



Date: 15/06/2023

Our reference: 509168/NW/003

School Lane, Pirbright,
Woking, Surrey, GU24 0JN

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By email: planningdm@spelthorne.gov.uk

planning@surreywt.org.uk
surreywildlifetrust.org/planning

Dear Paul Tomson / Kelly Walker,

Planning reference: 22/01615/OUT

Proposals: Outline application with approval sought for scale, access and siting, with details of appearance and landscaping reserved, for the demolition of existing buildings and structures, removal of waste transfer facility and the redevelopment of the site for up to 80 residential units and the provision of open space and a play area, plus associated works for landscaping, parking areas, pedestrian, cycle and vehicular routes.

Site Address: Bugle Nurseries, Upper Halliford Road, Shepperton, TW17 8SN **Planning reference:**

Thank you for consulting Surrey Wildlife Trust Ecology Planning Advice Service with regards to the above planning application. Our advice is restricted to ecological issues, and does not prejudice further representation Surrey Wildlife Trust may make as a non-statutory organisation on related, or other, issues. We also do not comment on whether a planning application should be granted, or refused, but rather provide a technical review of the ecological information that has been submitted to ensure that all ecological aspects have been appropriately considered prior to determination or discharging of conditions.

The Local Planning Authority (LPA) has a duty to conserve biodiversity in line with the planning and legislative context. Relevant legislation and planning policies are detailed in Appendix 1. We have reviewed the relevant application documents submitted on the planning portal, and other relevant publicly available information, and assessed these against published best practice guidance to determine whether submitted information was sufficient in order for the LPA to assess the planning application. Following this, we assessed the proposals against relevant legislation and planning policy and recommended appropriate course of action to ensure the LPA is fulfilling its duty to conserve biodiversity.

This consultation response is valid for one year. Should further project information or amended designs be provided or submitted to the planning portal, then we may need to update our response accordingly.

Our advice and recommendations, which follow on from our previous response dated 10/02/2023 (Our reference: 509168/NW/002) are detailed below.

We have reviewed the following reports:

- Technical Note Technical response to planning consultation, Delta Simons, 15/05/2023



- Reptile Mitigation Strategy, Delta Simons, May 2023

Summary of Recommendations

A summary of our advice and recommendations is provided in Table 1. The detail is provided further in this document. Please let us know if you would like to discuss any of these further.

Table 1 Summary of Recommendations Table

Planning Stage	Recommendation
Prior to determination	n/a
Prior to commencement	Provision of a sensitive lighting plan Secure biodiversity net gain Provision of a Landscape and Ecological Management Plan (LEMP) Provision of a Construction Environmental Management Plan (CEMP)
Prior to occupation	N/A
General Recommendations / Informatives	Consideration of badgers and nesting birds (include in CEMP) Implement the recommended precautionary measures for bats and buildings, great crested newt and hazel dormouse (include in CEMP) Impacted trees with low bat roost potential should be soft felled (include in CEMP) Incorporate biodiversity enhancements (include in LEMP) Works to proceed in strict accordance with the submitted Reptile Mitigation Strategy.

Protected species - badger

No further comment.

Protected species - bats

We had previously recommended that the LPA seek clarification of the bat potential of trees T20 and the unidentified tree with a split prior to determination.

The above referenced Technical Note has confirmed that *'all trees were assessed as Low and the specified mitigation will be applied'*.

Protected species – breeding birds

No further comment.

Protected species – hazel dormouse

We had previously advised the LPA seek clarification of the extent of retention of habitats in the western side of the site to inform whether further assessment for hazel dormouse is necessary.

The above referenced Technical Note provided further ecological justification for why the ecologist, in their professional opinion, has scoped out likely impacts to hazel dormouse; they state that *'Scrub vegetation within the west of the Site has colonised the earth bund and is, by character, relatively low growing, and lacks the arboreal opportunities for dormice'*. In addition, it confirms that *'A total 0.3 hectares of scrub along the western boundary is to be retained as part of the proposals'* and *'the mitigation proposed for the clearance any scrub in relation to*

reptiles, would also allow for consideration of dormice, and appropriate mitigation would be applied if any evidence of this'.

The professional opinion of Delta Simmons appears to have been appropriately justified.

The applicant should be made aware of the requirement for them to apply for a hazel dormouse mitigation licence from Natural England where development activities may cause an offence. The licence can only be applied for once planning permission has been granted.

Protected species – Great Crested Newt

No further comment.

Protected species – reptiles

We had previously advised that a reptile mitigation strategy should be provided to the LPA. If the reptile mitigation strategy provides a good level of confidence that, if reptiles are present, then none will be killed/injured and that the development site has the carrying capacity to support a population of reptiles in perpetuity, then this may be a suitable approach.

The above referenced Reptile Mitigation Strategy has identified an onsite area that will be retained and enhanced to mitigate for the loss of suitable reptile habitat, details the provision of two reptile hibernacula prior to the requirement to translocate any reptiles that may be discovered or prior to any site clearance and details of a destructive search under ecological supervision of identified area of potentially suitable reptile habitat. In addition, it provides a schedule of works for the area of public open space that will also provide opportunities for reptiles post development.

Should the LPA be minded to grant planning permission of the proposed development, we recommend the LPA requires the development to proceed only in strict accordance with the submitted Reptile Mitigation Strategy.

I hope this information is helpful in assisting your consideration of the application. Please contact planning@surreywt.org.uk if you require any further clarifications with regards to the above.

Kind regards,

Author: Nicky Williamson BSc (Hons) MSc MCIEEM - Conservation Officer

Appendix 1: National Planning Policy and Legislation

Conservation of Habitats and Species Regulations 2017 (as amended)

Provides for the protection of Natura 2000 sites (SACs, SPAs and Ramsar sites), European Protected Species and habitats. European Protected Species are protected from:

- Deliberate capture, injury or killing.
- Deliberate disturbance of a European Protected Species, such that it impairs their ability to breed, reproduce or rear their young, hibernate or migrate or significantly affect their local distribution or abundance.
- Deliberately take or destroy effect.
- Damage or destroy a breeding site or resting place.
- Keep, transport, sell or exchange any live, dead or part of a European Protected Species.

European Protected Species include, but are not limited to:

- Great crested newt
- Natterjack toad
- Otter
- Smooth snake
- Sand lizard
- All bat species
- Hazel dormouse

The LPA should be aware of its legal duty under Regulation 9(3) of Conservation of Habitats and Species Regulations 2017, as amended, which states that “*a competent authority in exercising any of its functions, must have regard to the requirements of the Directives so far as they may be affected by the exercise of those function*”.

Also, under Regulation 55 (9b) of the above regulations, the LPA must apply the following three tests when deciding whether to grant planning permission where a Protected Species (bats) may be harmed, in line with of the Conservation of Habitats and Species Regulations 2017, as amended.

- The activity must be for imperative reasons of overriding public interest or for public health and safety;
- There must be no satisfactory alternative;
- Favourable conservation status of the species must be maintained.

Natural England has stated that they would expect these three tests to be adequately considered by the LPA before planning permission is granted. Natural England will require evidence from the applicant that the LPA has considered the three tests and how they were met, before a mitigation licence can be issued. Where a mitigation licence is required to avoid breach of legislation, development cannot proceed even where a valid planning permission is granted.

Wildlife and Countryside Act 1981 (as amended)

Key piece of legislation consolidating existing wildlife legislation to incorporate the requirements of the Bern Convention and Birds Directive. It includes additional protection measures for species listed under the Conservation of Habitats and Species Regulations 2017 (as amended) and includes a list of species protected under the Act. It also provides for the designation and protection of Sites of Special Scientific Interest (SSSI).

Development which would adversely affect a SSSI is not acceptable except only in special cases, where the importance of a development outweighs the impact on the SSSI when planning conditions or obligations would be used to mitigate the impact. Developments likely to impact on a SSSI will likely require an Environmental Impact Assessment (EIA).

The Impact Risk Zones (IRZs) dataset is a GIS tool which details zones around each SSSI according to the particular sensitivities of the features for which it is notified and specifies the types of development that have the potential to have adverse impacts. Natural England uses the IRZs to make an initial assessment of the likely risk of impacts on SSSIs and to quickly determine which consultations are unlikely to pose risks and which require more detailed consideration. Local Planning Authorities (LPAs) have a duty to consult Natural England before granting planning permission on any development that is in or likely to affect a SSSI.

Further information on specific legislation relating to species protected under the Wildlife and Countryside Act 1981 (as amended) is detailed below, under Protection of Protected Species and Habitats.

Environment Act (2021)

The Environment Act (2021) achieved Royal Assent in November 2021.

The Environment Act (2021) makes a provision for biodiversity net gain to be a condition of planning permission in England, however, it is not anticipated that a 10% biodiversity net gain will be mandatory until 2023. When it does become mandatory, planning applications will need to demonstrate a 10% biodiversity net gain can be met. A biodiversity net gain plan must be submitted and must include:

- (a) information about the steps taken or to be taken to minimise the adverse effect of the development on the biodiversity of the onsite habitat and any other habitat
- (b) the pre-development biodiversity value of the onsite habitat,
- (c) the post-development biodiversity value of the onsite habitat,
- (d) any registered offsite biodiversity gain allocated to the development and the biodiversity value of that gain in relation to the development,
- (e) any biodiversity credits purchased for the development.

It should be noted however, that the NPPF (2021) as set out below does require a project to provide a measurable net gain for biodiversity.

Countryside and Right of Way Act 2000

Amends and strengthens the Wildlife and Countryside Act 1981 (as amended). It also details habitats and species for which conservation measures should be promoted.

Natural Environment and Rural Communities Act 2006

Section 40 of the Act places a duty on local planning authorities to conserve and enhance biodiversity in England whilst carrying out their normal functions. Section 41 comprises a list of Habitats of Principal Importance (HPIs) and Species of Principal Importance (SPIs) which should be considered.

The LPA will need to have particular regard to any relevant local nature recovery strategies, and any relevant species conservation strategy or protected site strategy prepared by Natural England.

Hedgerows Regulations 1997

Under these regulations it is an offence to intentionally or recklessly remove, or cause or permits another person to remove, a hedgerow. Important hedgerows are defined in Section

4 of the Regulations. This includes hedgerows that have existed for over 30 years or satisfies at least one criteria listed in Part II of Schedule 1.

Wild Mammals (Protection) Act 1996

Under this act wild mammals are protected from the intentional unnecessary suffering by crushing and asphyxiation.

ODPM Circular 06/05: Biodiversity and Geological Conservation – Statutory Obligations and Their Impact within the Planning System (2005)

The Government's Office of the Deputy Prime Minister (ODPM) Circular 06/05 (ODPM 2005) presents the legal requirement for planning authorities with regard to statutory designated sites. Planning approval should not be granted where impacts to statutory designated sites that are not connected to the site maintenance for nature conservation, or will have a significant effect on the site's conservation objectives and/or affect the site's integrity. Permission may be granted if the proposed development overrides public interest.

The presence of a protected species is a material planning consideration. The Circular clearly outlines 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 planning permission is granted. Otherwise, all relevant considerations may not have been addressed in making the decision.

Biodiversity Opportunity Areas (BOAs)

In order to assist in delivering the government's Biodiversity 2020 strategy, the Surrey Nature Partnership has identified seven BOAs where improved habitat management, habitat restoration and recreation of HPIs is the key focus to enhancing the connectivity of habitats for SPIs to deliver biodiversity objectives at a landscape scale. The location of these is presented in the South East Biodiversity Strategy's website. The project promotes a collaborative approach across a number of regional and local organisations.

Developments within or adjacent to BOAs should be designed in consideration of the BOA objectives, which are provided at:

- <https://surreynaturepartnership.org.uk/our-work/>

The BOAs include:

- Thames Basin Heaths comprising Chobham Common North & Wentworth Heaths, Chobham South Heaths, Colony Bog, Bagshot Heath & Deepcut Heaths, Ash, Brookwood & Whitmoor Heaths, Woking Heaths;
- Thames Basin Lowlands comprising Wanborough & Normandy, Woods & Meadows, Clandon to Bookham Parkland, Esher & Oxshott Commons, Ashted & Epsom Wood Pasture, Princes Coverts & Horton Country Park;
- Thames Valley comprising Windsor Great Park, Runnymede Meadows & Slope, Staines Moor & Shortwood Common, Thorpe & Shepperton, Molesey & Hersham;
- North Downs comprising North Downs Scarp; The Hog's Back, North Downs Scarp and Dip; Guildford to the Mole Gap, North Downs Scarp; Mole Gap to Reigate, North Downs; Epsom Downs, North Downs; Banstead Wood & Chipstead Downs, North Downs Scarp; Caterham, North Downs Scarp; Woldingham,
- Wealden Greensands comprising Puttenham & Crooksbury, Farnham Heaths, Thursley, Hankley & Frensham Heaths, Devil's punch-bowl & Hindhead Heaths, Hascombe, Winkworth & Hydon's Heath and Woodland, Blackheath, Chilworth &

Farley Heaths, Winterfold & Hurtwood Greensand Ridge, Leith Hill, Wotton, Abinger & Holmwood Greensand Ridge, Limpsfield Heaths, Reigate Heaths, Holmthorpe & Bay Pond

- Low Weald comprising Chiddingfold & West Weald Woodlands, Cranleigh Woodlands, Wallis Wood, Vann Lake & Ockley Woodland, Glover's Wood & Edolph's Copse, Newdigate Wood, Earlswood & Redhill Commons;
- River Valleys comprising Hogsmill, Eden Brook, River Blackwater, River Wey, River Mole, River Thames,

Protection of protected species and habitats

Amphibians

Natterjack toad, pool frog and great crested newt are protected under the Conservation of Habitats and Species Regulations 2017 (as amended). They are also afforded additional protection under the Wildlife and Countryside Act 1981 (as amended).

Natterjack toad, common toad, great crested newt and northern pool frog are also SPIs.

Reptiles

Smooth snake and sand lizard are protected under the Conservation of Habitats and Species Regulations 2017 (as amended). They are afforded additional protection under the Wildlife and Countryside Act 1981 (as amended).

Adder, grass snake, common lizard and slow-worm are all protected from killing and injury under the Wildlife and Countryside Act 1981 (as amended). All UK reptile species are SPIs.

Birds

All wild birds are protected under the Wildlife and Countryside Act 1981 (as amended). This includes damage and destruction of their nests whilst in use, or construction. Species listed under Schedule 1 of the Act, such as barn owl, are afforded protection from disturbance during the nesting season.

The following 50 bird species are SPIs: lesser redpoll, aquatic warbler, marsh warbler, skylark, white-fronted goose, tree pipit, scaup, bittern, dark-bellied brent goose, stone-curlew, nightjar, hen harrier, northern harrier, hawfinch, corncrake, cuckoo, Bewick's swan, lesser spotted woodpecker, corn bunting, curl bunting, yellowhammer, reed bunting, red grouse, herring gull, black-tailed godwit, linnet, twite, Savi's warbler, grasshopper warbler, woodlark, common scoter, yellow wagtail, spotted flycatcher, curlew, house sparrow, tree sparrow, grey partridge, wood warbler, willow tit, marsh tit, dunnoek, Balearic shearwater, bullfinch, roseate tern, turtle dove, starling, black grouse, song thrush, ring ouzel and lapwing.

Badger

Badger is protected under the Protection of Badgers Act 1992. Under this legislation it is an offence to kill or injure a badger; to damage, destroy or block access to a badger sett; or to disturb badger in its sett. The Act also states the conditions for the Protection of Badgers licence requirements.

Bats

All bat species are protected under the Conservation of Habitats and Species Regulations 2017 (as amended), as detailed above. Bats are further protected under the Wildlife and Countryside Act 1981 (as amended), making it an offence to:

- Deliberately or recklessly damage or destroy any structure or place which bat(s) use for shelter or protection.
- Disturb bat(s) while occupying a structure or place which it uses for shelter or protection.
- Obstruct access to any structure or place which they use for shelter or protection.

Furthermore, seven bat species are SPIs, covered under Section 41 of the NERC Act 2006. These include western barbastelle, Bechstein's, noctule, soprano pipistrelle, brown long-eared, lesser horseshoe and greater horseshoe.

Hazel dormouse

Hazel dormouse is protected under the Conservation of Habitats and Species Regulations 2017 (as amended). It is afforded additional protection under the Wildlife and Countryside Act 1981 (as amended), including obstruction to a place of shelter or rest.

Hazel dormouse is also a SPI.

Hedgerow

Under the Hedgerows Regulations 1997 it is against the law to remove or destroy certain hedgerows without permission from the LPA, which are also the enforcement body for offences created by the Regulations. LPA permission is normally required before removing hedges that are at least 20 m in length, more than 30 years old and contain certain plant species. The authority will assess the importance of the hedgerow using criteria set out in the regulations. The regulations **do not** apply to hedgerows within the curtilage of, or marking a boundary of the curtilage of, a dwelling house.

Hedgerow is a HPI.

Otter

Otter is protected under the Conservation of Habitats and Species Regulations 2017 (as amended) and is afforded additional protection under the Wildlife and Countryside Act 1981 (as amended). Otter is also a SPI.

Water vole

Water vole is fully protected from capture, killing or injury; damage, destruction or blocking access to a place of shelter; disturbance whilst in a place of shelter or possessing, selling any part of a water vole, dead or alive under the Wildlife and Countryside Act 1981 (as amended).

Water vole is also a SPI.

Other mammals

West European hedgehog, brown hare, mountain hare, pine marten, harvest mouse, polecat and red squirrel are all SPIs.

The following mammals are listed under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended): wildcat, brown hare (Schedule 5A), mountain hare (Schedule 5A), pine marten and red squirrel.

Invertebrates

Fifty-six terrestrial and freshwater invertebrate species are listed under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended). These include Reddish buff, Norfolk hawker, Purple emperor, High brown fritillary, Northern brown argus, White-clawed crayfish, Pearl-bordered fritillary, DeFolin's lagoon snail, Chequered skipper, Fairy shrimp, Rainbow leaf beetle, New Forest cicada, Southern damselfly, Large heath, Small blue, Wartbiter, Fen raft

spider, Ivell's sea anemone, Mountain ringlet, Ladybird spider, Marsh fritillary, Spangled diving beetle, Mole cricket, Field cricket, Duke of Burgundy, Silver-spotted skipper, Medicinal leech, Lesser silver water beetle, Moccas beetle, Wood white, Violet click beetle, Large copper, Freshwater pearl mussel, heath fritillary, Glanville fritillary, Glutinous snail, Starlet sea anemone, Large tortoiseshell, Brackish hydroid, Swallowtail, Bembridge beetle, Barberry carpet, Silver-studded blue, Adonis blue, Chalk hill blue, Fiery clearwing, Sandbowl snail, Black hairstreak, White-letter hairstreak, Black-veined moth, Sussex emerald, Brown hairstreak, Northern hatchet-shell, Lulworth skipper, Tadpole shrimp, New Forest burnet.

A total of 398 invertebrates are Species of Principal Importance. These include: beetles (including stag beetle), butterflies (high brown fritillary, large heath, small blue, white-letter hairstreak, brown hairstreak, damselflies (southern damselfly), moths (marsh moth), ants, bees etc. Impacts to SPI must be considered by the LPA when assessing planning applications.

Non-native invasive plant species

Schedule 9 of the Wildlife and Countryside Act 1981 (as amended) is a list of non-native plant species for which Section 14 of the Act applies. It is an offence to plant, or otherwise cause to grow in the wild species listed under Schedule 9 of the act. These include, but are not limited to:

- Himalayan balsam
- Cotoneaster sp.
- Japanese knotweed
- Giant hogweed

Habitats of Principal Importance

Section 41 of the NERC Act 2006 details 56 HPis, of which the following could be present in south-east England: Lowland calcareous grassland, Lowland dry acid grassland, Lowland meadows, Lowland Heathland, Open Mosaic Habitats on Previously Developed Land, Lowland fens, Lowland raised bog, Reedbeds, Lowland beech and yew woodland, Lowland mixed deciduous woodland and Wet woodland.

Impacts to HPI are of material planning consideration.

Ancient woodland and veteran trees

The NPPF 2021 states that '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'. In addition, Natural England's standing advice for ancient woodland indicates that a 15 m buffer is retained between ancient woodland and any works or development. Ancient woodlands, and ancient and veteran trees, may also be protected by Tree Preservation Orders.

National Planning Policy Framework (2021)

Details the Government's planning policies for England and how these should be applied, particularly to contribute to the Government's commitment to halt the decline of biodiversity. When assessing planning applications, LPAs should have regard to conserving and enhancing biodiversity by applying a number of principals, including:

- Avoiding impacts to biodiversity through appropriate site selection.
- Mitigating residual impacts.

- Encouraging the preservation and enhancement of biodiversity.
- Preventing the development of protected sites, such as SSSIs.
- Refusing permission where habitats that cannot be recreated, such as ancient woodland, would be lost.
- Encouraging good design that limits light pollution.

Relevant paragraphs in the NPPF (2021) are detailed below.

Paragraph Number	Detail
174	"Planning policies and decisions should contribute to and enhance the natural and local environment by...minimising impact on and providing net gains for biodiversity" Protection of sites of biological values Preventing new and existing development from adverse impacts to soil, air, water or noise Development should help improve local conditions
175	Maintenance and enhancement of networks of habitats and green infrastructure; plan for the enhancement of natural capital at a catchment or landscape scale
179	"To protect and enhance biodiversity and geodiversity, 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."
180	"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 improve biodiversity in and around developments should be integrated as

Paragraph Number	Detail
	part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.”
185	“Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should: ... c) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.”