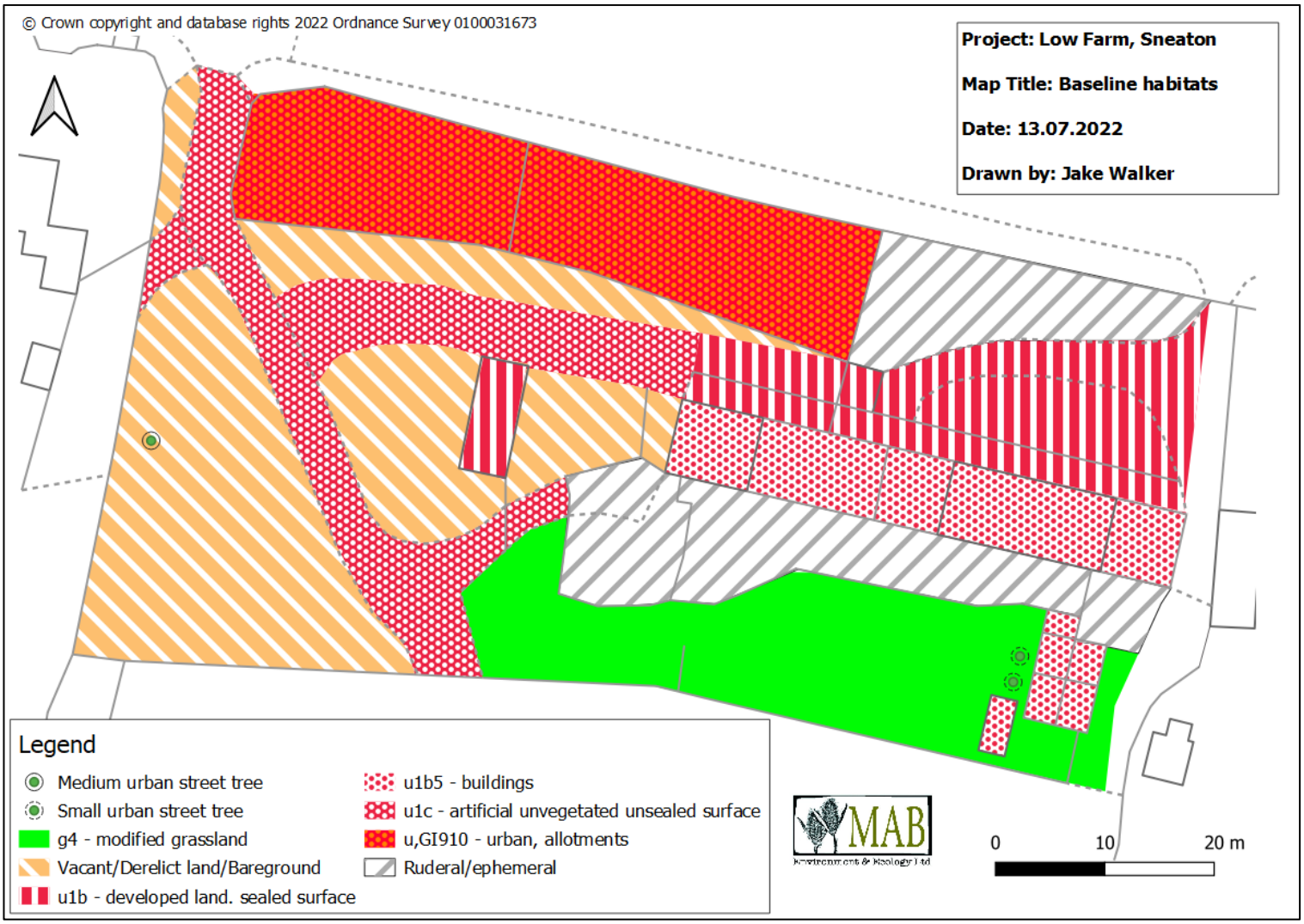

Figure 2: UK Habitat map of baseline habitats.

5.2 Baseline Metric calculations

	Habitats and areas			Distinctiveness		Condition		Strategic significance			Suggested action to address habitat losses	Ecological baseline
Ref	Broad Habitat	Habitat Type	Area (hectares)	Distinctiveness	Score	Condition	Score	Strategic significance	Strategic significance	Strategic Significance multiplier		Total habitat units
1	Urban	Artificial unvegetated, unsealed surface	0.0582	V Low	0	N/A - Other	0	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Compensation Not Required	0.00
2	Urban	Developed land; sealed surface	0.0906	V Low	0	N/A - Other	0	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Compensation Not Required	0.00
3	Urban	Vacant/derelict land/ bareground	0.1213	Low	2	Moderate	2	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same distinctiveness or better habitat required ≥	0.49
4	Sparsely vegetated land	Ruderal/Ephemeral	0.0653	Low	2	Moderate	2	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same distinctiveness or better habitat required ≥	0.26
5	Urban	Urban Tree	0.0122	Medium	4	Poor	1	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same broad habitat or a higher distinctiveness habitat required (≥)	0.05
6	Urban	Urban Tree	0.08366	Medium	4	Moderate	2	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same broad habitat or a higher distinctiveness habitat required (≥)	0.67
7	Grassland	Modified grassland	0.0646	Low	2	Moderate	2	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same distinctiveness or better habitat required ≥	0.26
8	Urban	Allotments	0.0656	Low	2	Moderate	2	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same distinctiveness or better habitat required ≥	0.26
9												
10												
11												
		Total habitat area	0.56									1.99

Figure 3: Baseline biodiversity metric.

6 Proposed design

The proposed development is for the construction of four new residential dwellings, conversions/restoration of the existing buildings on-site, and associated access and landscaping. This will result in the loss of allotments, vacant/derelict land/bare ground, ruderal/ephemeral, and modified grassland. The ash tree on-site will be removed due to H&S reasons, stemming from the onset of ash dieback; additionally, the sycamore saplings will be lost to facilitate the development.

Created habitats will primarily consist of gardens laid to lawn, and the planting of 14 trees; as per metric 3.1 guidance, tree sizes have been approximated at 30 years post development. Figures 4 & 5, show the proposed plan and habitats post-development.

Figure 4: Proposed habitats, overlayed with development plan.

Figure 5: Proposed development.

Table 2: Proposed created habitats on-site.

Created Habitat			
Area Habitats			
Habitat	**Area (ha)**	**Condition**	**BNG Units**
Developed land; sealed surface	0.2269	N/A	0
Modified grassland	0.1555	Moderate	0.54
Modified grassland	0.0872	Moderate	0.30
Urban tree	0.5127	Moderate	1.68
Linear Habitats			
Feature	**Length (km)**	**Condition**	**BNG Units**
Native species rich hedgerow	0.122	Moderate	0.82

7 Biodiversity Net Gain Metric

The proposed development will result in a 21.36% increase in area habitat units, and a 100% increase in hedgerow units. This satisfies the trading rules of the metric, and requirements of local planning policy.

On-site baseline	*Habitat units*	1.99
	Hedgerow units	0.00
	River units	0.00
On-site post-intervention (Including habitat retention, creation & enhancement)	*Habitat units*	2.41
	Hedgerow units	0.82
	River units	0.00
On-site net % change (Including habitat retention, creation & enhancement)	*Habitat units*	21.36%
	Hedgerow units	0.00%
	River units	0.00%
Off-site baseline	*Habitat units*	0.00
	Hedgerow units	0.00
	River units	0.00
Off-site post-intervention (Including habitat retention, creation & enhancement)	*Habitat units*	0.00
	Hedgerow units	0.00
	River units	0.00
Total net unit change (including all on-site & off-site habitat retention, creation & enhancement)	*Habitat units*	0.42
	Hedgerow units	0.82
	River units	0.00
Total on-site net % change plus off-site surplus (including all on-site & off-site habitat retention, creation & enhancement)	*Habitat units*	21.36%
	Hedgerow units	100.00%
	River units	0.00%
Trading rules Satisfied?	Yes ✓	

Figure 6: Headline results.

8 Habitat creation and management

8.1 Habitat creation

8.1.1 Urban trees

- Suitable urban tree species include field maple (*Acer campestre*), rowan (*Sorbus aucuparia*), and silver birch (*Betula pendula*).
- Planting of new trees should be undertaken between November-March. Planting should be avoided during very cold or windy weather – not in frozen or waterlogged soils
- Bare-root and rootballed trees and shrubs should be planted immediately, but if this is not possible then they can be heeled in (temporary planting in the soil to prevent the roots drying out) until planting is possible.

8.1.2 Native hedgerows

- Planting of new hedgerows should be undertaken between November-March. Planting should be avoided during very cold or windy weather – not in frozen or waterlogged soils.
- Plants should be planted in staggered rows, with densities of a minimum 6 plants per linear metre.
- Shrubs should be planted in groups of 5 of the same species.
- Hedgerows should be planted with native species which are beneficial to UK wildlife – with hawthorn as the dominant species, at approximately 90% density. Suitable shrub species include hawthorn (*Cretaegus monogyna*), hazel (Corylus avellana), holly (*Illex aquifolium),* dogwood (*Cornus sanguinea*), and guelder rose (*Viburnum opulus*).

8.2 Management

8.2.1 Urban trees

8.2.2 Two years post-development newly planted trees should be assessed to determine if they have established successfully. If any trees have failed then they should be replaced, a further check on any re-planted trees should be undertaken two years post planting.

8.2.3 Native hedgerows

- Newly planted hedgerows should be allowed to establish and mature; approximately 10 years. Once mature hedgerows should be managed under regular hedgerow management.
- In year two of planting, hedgerows should be assessed to determine if any areas require “gapping up”. This should be repeated in the following year if plants fail to establish.
- Once established hedgerows should be managed sympathetically for wildlife. Hedge maintenance should include bi-annual cutting/flailing.

9 References

BS42020. Biodiversity - Code of Practice for planning and development. British Standards Institution 2013.

Circular 06/05: Biodiversity and Geological Conservation - Statutory Obligations and Their Impact Within the Planning System.
http://www.communities.gov.uk/publications/planningandbuilding/circularbiodiversity

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

National Planning Policy Framework 2018: https://www.gov.uk/government/collections/revised-national-planning-policy-framework#revised-national-planning-policy-framework

UK Biodiversity Action Plan Priority Species and Habitats List. http://jncc.defra.gov.uk

Magnificentmeadows.org.uk. n.d. [online] Available at:
http://www.magnificentmeadows.org.uk/assets/pdfs/Restoration_using_a_seed_mixture.pdf

Butcher, B., Carey, P., Edmonds, R., Norton, L. Treweek, J. (2020). *UK Habitat Classification – Habitat Definitions V1.1 at* http://ukhab.org

STEPHEN PANKS [A], NICK WHITE [A], AMANDA NEWSOME [A], MUNGO NASH [A], JACK POTTER [A], MATT HEYDON [A], EDWARD MAYHEW [A], MARIA ALVAREZ [A], TRUDY RUSSELL [A], CLARE CASHON [A], FINN GODDARD [A], SARAH J. SCOTT [B], MAX HEAVER [C], SARAH H. SCOTT [C], JO TREWEEK [D], BILL BUTCHER [E] AND DAVE STONE [A] 2022. *Biodiversity metric 3.1: Auditing and accounting for biodiversity – User Guide*. Natural England.

Appendix 1: Relevant policy and legislation

Planning policy

National Planning Policy Framework (England) NPPF February 2021

National planning guidance for ecological issues is set out in the updated July 2021 National Planning Policy Framework (NPPF). The requirements are consistent with those specified in the updated February 2019 NPPF; which advocate biodiversity net gain and improvement where possible, as evidenced below.

Paragraph 179 refers to the requirement of plans to "protect and enhance biodiversity and geodiversity" In order to do this, "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."

In paragraph 180 the NPPF indicates that "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 incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity."

The accompanying ODPM / Defra Circular 06/2005 remains pertinent; circular 06/2005 is prescriptive in how planning officers should deal with protected species, see paragraphs 98 and 99:

The presence of a protected species is a material consideration when considering a proposal that, if carried out, would be likely to result in harm to the species or its habitat (see ODPM/Defra Circular, para 98)

LPAs should consider attaching planning conditions/entering into planning obligations to enable protection of species. They should also advise developers that they must comply with any statutory species protection issues affecting the site (ODPM/Defra Circular, para 98)

The presence and extent to which protected species will be affected must be established before planning permission is granted. If not, a decision will have been made without all the facts (ODPM/Defra Circular, para 99)

Any measures necessary to protect the species should be conditioned/planning obligations used, before the permission is granted. Conditions can also be placed on a permission in order to prevent development proceeding without a Habitats Regulations Licence (ODPM/Defra Circular, para 99).

The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances.

Further to NPPF and OPDM Circular 06/2005, Section 40 of 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'. Section 40(3) also states that 'conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat'.

Local Planning Policy

The quality and diversity of the natural environment of the North York Moors National Park will be conserved and enhanced. Development which has an unacceptable impact on the natural environment, the wildlife it supports and the environmental benefits it provides will not be permitted.

All development will be expected to:

1. Ensure that natural capital is used in efficient and sustainable ways.
2. Demonstrate, where appropriate, how it makes a positive contribution to natural capital and its ability to provide ecosystem services.

The intention of this policy (and the wider Plan) is to reinforce consideration of how new development can contribute to the first National Park statutory purpose – to conserve and enhance the natural beauty, wildlife and cultural heritage of the National Park. It requires that development proposals should show how their function and design can maintain or enhance the existing stock of environmental resources or 'natural capital' and the benefits that flow from them.

Strategic Policy G - Landscape

The high quality, diverse and distinctive landscapes of the North York Moors will be conserved and enhanced. Great weight will be given to landscape considerations in planning decisions and development will be supported where the location, scale and detailed design of the scheme respects and enhances the local landscape character type as defined in the North York Moors Landscape Assessment. Development which would have an unacceptable impact on the natural beauty, character and special qualities of the areas of moorland, woodland, coast and foreshore as defined by the Section 3 Conservation Map or on the setting of the Howardian Hills AONB or local seascape will not be permitted.

Strategic Policy H - Habitats, Wildlife, Biodiversity and Geodiversity

1. The conservation, restoration and enhancement of habitats, wildlife, biodiversity and geodiversity in the North York Moors National Park will be given great weight in decision making.

2. All development and activities will be expected to:

a) Maintain and where appropriate enhance features of ecological value and recognised geodiversity assets;

b) Maximise opportunities to strengthen the integrity and resilience of habitats and species within the National Park and provide a net gain in biodiversity; including those species for which the National Park

supports a significant proportion of the regional or national populations and those found at the edge of their range. Examples would include nightjar, honey buzzard, goshawk and turtle dove; and

c) Maintain and where appropriate enhance existing wildlife connections and landscape features such as water courses, disused railway lines, hedgerows and tree lines for biodiversity as well as for other green infrastructure and recreational uses.

3. Development proposals that are likely to have a harmful impact on protected or valuable sites or species will only be permitted where it can be demonstrated that:

a) There are no alternative options that would avoid or reduce the harm to the protected or valuable interest;

b) Suitable mitigation measures to avoid or reduce the harm have been incorporated into the proposals and will be maintained in order to retain their biodiversity or geodiversity benefits;

c) Any residual harmful impacts have been offset through appropriate habitat enhancement, restoration or creation on site or elsewhere; and

d) The wider sustainability benefits of the development outweigh the harm to the protected or valuable interest.

Proposals will be considered in accordance with the following hierarchy:

International Sites and Protected Species:

Proposals that have a likely significant effect on European sites (comprising Special Areas of Conservation, Special Protection Areas and Ramsar sites) will be subject to an Appropriate Assessment in accordance with the Habitats Regulations. Where the assessment indicates that it is not possible to ascertain that the proposal, either on its own or in combination with other plans or projects, would have no adverse effect on the integrity of the site, development will only be permitted in exceptional circumstances where there are no alternative solutions, there is an imperative over-riding public interest and compensation measures are secured. This protection will be extended to proposed or potential European sites and significant weight will be given to this policy in areas where the presence of internationally important features is recognised but no formal designation process has begun.

National Sites and Protected Species:

Proposals that would adversely affect the special interest features of a Site of Special Scientific Interest or National Nature Reserve or the nature conservation interest of a nationally protected species will only be permitted where the benefits of the development clearly outweigh the impact on the protected interest.

Regional and Local Sites and other Valuable Habitats and Species:

Proposals that would adversely affect any locally designated site such as a Local Nature Reserve, Local Wildlife Site, Regionally Important Geological or Geomorphological Site, Sensitive Marine Area, Marine Conservation Zone, or other valuable habitat or species (including Local or National Biodiversity Action Plan priority habitats or species) will only be permitted where the benefits of the development clearly outweigh the impact on the protected interest.

Where a proposed development would attract a significant number of additional visitors to an area or facility, it should be demonstrated how any potential impact upon the area or feature of biodiversity interest will be managed as part of the new development.

The Authority will therefore expect all development proposals to provide appropriate protection for the diverse ecological and geological assets in the National Park and, wherever possible, to incorporate features that will enhance biodiversity, for example, by planting with appropriate native species and providing nesting and roosting opportunities for birds and bats in suitable locations. Applicants should ensure that sufficient information is provided regarding any wildlife sites or species that may be affected by a proposal, seeking qualified advice as appropriate.

<u>Policy ENV1 - Trees, Woodlands, Traditional Orchards and Hedgerows</u>

There will be a presumption in favour of the retention and enhancement of existing trees, woodland, traditional orchards and hedgerows of value on all developments.

Where a development would result in the unavoidable loss of an existing tree, orchard or hedgerow but the wider sustainability benefits of the development clearly outweigh the loss, proposals will be expected to minimise harm and provide a net biodiversity and amenity gain, with appropriate replacement of lost trees or hedgerows.

Development will not be permitted that would lead to loss of or damage to ancient woodland and aged or veteran trees found outside ancient woodland unless there are wholly exceptional reasons and the need for, and benefits of the development in that location clearly outweigh the loss.

Policy ENV8 - Renewable Energy

… The Authority will therefore expect all development proposals to provide appropriate protection for the diverse ecological and geological assets in the National Park and, wherever possible, to incorporate features that will enhance biodiversity, for example, by planting with appropriate native species and providing nesting and roosting opportunities for birds and bats in suitable locations. Applicants should ensure that sufficient information is provided regarding any wildlife sites or species that may be affected by a proposal, seeking qualified advice as appropriate.

All proposals will be expected to incorporate appropriate mitigation measures on site to minimise any unavoidable harm to wildlife and ecological or geological assets. The scale of these measures will depend on the proposal, however the expectation is that any scheme likely to attract significant numbers of visitors (that is of sufficient volume to potentially cause harm to habitats) will need to provide evidence as to how management will avoid or mitigate this potential harm. Agreed mitigation measures may include arrangements for the long-term management of biodiversity enhancements which would be secured through a planning condition. In exceptional cases where it is not possible to incorporate mitigation measures on site, the Authority may consider compensatory measures in an alternative location, secured through a Section 106 legal agreement. Applicants should be aware that some features and habitats, for example veteran trees, ancient woodland and peatlands are by their nature irreplaceable and harm to these assets cannot be mitigated or compensated for and in such cases planning permission will not normally be granted.

Natural Environment and Rural Communities (NERC) Act 2006 – Habitats and Species of Principal Importance (England and Wales)

The NERC Act came into force on 1st October 2006. Sections 41 and 42 (S41 and S42) of the Act require the Secretary of State to publish a list of habitats and species which are of principal importance for the conservation of biodiversity in England and Wales respectively. The list has been drawn up in consultation with Natural England (NE) and Countryside Council for Wales (now NRW) as required by the Act. In accordance with the Act the secretary of state keeps this list under review and will publish a revised list if necessary, in consultation with NE and NRW.

The S41 and S42 lists are used to guide decision makers such as public bodies, including local and regional authorities, and utilities companies, in implementing their duty under Section 40 of the NERC Act 2006, to have regard to the conservation of biodiversity in England and Wales, when carrying out their normal functions, including development control and planning. This is commonly referred to as Biodiversity Duty.

Guidance for public authorities on implementing Biodiversity Duty has been jointly published by Defra and the Welsh Assembly. One of the key messages in this document states that "conserving biodiversity includes restoring and enhancing species populations and habitats, as well as protecting them". In England, local authorities are required to take measures "to promote the preservation, restoration and recreation of priority habitats, ecological networks and the protection and recovery of priority species" linking to national and local targets through policy and by association, therefore, through development control.

In 2007, the UK biodiversity Action Plan (BAP) Partnership published an updated list of priority UK species and habitats covering terrestrial, freshwater and marine biodiversity to focus conservation action for rarer species and habitats in the UK. The UK post 2010 Biodiversity Framework, which covers the period from 2010 – 2020 now succeeds the UK BAP. The UK priority list contained 1150 species and 65 habitats requiring special protection and has been used as a reference to draw up lists of species and habitat s of principal importance in England and Wales.

In England, there are 56 habitats of principal importance and 943 species of principal importance on the S41 list. These are all the habitats and species that are found in England that were identified as requiring action in the UK BAP and which continue to be regarded as conservation priorities in the subsequent UK post -2010 Biodiversity Framework.

In Wales, there are 54 habitats of principal importance and 557 species of principal importance on the S42 list. This includes three marine habitats and 53 species that were not on the list of UK BAP priority habitats, but which are recognised as of principal importance for Wales.

Government Circular 06/2005 and Standing Advice from NE

Paragraph 99 of Government Circular 06/2005 advises 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 the planning permission is granted, otherwise all relevant*

material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted".

The reasoning behind this statement stems from the fact that, without appropriate protected species surveys to confirm presence or likely absence and where an effect upon the species is considered likely should the development proposal proceed, planning permission may be inadvertently granted for an action that would contravene protected species legislation or the local planning authority may not have due regard to its duty in respect of protected species in advance of determination and this could result in issues in the ability to implement the planning permission. For example, if a situation were to arise where protected species were discovered after planning permission had been granted, it may not be possible to incorporate mitigation measures into the scheme, at least without a major change to the scheme design that would require re-submission to the planning authority.

Paragraph 118 of the NPPF advises that when determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying certain principles. One of these principles advises that 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.

Paragraph 98 of Circular 06/2005 advises that "*the presence of a protected species is a material consideration when a planning authority is considering a development proposal that, if carried out, would be likely to result in harm to the species or its habitat. Local authorities should consult with NE before granting planning permission. They should consider attaching appropriate planning conditions or entering into planning obligations under which the developer would take steps to secure the long-term protection of the species. They should advise developers that they must comply with any statutory species' protection provisions affecting the site concerned...."*

Standing advice from NE provides advice to planners on deciding if there is a 'reasonable likelihood 'of protected species being present. It also provides advice on survey and mitigation requirement

s. When determining an application for development that is covered by standing advice, in accordance with guidance in Government Circular 06/2005, Local planning authorities are required to take the standing advice into account. NE advises that standing advice is a material consideration in the determination of applications in the same way as a letter received from NE following consultation.

European Protected Species (Animals)

The Conservation of Habitats and Species Regulations 2017 (as amended) consolidates the various amendments that have been made to the original (1994) Regulations which 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.

"European protected species" (EPS) of animal are those which are present on Schedule 2 of the Conservation of Habitats and Species Regulations 2017 (as amended). They 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:

a) Intentionally or deliberately capture, injure or kill any wild animal included amongst these species
b) Possess or control any live or dead specimens or any part of, or anything derived from these species
c) Deliberately disturb wild animals of any such species
d) Deliberately take or destroy eggs of such an animal or
e) Intentionally, deliberately or recklessly damage or destroy a breeding site or resting place of such an animal, or obstruct such a place

For the purposes of paragraph c), disturbance of animals includes in particular any disturbance which is likely

a) To impair their ability
    I. To survive, to breed or reproduce, or to rear or nurture their young, or
    II. In the case of animals of a hibernating or migratory species, to hibernate or migrate; or
b) To affect significantly the local distribution or abundance of the species to which they belong.

Although the law provides strict protection to these species, it also allows this protection to be set aside (derogation) through the issuing of licences. The licences in England are currently determined by NE for development works. In accordance with the requirements of the Regulations (2017), a licence can only be issued where the following requirements are satisfied:

a) The proposal is necessary "to preserve public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance to the environment
b) There is no satisfactory alternative
c) The proposals 'will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range'.

Wild mammals

Under the Wild Mammals (Protection) Act 1996, it is an offence to kill or injure any wild mammals by various means, including crushing and suffocating; therefore, consideration must be given to the humane exclusion or destruction of foxes and rabbits before work starts.

Birds

All nesting birds are protected under Section 1 of the Wildlife and Countryside Act 1981 (as amended) which makes it an offence to intentionally kill, injure or take any wild bird or take, damage or destroy its nest whilst in use of being built, or take or destroy its eggs. In addition to this, for some rarer species (listed on Schedule 1 of the Act), it is an offence to disturb them whilst they are nest building or at or near a nest with eggs or young, or to disturb the dependent young of such a bird.

The conservation of Habitats and Species (Amendment) Regulations 2012 has placed new duties on Local Authorities and National Park Authorities (and others) in relation to wild bird habitat. Regulation 9A(2) and (3) require that "in the exercise of their functions as they consider appropriate" these authorities must take steps to contribute to the "preservation, maintenance and reestablishment of a sufficient diversity and area of habitat for wild birds in the UK, including by means of upkeep, management and creation of such habitat....."These authorities are also

required, under Regulations 9A(8) to “use all reasonable endeavours to avoid any pollution or deterioration of habitats of wild birds”.