

# Policy Evidence Report

## Policy 15: Biodiversity and Geodiversity

**Hertfordshire Minerals and Waste  
Local Plan 2040**

**Hertfordshire County Council**



Supporting Regulation 22(c)(iii)(iv)

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# 1. Introduction

- 1.1. Hertfordshire County Council is reviewing its adopted Minerals Local Plan, Waste Local Plan and supporting documents. These comprise the following documents (with adoption date):
  - Minerals Local Plan Review (March 2007)
  - Minerals Consultation Areas SPD (November 2007)
  - Waste Core Strategy and Development Management Policies DPD (November 2012)
  - Waste Site Allocations DPD (July 2014)
  - Employment Land Areas of Search SPD (November 2015)
- 1.2. The documents listed above are to be replaced by a single Minerals and Waste Local Plan (MWLP) covering the period to 2040. The new MWLP will set the overall spatial framework and development management policies for sustainable minerals and waste management development in Hertfordshire.
- 1.3. This Policy Evidence Report provides a context and justification for the creation of Policy 15: Biodiversity and Geodiversity in the emerging Minerals and Waste Local Plan.

## 2. National Policy Context

- 2.1. The National Planning Policy Framework (NPPF 2021) and National Planning Practice Guidance (PPG) provide the basis of national planning policy.
- 2.2. The following points within the NPPF relate to Policy 15:
  - Paragraph 174 states that ‘planning policies and decisions should contribute to and enhance the natural and local environment by: a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan); b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland; ... d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures; ... ’.
  - Paragraph 175 – ‘Plans should: distinguish between the hierarchy of international, national and locally designated sites; allocate land with the least environmental or amenity value, where consistent with other policies in this Framework; take a strategic approach to maintaining and enhancing networks of

habitats and green infrastructure; and plan for the enhancement of natural capital at a catchment or landscape scale across local authority boundaries.’

- Paragraph 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.’
- Paragraph 180 explains the principles that local planning authorities should apply in the determination of planning applications: ‘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; ... 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<sup>63</sup> 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 part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.’
- Paragraph 210 – ‘Planning policies should: ... f) set out criteria or requirements to ensure that permitted and proposed operations do not have unacceptable adverse impacts on the natural and historic environment or human health, taking into account the cumulative effects of multiple impacts from individual sites and/or a number of sites in a locality ...’.
- Paragraph 211 - In considering proposals for mineral extraction, minerals planning authorities should: ... b) ensure that there are no unacceptable adverse impacts on the natural and historic environment, human health or aviation safety, and take into account the cumulative effect of multiple impacts from individual sites and/or from a number of sites in a locality ...’.

### 2.3. The PPG includes a number of relevant sections:

- ‘The planning system controls the development and use of land in the public interest and, ... this includes ensuring that new development is appropriate for its location – taking account of the effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the potential sensitivity of the area or proposed development to adverse effects from pollution.’

*Minerals, Paragraph: 012 Reference ID: 27-012-20140306*

- ‘The principal issues that mineral planning authorities should address, bearing in mind that not all issues will be relevant at every site to the same degree, include: ... internationally, nationally or locally designated wildlife sites, protected habitats and species, and ecological networks; impacts on nationally protected landscapes (National Parks, the Broads and Areas of Outstanding Natural Beauty); nationally protected geological and geo-morphological sites and features ...’.

*Minerals, Paragraph: 013 Reference ID: 27-013-20140306*

- ‘Minerals operators should look to agree a programme of work with the mineral planning authority which takes into account, as far as is practicable, the potential impacts on the local community and local environment (including wildlife), the proximity to occupied properties, and legitimate operational considerations over the expected duration of operations.’

*Minerals, Paragraph: 015 Reference ID: 27-015-20140306*

- ‘There are many possible uses of land once minerals extraction is complete and restoration and aftercare of land is complete. These include: creation of new habitats and biodiversity; use for agriculture; forestry ...’.

*Minerals, Paragraph: 045 Reference ID: 27-045-20140306*

- ‘Planning authorities and neighbourhood planning bodies can work collaboratively with other partners, including Local Nature Partnerships, to develop and deliver a strategic approach to protecting and improving the natural environment based on local priorities and evidence. Equally, they need to consider the opportunities that individual development proposals may provide to conserve and enhance biodiversity and geodiversity, and contribute to habitat connectivity in the wider area (including as part of the Nature Recovery Network).

In this context, it is useful to consider:

- the latest government policies that are relevant, including the commitments in the 25 Year Environment Plan;
- the contents of existing up-to-date plans and strategies for biodiversity and nature recovery;
- the potential effects of a development on the habitats or species on the Natural Environment and Rural Communities Act 2006 section 41 list;
- whether an ecological survey is appropriate;
- opportunities to restore or enhance local ecological networks, including those that contribute to the wider Nature Recovery Network;
- how to secure net gains for biodiversity as part of green infrastructure provision; and
- opportunities to work strategically in order to streamline development decisions: for example, by establishing a ‘zone of influence’ around protected sites.’

*Natural Environment, Paragraph: 010 Reference ID: 8-010-20190721*

- ‘Information on biodiversity and geodiversity impacts and opportunities needs to inform all stages of development (including site selection and design, pre-application consultation and the application itself). An ecological survey will be necessary in advance of a planning application if the type and location of development could have a significant impact on biodiversity and existing information is lacking or inadequate ... As with other supporting information, local planning authorities should require ecological surveys only where clearly justified. Assessments should be proportionate to the nature and scale of development proposed and the likely impact on biodiversity ...’.

*Natural Environment, Paragraph: 018 Reference ID: 8-018-20190721*

- ‘The National Planning Policy Framework encourages net gains for biodiversity to be sought through planning policies and decisions. Biodiversity net gain delivers measurable improvements for biodiversity by creating or enhancing habitats in association with development. Biodiversity net gain can be achieved on-site, off-site or through a combination of on-site and off-site measures. It may help local authorities to meet their duty under Section 40 of the Natural Environment and Rural Communities Act 2006.’

*Natural Environment, Paragraph: 022 Reference ID: 8-022-20190721*

- ‘Local planning authorities need to consider both the direct and indirect impacts on ancient woodland and ancient or veteran trees when assessing development proposals and the scope for avoiding or mitigating adverse impacts ...’.

*Natural Environment, Paragraph: 033 Reference ID: 8-033-20190721*

- ‘Local planning authorities can ensure that waste is handled in a manner which protects human health and the environment through testing the suitability of proposed sites, both in developing their Local Plans and in considering individual planning applications ...’ by ‘... ensuring land raising or landfill sites are restored to beneficial after-uses (eg agriculture, biodiversity, forestry, amenity) at the earliest opportunity and to high environmental standards.’

*Waste, Paragraph: 005 Reference ID: 28-005-20141016*

2.4. The locational criteria set out in Appendix B of the National Planning Policy for Waste (NPPW) states:

*‘d. nature conservation*

Considerations will include any adverse effect on a site of international importance for nature conservation (Special Protection Areas, Special Areas of Conservation and RAMSAR Sites), a site with a nationally recognised designation (Sites of Special Scientific Interest, National Nature Reserves), Nature Improvement Areas and ecological networks and protected species.’

2.5. In addition, the Natural Environment and Rural Communities Act 2006 (40(1)) states that a *‘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.’*

2.6. Furthermore, the NPPF refers to the Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within the Planning System (2005). Although it is an older document, the Circular provides useful information on the role of planning in the conservation of biodiversity and geodiversity.

### **3. Local Context**

- 3.1. Natural England has identified a series of National Character Areas (NCAs) which form distinct geographical areas across England in terms of their landscape, wildlife and historic characteristics. Hertfordshire contains four main NCAs: the Chilterns, Northern Thames Basin, South Suffolk and North Essex Claylands, and East Anglian Chalk, as well as small sections of the Bedfordshire Claylands and Thames Valley in the North West and South west of Hertfordshire. These reflect the distinctive landscapes and habitats across the county, from the chalk scarp grasslands and chalk streams of the Chilterns to the hornbeam woodlands and remnant heaths of the London clay and gravels.
- 3.2. On behalf of the Hertfordshire Environmental forum, the Herts and Middlesex Wildlife Trust (HMWT) prepared a Local Biodiversity Action Plan (BAP) for the county in 1998 which was revised in 2006. This sets out a series of Habitat and Species Actions Plans reflecting national and local priorities. Whilst these remain technical documents, the BAP process was formally superseded by the Local Nature Partnership (LNP) in 2012. This has replaced the High Biodiversity Areas with the Ecological Network Mapping to identify priority habitats and areas for potential ecological restoration. The LNP has published a series of high-level guiding principles and also provides planning guidance and embraces other conservation initiatives.
- 3.3. Sites of Special Scientific Interest (SSSI) are an important part of delivering these objectives. Within Hertfordshire, there are 43 SSSIs which provide statutory protection and management to these nationally important ecological and geological sites. A number of these also contribute to the internationally important designations of the Chilterns Beechwoods Special Area of Conservation, Wormley Hoddesdon Park Woods Special Area of Conservation (and National Nature Reserve), and the Lee Valley Special Protection Area and Ramsar (International wetland) site. There are also 36 Nature Reserves, mainly managed by HMWT, 44 Local Nature Reserves and (currently) 1,812 non-statutory Local Wildlife Sites and Regionally Important Geological / Geomorphological Sites recognised for their significant contribution to the biodiversity within Hertfordshire.

## 4. Minerals & Waste Local Plan Policy

4.1. Prior to the publication of the emerging MWLP, the Council was preparing separate Minerals and Waste Plans, which were at differing stages of production. The emerging Minerals Local Plan (MLP) was published for a Regulation 19 Proposed Submission consultation in 2019, and the emerging Waste Local Plan (WLP) was published for a Regulation 18 Draft Plan consultation in 2021. These emerging Plans have now been brought together into a single MWLP. The Policy which this Evidence Report relates to has been formulated from one or more relevant policies in those previous emerging Plans, and takes into account the representations received at those previous stages of consultation.

### Proposed Submission Minerals Local Plan 2019

4.2. The Proposed Submission Minerals Local Plan was published for a ten week Regulation 19 consultation from 14 January 2019 to 22 March 2019. This document included Policy 17: Biodiversity. The policy read as follows:

#### **Policy 17: Biodiversity**

Proposals for mineral extraction, associated development and reclamation should be consistent with national and local biodiversity policies and guidance, informed by existing and new ecological information as necessary and green infrastructure plans.

In line with the mitigation hierarchy, proposals for mineral extraction and associated development will be permitted where it can be demonstrated that throughout the life time of the development (including restoration):

- the impact on biodiversity through loss of or damage to habitats and/or species is minimised;
- there is a measurable net gain in biodiversity, during restoration and aftercare, demonstrated by an acceptable method;
- biodiversity networks can be enhanced and contribute to the wider ecological networks and local green infrastructure;
- there are no irreversible or unacceptable impacts on International, National and Local statutory nature conservation sites (e.g. Special Areas of Conservation, Special Protection Areas, Ramsar sites, National Nature Reserves, Sites of Special Scientific Interest);
- there is no loss or deterioration of irreplaceable habitats including ancient woodlands, veteran trees;
- the requirements of protected species can be fully and satisfactorily demonstrated at all stages of the development; and

- adequate mitigation is in place to compensate for irreversible damage or loss of European Protected Species including their place of rest/shelter.

Proposals must submit an acceptable ecological survey and scheme for monitoring the biodiversity within the site prior to, during and after extraction.

- 4.3. During the Regulation 19 consultation, 8 representations were made in relation to this policy, including some support. The main points of these are summarised below:
- a) The policy does not adequately safeguard sites in line with their position in the hierarchy of sites. The wording should be strengthened to offer better protection, avoid ambiguity and to be in line with the plan's HRA.
  - b) The wording should be changed from *'there are no irreversible or unacceptable impacts'* to *'there are no adverse effects'* in line with HRA terminology.
  - c) The policy should distinguish between the hierarchy of sites to align with the NPPF.
  - d) It is stated that the policy, along with the requirements for net-gain, should be applied to a site's operation phase, making the policy more positive.
  - e) The policy wording should be more positive about preventing impacts and seek enhancements where appropriate during both the operational and after-use phases.
  - f) To keep the policy in line with the NPPF, it should reference the need for restoration and aftercare at the earliest opportunity and to the highest environmental standards through the application of appropriate conditions.
  - g) Within the policy there is a lack of consideration for geo-diversity.
  - h) A textual amendment is suggested within the bullet points to ensure that European Protected Species are given proper consideration:  
*'...the requirements of protected species (including European Protected Species) can be fully and satisfactorily met at all stages of the development'*.
  - i) The last bullet point within the policy is considered unnecessary as protected species would already receive this protection.
  - j) The Preferred Area in the plan presents a loss of habitat and would be unacceptable in relation to this policy.
- 4.4. The county council's response to the representations received is stated below:
- a) Although the supporting text to the policy did reference the hierarchy of sites, the policy wording has now been amended to account for this.
  - b) The terminology used within the policy has been changed to remove ambiguity.
  - c) The policy has been amended to state that there is a distinction between the hierarchy of sites.
  - d) Net gain is required to be demonstrated throughout the lifetime of the development.
  - e) The policy wording has been amended to further align with national policy and to offer more positive statements on protection of biodiversity and geodiversity.

- f) The policy now applies to mineral and waste developments. Restoration and aftercare requirements are contained within Policy 13: Restoration, Aftercare and After-use.
- g) Geodiversity considerations have been added to the revised policy.
- h) European Protected Species are explicitly mentioned in the policy and the textual amendment has been made.
- i) It is considered that this point offers a mechanism of mitigation where irreversible impacts have the potential to occur and where full conservation and enhancement may not be possible on site.
- j) Any site-specific effects on local habitat are covered in the relevant policies relating to those sites.

## **Draft Waste Local Plan 2021**

4.5. The Draft Waste Local Plan was published for a ten week Regulation 18 consultation from 11 January 2021 to 19 March 2021. This document included Non-strategic Policy 11: Biodiversity. The policy read as follows:

### **Non-Strategic Policy 11: Biodiversity**

Waste development proposals should be consistent with National and Local biodiversity policies and guidance, informed by existing and new ecological information as necessary and green infrastructure plans/strategies. In line with the mitigation hierarchy, proposals for waste development will be permitted where it can be demonstrated that throughout the lifetime of the development (including restoration where applicable);

- the impact on biodiversity through loss of or damage to habitats and/or species is minimised;
- there is a measurable net gain in biodiversity (either on site or via off-setting) consistent with Government guidance;
- biodiversity can be enhanced and contribute to the wider ecological network and local green/blue infrastructure through the introduction of appropriate measures;
- biodiversity sites will be protected or enhanced in line with the level of protection due to their designation;
- there is no loss or deterioration of irreplaceable habitats including ancient woodland, veteran trees and hedgerows; and
- the requirements of protected species (including European Protected Species) can be fully and satisfactorily demonstrated to be met at all stages of development.

Proposals must submit an acceptable ecological survey of the site prior to development and if appropriate, a scheme for monitoring biodiversity during or after the development.

4.6. During the consultation on the Draft Waste Local Plan, this policy received 8 representations. Generally, they were in support of the inclusion of this policy. The points raised are summarised below:

- a) The policy should recognise that not all waste developments would require an ecological survey as many applications relate to existing facilities already deemed acceptable. Instead, the need should be discussed on a case-by-case basis.
- b) The policy should include wording regarding wildlife corridors to avoid habitat fragmentation across an entire landscape. A suggested change is provided: The phrase '*... an acceptable ecological survey of the site*' should be extended with '*and its environs including habitats that may sustain or need wildlife corridors*'.
- c) The policy should be strengthened to require a biodiversity metric to value the site before and after the development.
- d) The policy should include a requirement for long term management and monitoring if extended ecological networks and biodiversity net gain are to create substantial long term enhancements to biodiversity.
- e) A textual amendment is suggested to ensure that on-site biodiversity net-gain is the preferred option:  
*'there is a measurable net gain in biodiversity (preferably either on site or otherwise via offsetting) consistent with Government guidance;'*
- f) The policy should include further protection for the species known to be struggling locally. The following text is provided:  
*'the requirements of protected species (including European Protected Species) and where possible Local Species of Conservation Concern, can be fully and satisfactorily demonstrated to be met at all stages of development'.*
- g) The policy should emphasise the need for an assessment of the impact of the development throughout its lifetime to ensure the survey process is thorough.
- h) An additional bullet point, suggested by the HRA, should be added to the policy to strengthen protection for European and internationally designated sites:  
*'... there will be no adverse effects on the integrity of European/internationally designated biodiversity sites, or the habitats and species on which they depend, either alone or in combination with other proposals.'*
- i) The requirement to undertake appropriate site assessments must be considered on a site-by-site basis. It is suggested that more flexibility needs to be built into these policies to take account of site-by-site circumstances.

4.7. The county council's response to the above representations is as follows:

- a) The policy wording has been amended to reflect this point.
- b) The policy strengthens protections for the wider ecological network, which would cover wildlife corridors.
- c) The policy now refers to the DEFRA biodiversity metric
- d) The requirement for a long term management plan is now included within the policy where appropriate

- e) The preference for on-site gain has been added to the policy wording
- f) This should be picked up by the required ecological assessment of the site.
- g) The policy requires an assessment of the impact of development prior to implementation and, where appropriate, for monitoring purposes after the development.
- h) The policy has been amended to explicitly reference the hierarchy of sites and the varying importance of the need for protection at each scale.
- i) The need to protect and conserve biodiversity must be assessed by each development proposal. Through these assessments and on a site-by-site basis, the level of action needed can be decided.

## **5. Alternative Reasonable Options**

- 5.1. The following alternative options have been considered (and fully assessed in the Sustainability Appraisal Report):
- Option 1 – Include a detailed criteria-based policy, consistent with national policy
  - Option 2 – A similar policy to Option 1, with less restrictive criteria
  - Option 3 – A policy similar to Option 1 but which sets out the hierarchy of sites and affords different levels of protection to each (preferred policy)

## **6. Conclusion**

- 6.1. This Policy Evidence Report demonstrates the justification for the inclusion of this policy in the emerging Minerals and Waste Local Plan Draft Plan. It summarises the national policy context and local context, along with the main issues raised through previous consultation and how the council has addressed those issues.
- 6.2. Any representations received on this policy at the Regulation 18 consultation stage will be carefully considered by the county council and used to inform any changes to the policy wording as appropriate.
- 6.3. This Policy Evidence Report was written to support the Draft Plan (Regulation 18) consultation. The next iteration of this report, to be published in support of the Proposed Submission (Regulation 19) version of the Plan, will summarise the main issues arising from the Regulation 18 consultation and will form part of the Regulation 22 statement, as set out by the Town and Country Planning (Local Planning) (England) Regulations 2012.