

Further Environmental Information

Network Rail East West Rail TWA Order

Response to

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House, 33 Horseferry Road, London SW1P 4DR*

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December 2018

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Reg. No. 680007 Reg. Charity No. 204330

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The Berks, Bucks and Oxon Wildlife Trust (BBOWT) welcomes the opportunity to respond to the Further Environmental Information for the Network Rail East West Rail TWA Order.

BBOWT has responded on several previous rounds of consultation and attended numerous meetings with EW Rail staff. We note that some of our concerns raised in previous responses have been addressed, which we greatly welcome. We also note, and welcome, that with the Further Environmental Information supplied the Environmental Statement is in a more complete state than previously. However the Further Environmental Information has not addressed the vast majority of our concerns. There remain outstanding some very serious concerns.

BBOWT does not object in-principle to the EW Rail proposal. However until the concerns, set out below, that we have with the approach taken in the TWAO application are resolved, then we maintain a holding objection.

Holding objection: BBOWT objects to the EW Rail TWAO application for the reasons set out in the response below.

We would be happy to meet with representatives from EW Rail to find solutions to the concerns we have set out below.

Introduction

Established in 1959, BBOWT has now grown to be the largest and most influential voluntary conservation organisation in the region concerned with all aspects of nature conservation. BBOWT has over 50,000 members and 1,800 volunteers. We own or manage 87 nature reserves, totalling over 2,600 ha.

BBOWT is one of 47 county-based Wildlife Trusts working across the UK. This makes the largest UK network of organisations dedicated exclusively to conserving all our habitats and species. The partnership has over 800,000 members, over 40,000 volunteers and over 2,300 nature reserves.

The EW Rail proposals will run on or directly adjacent to land owned and managed by BBOWT on two of our nature reserves. BBOWT works beyond our nature reserves to promote and protect wildlife throughout our region. The EW Rail proposals have the potential to cause major impacts on habitats and species of conservation interest as it passes through Buckinghamshire and Oxfordshire.

Consultation period

This response, whilst extensive, and in some areas quite detailed, should not be considered in any way to be comprehensive. In our view the response period has not been sufficient for the Further Environmental Information, and we believe that the time-frame was not sufficient for our effective participation, nor for that of members of the general public. Therefore the absence of comment on any particular matter should not be taken to mean an absence of concern.

1. Overarching issues

Net gain in biodiversity

We welcome the commitment (“Net Positive”) from EW Rail to ensure that the project delivers a net gain in biodiversity. We consider this commitment to be exactly what is required by the NPPF and other policy drivers and we therefore consider that the TWAO, as well as the overall project, should be clearly seeking a net gain in biodiversity rather than no net loss. We are greatly alarmed however by the fact that Network Rail are not applying for consent under a TWAO application on the basis of achieving a “net gain” in biodiversity.

We cannot see any reason for not “formally” seeking net gain in the TWAO application, as well as the aspiration for the project as a whole being for a net gain. The steer in planning policy is clearly for a “net gain” in biodiversity. To support that argument we attach in Appendix 1 a BBOWT note on net gain which sets out in detail key extracts from policy that clearly seek a net gain from development. We consider, as shown in the paper, that the wording of the previous NPPF gave clear support to our assertion that the TWAO application should be seeking a net gain in biodiversity. However since we wrote that paper the new NPPF was published on the 24th July 2018, and has stronger policy still in relation to net gain. The amendments to policy in favour of net gain in biodiversity are a clear indication that that is what is now expected. For example, paragraph 170, with our underlining, states: ..*“Planning policies and decisions should contribute to and enhance the natural and local environment by:*

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;”

Other references in support of the case that the EW Rail TWAO application should be achieving a “net gain” in biodiversity include:

The Natural England review of the HS2 No Net Loss metric

(<https://www.gov.uk/government/publications/review-of-hs2-ltds-no-net-loss-in-biodiversity-metric>)

stated:

“26. It is recommended that for Phase 2 the metric should be applied for the purpose of meeting a net gain objective, in order to fully accord with national policy, rather than simply aiming to achieve NNL.” (where NNL = no net loss)

The commitment from Network Rail in the EIA Scoping Report in paragraph 9.62 to provide a measurable net gain “In line with Network Rail objectives, the scheme is aiming for a measurable net gain”

So whilst we recognise (and welcome) that Network Rail have a project intention to achieve “net positive” we are greatly concerned that the TWAO application is not seeking a “net gain” in biodiversity. The planning policy requirement is for a net gain and we consider therefore that the TWAO application should clearly aspire to a net gain. For whoever ultimately takes this project forward and manages it in the long-term it must be clear that a net gain should be aimed for and that in order to ensure that this is the outcome it is essential that the TWAO order is clearly worded as showing a net gain in biodiversity will be expected.

The net gain should also be measurable in order to be properly assessed. In a previous consultation (Round 2 consultation in 2017) EW Rail provided a Metric calculation paper (Appendix 9.19 Net Positive) setting out their intention as follows:

“1.1.1 The East West Rail (EWR) Alliance committed to “delivering measurable net biodiversity gain and positively contributing to the conservation of nature in the region” (Sustainability Objective ENV03). To realise this commitment, the Alliance has undertaken a Biodiversity Net Positive assessment of the Project.

1.1.2 The assessment uses Defra’s metric1 to quantify biodiversity losses and gains from the Project in terms of ‘biodiversity units’ (BU) and ‘linear units’ (LU) for hedgerow habitats.”

and then went on in figure 9.19.1 to set out all the metric work that would be done over the next year culminating in the following: *“final report submitted with TWAO application and final ES”.*

Whilst the Further Environmental Information has now provided the outcome of the metric it is not possible to assess the metric as the working has not been provided. EW Rail should follow what HS2 did (and the majority in our experience of development applications do when using the metric) and provide full working to show the before and after habitat distinctiveness and condition scores and multipliers for each field etc. or GIS polygon. We would welcome this information being provided to us urgently so we are able to assess how the metric scores were arrived at.

The revised NPPF published just before the submission of this application also gives a very strong steer towards the net gain in biodiversity requirement set out in NPPF paragraph 170 being measurable e.g.:

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

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.”

It is not appropriate to determine the application until the metric report, demonstrating a net gain in biodiversity and with full working provided, is submitted and made available to be reviewed and commented on by relevant parties such as ourselves and others prior to the determination of the TWAO application.

Even the limited information that has been provided in Table 9.15 on page 67 of “Environmental Statement Volume 2i Project Wide Chapter 9 Ecology” is incomplete and we could not find an update of the Table in the Further Environmental Information. Paragraph 9.5.18 on the preceding page states that “The gains listed do not include the habitats that will be created in Route Section B (except for B2, B7 and B13), D and E ECS”

Table 9.15 shows significant or even severe losses in several key biodiversity habitats. For example it shows 56.7 hectares of broadleaved semi-natural woodland are to be lost. And yet only 6.8 hectares of land have been currently identified for the planting of compensatory woodland habitat, and no figure is given for how many hectares it is intended would be created. It is not possible to know whether the habitat creation that is to be considered following determination of the TWAO application will be enough to achieve “net gain” or even just “no net loss”. It is not appropriate for the application to be determined whilst this matter is still outstanding and with no indication of how

much compensatory habitat will be created for what are some highly significant losses of key wildlife habitat, including priority habitats.

The TWAO application should not be determined until this very serious issue is resolved.

No net loss in Biodiversity

We have assessed the document provided entitled: Appendix 9.16 Biodiversity accounting. We welcome this document but were shocked and surprised on reading it to discover that the TWAO application is not appearing to seek “no net loss” in biodiversity. As we had been forewarned of EW Rail’s intention to not seek a net gain within the TWAO application we were prepared to find that there would not be a net gain showing on the metric. What we were not expecting was to find a loss of minus 432 units for non-linear habitats on the project (note that although a small net gain of 27.6 units is proposed for linear habitats (e.g. largely hedgerows), the principles of biodiversity metrics are that linear and non-linear habitats are calculated in a different way and the figures are not comparable – a gain in one cannot be used to compensate for losses in the other). Indeed we were genuinely shocked to see such a figure of minus 432 units. Whilst HS2 did not pursue a net gain approach (despite many responders saying they needed to), they did, within the Hybrid Bill, commit to no net loss in biodiversity and to show that with a metric. We would reasonably expect (both in terms of standard practice and in terms of the NPPF) that even though EW Rail are not pursuing net gain in biodiversity within the TWAO application (despite our clear case above as to why they should be) that their metric would show no net loss in biodiversity. It is hard to describe quite how far minus 432 biodiversity units is from no net loss but it is considerable and represents a considerable impact on ecology. To put this into context, there are a variety of ways amongst providers of biodiversity offsets of calculating how much it costs to create habitat to offset losses but with one example we are aware of a loss of -432 units for non-linear habitats would cost in the region of 15 million pounds to offset. This hopefully shows quite how significant a net loss in biodiversity is proposed here. Such a scale of net loss is wholly incompatible with the following paragraphs of the NPPF:

“170..”Planning policies and decisions should contribute to and enhance the natural and local environment by:

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;.....

174. To protect and enhance biodiversity and geodiversity, plans should:

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.....

175. 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;”

Such a scale of net loss is immensely concerning and clearly contrary to planning policy. This issue must be addressed prior to the determination of the TWAO application with large areas of additional habitat creation being set out and agreed with full details of how this will result in, firstly, no net loss, and then, net gain.

The vast majority of the net loss occurs in Route Section 2B where a net loss of -373 units is proposed. This is the disused section of the railway and it is here that valuable habitats of woodland, scrub and open grassland are present that support exceptional populations of reptiles, invertebrates and breeding birds amongst other species. That such a large net loss is being accepted on this Route Section fully justifies the concerns we express below in the Protected Sites, Habitats and Species sections of our response that the habitat that these exceptional populations of species rely on is not in any way being adequately compensated for. A severe impact on these species, as well as on the habitats and on other species, is inevitable unless this matter is addressed.

The TWAO application should not be determined until this very serious issue is resolved.

In perpetuity management of habitat provided as mitigation, compensation and to achieve a net gain in biodiversity

East West Rail is expected to be in operation for the foreseeable future, that is in perpetuity. The impact on habitats lost or damaged in the process is therefore in perpetuity. **If a “net gain” in biodiversity is to be achieved, as required by the NPPF, then any habitats created to compensate for habitat loss so as to achieve that net gain should be present, and managed for wildlife, as long as the railway is there and in operation.** Even if the lesser aim of “no net loss” in biodiversity is accepted, then the case is the same, any habitats created to compensate for habitat loss so as to achieve no net loss in biodiversity should be present, and managed for wildlife, as long as the railway is there and in operation.

Volume 2i Chapter 16 Summary of Mitigation states that *“Each Ecological Compensation Site will be subject to a 30-year maintenance and management plan as part of a legal agreement between NR and the landowner”*

There is no indication as to what happens after these 30 years have elapsed. It is to be assumed that the railway will still be there and operating. Therefore the habitats it has impacted on will still be impacted. Once the 30 year agreements have ceased there is no guarantee that the habitats created to compensate for those lost will not be lost to development, intensive agriculture or many other land uses that will not be providing compensatory habitat for wildlife.

This application should not be determined until this serious issue is resolved.

To achieve such a resolution we consider that EW Rail should either:

- a) ensure that the land for mitigation/compensation/enhancement is purchased and retained within the railway estate with a legal commitment to manage on an in perpetuity basis for biodiversity, or

- b) ensure that if land for mitigation/compensation/enhancement is purchased and passed onto another body, there is a requirement for perpetuity management for biodiversity

or a combination of the above as appropriate for each parcel.

If mitigation/compensation/enhancement is secured with private landowners we would expect a management plan lasting for the lifetime of the railway, so that as long as the railway is there and running, the compensation is provided. Without this we do not consider that an outcome of Net Positive or even No Net Loss will have been achieved.

We accept that it may be difficult to find private landowners who would agree to such terms of in perpetuity management for the lifetime of the development and therefore suggest EW Rail pursue compensation methods which ensure that land for mitigation / compensation / enhancement is either

- a) purchased and retained within the railway estate with a legal commitment to manage on an in perpetuity basis for biodiversity, or

- b) purchased and passed onto an appropriate organisation that will commit to its in perpetuity management for biodiversity.

This may involve locating habitat away from the railway line in order to find landowners willing to sell but we consider this to be the only way of ensuring a genuine net gain is achieved by the development.

We do not consider that the TWAO application should be determined until the above issues are resolved.

Location of habitat created as mitigation, compensation and to achieve net positive

We would suggest that the habitats created for mitigation/compensation/enhancement be located so as to maximise the creation of ecological networks, and with substantial proportions located in BOAs. More detail on this is provided in the section titled “Ecological networks”.

2. BBOWT nature reserves

The Berkshire, Buckinghamshire and Oxfordshire Wildlife Trust has two nature reserves which are affected by the proposals. The impacts of construction on both, as we understand it, are deemed to have been considered through the HS2 ES process. However, both will be affected by the cumulative, intrusive nature of the proposals.

Finemere Woods and Meadows nature reserve

Our Finemere nature reserve lies alongside the proposed route between Waddesdon and Quainton. We have owned Finemere Woods SSSI since 1989, and in 2004 we acquired the meadows that lie between the woods and the current railway line, that is adjacent to the proposed route of EW rail.

We consider that the ES should consider the impact of the proposals on the visitor experience of the nature reserve, and consider appropriate mitigation. We were unable to find any reference to this in the ES. Opportunities for natural screening are limited, because of the vegetation management zone required by the HS2 proposals.

Calvert Jubilee nature reserve

BBOWT manage the Calvert Jubilee nature reserve, which lies on the north-west side of the line from Calvert to Aylesbury, and to the South of the line from Bicester to Winslow. We own the freehold of a small section of the reserve as well, which is directly affected by the proposals.

Our principle concern about the impact on Calvert Jubilee is that the proposals will, in combination with the HS2 project, make the site unworkable as a nature reserve. We could not find any evidence that the ES has recognised the impact of the line on the nature reserve as a visitor destination. We understand that the ES will work on the basis that construction impacts in this section will have been considered through the HS2 ES. However, Calvert Jubilee will be significantly affected as a result of the operation of the railway, which will have a cumulative impact on the enjoyment of the site by visitors as a result of noise, vibration and visual intrusion. Although the length of the reserve affected by EW rail is considerably shorter than that affected by HS2, the higher elevation, and visual prominence of the railway as seen from the reserve, will contribute to the effect.

Species for which the reserve is notable and which may be affected by the operation of the proposals, and should therefore be considered in the ES include:

- Wintering birds, during all winters but particularly vital during cold winters when due to its depth the reserve rarely freezes over providing vital habitat when other waterbodies have frozen over;
- Breeding birds. Turtle Dove: this rare and declining species regularly nests either in the scrub on the reserve or the adjoining Calvert Brickpits LWS (Grebe Lake). Nightingale: although not proven to have bred in recent years singing nightingales have been recorded recently.
- Butterflies and other invertebrates. All five UK hairstreak butterflies were recorded in 2015. Purple Emperor is present too.

The habitats and species of the reserve are vulnerable to disturbance through noise and lighting, changes in hydrology (water quantity and water quality), and air pollution.

We do not consider that the TWAO application should be determined until the above issues are resolved.

3. Designated Sites

Avoidance of impact on Local Wildlife Sites (LWSs) and Biological Notification Sites (BNSs)

The proposed development lies on, directly adjacent to, or close to, numerous LWSs and BNSs which are the locally designated sites referred to in paragraph 174 of the NPPF:

“174. 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 biodiversity⁵⁶; wildlife corridors and stepping stones that connect them; and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation⁵⁷;”

These sites, along with SSSIs, represent the highest quality wildlife sites within the County and impact on them should be avoided. Mitigation/compensation should only be considered as a last resort. Impact can occur directly if sites lie within the proposed development area, but also indirectly through disturbance from lighting or noise, changes in hydrology (water quantity and water quality), or air pollution. We provided in our response to the EW Rail Stakeholder Consultation a list of locally designated sites that we were aware of that are on, adjacent to, or close to the proposed line.

LWS / BNSs on section from Bicester to Milton Keynes

Wildlife site name and designation	Location and map reference	The potential impact on this site of East West rail route
Lawn Farm, Tinkers Hole LWS	SP661249	On or adjacent to route
Calvert Brick Pits, Great Moor Sailing Club LWS	SP677250	On or adjacent to route
Calvert Jubilee Nature Reserve LWS	SP683250	On or adjacent to route
Verney Junction Station LWS	SP733274	On or adjacent to route
Grassland near Addington BNS	SP741273	Within 50m of route
South Lake, Addington BNS	SP746277	Within 50m of route
Old Quarry, Winslow BNS	SP769285	On or adjacent to route
Wood copse off Magpie Way LWS	SP773284	Within 100m of route
Claypit near Horwood House BNS	SP795290	On or adjacent to route
Horwood House BNS	SP797295	On or adjacent to route
Ponds east of Lower Grove Farm BNS	SP807299	On or adjacent to route
Railway Bank by Salden Wood LWS	SP818309	On route
Salden Wood LWS	SP823310	On or adjacent to route
Railway Siding east of Salden Wood LWS	SP831316	On route
Newton Longville Brickworks BNS	SP852323	On route
Newton Longville Brickpits BNS	SP863323	Within 300m of route
Blue Lagoon BNS	SP868327	On or adjacent to route
Grand Union Canal, Fenny Stratford to Water Eaton BNS	SP883335	Within 200m of route
Caldecote Lake BNS	SP889352	On or adjacent to route

SSSIs, LWSs and BNSs on section of route from Calvert to Princes Risborough via Aylesbury

Wildlife site name and designation	Location and map reference	The potential impact on this site of East West rail route
Calvert Jubilee LWS	SP683250	On or adjacent to route
Calvert Railways Station LWS	SP689246	On or adjacent to route
Decoypond Wood LWS	SP695239	On or adjacent to route
Sheephouse Wood SSSI	SP702234	On or adjacent to route
Finemere Wood SSSI	SP715220	Within 200m of route
Track leading to Railway BNS	SP710215	On or adjacent to route
Traditional Orchard	SP715212	On or adjacent to route
Grendon & Doddershall Meadows LWS	SP724204	On or adjacent to route
Waddesdon Common LWS	SP751183	On or adjacent to route
Blackgrove Meadows BNS	SP754186	Within 100m of route
Sunny Hill Farm Pastures LWS	SP759180	On or adjacent to route
River Thames south east Putlowes BNS	SP791148	On or adjacent to route
Aylesbury Sewage & Works LWS	SP790147	Within 100m of route
Great Kimble Pond BNS	SP822060	Within 50m of route
Tumulus Field Great Kimble BNS	SP823059	Within 200m of route
North of the Grange BNS	SP819058	On or adjacent to route
Kingsmead Meadow & Pond BNS	SP805046	Within 300m of route

We do not consider that the ES or the Further Environmental Information has set out in sufficient detail the compensation that will be provided for any impacts on these designated sites. Whilst we accept that impacts on some will be minor or not needing compensation, there are many that will be impacted and we do not consider this impact is sufficiently dealt with. As already indicated above the Table 9.15 in the original TWAO application is not yet complete and currently shows significant losses for some habitats.

We could not find an update for Table 9.15 in the Further Environmental Information. The main report in the Further Environmental Information stated that *“Whilst the full detailed design of the embedded mitigation and some ECSs has not yet been completed, some further information is presented in Technical Appendix 9.13 in Part II. The areas of different habitats lost and created in each Route Section is provided.”* However our review of Technical Appendix 9.13 did not reveal an update to Table 9.15 from the original TWAO application. This is a critical table of information. The original application showed an alarming loss of significant wildlife habitats as a result of the scheme.

For example a few of the most serious habitat losses are shown below:

Habitat	Area (ha) to be lost	Area (ha) to reinstated/gained
Broadleaved semi natural Woodland	56.7	6.8
Dense scrub	37.6	18.0
Neutral grassland – semi-improved	20.1	18.0
Poor semi-improved	12.1	0

grassland

Please note that standard expectations for habitat compensation are that, due to the time taken to gain habitat condition and the loss in wildlife value during that time, and because of the risk of unsuccessful habitat creation, it is customary to create considerably more habitat than is lost. The above figures should be considered in that context. They already show a net loss but taking into account the customary practice of creating considerably more habitat than is lost shows that loss to be even higher.

Whilst the described increases in unimproved grassland (3ha before 15.5 ha after) and scattered scrub (2 ha before 5.4 ha after) in the table are welcome and go a little way towards compensating for the above grassland and scrub losses it should be noted that a significant part of such increases would be expected anyway in order to allow for the time to target condition impacts and risk factors described above. So these do not compensate for the losses described above.

The TWAO application should not be determined until all the Ecological Compensation Sites to compensate for impact on these designated sites have been identified, and full details of the habitat creation in those sites set out. Even though the Further Environmental Information provided additional information on these sites for many sites it is still lacking.

In particular, the TWAO application should not be determined until an updated version of Table 9.15 is provided showing that the losses of habitats such as unimproved and semi-improved grassland, wetland and pond, woodland, and scrub are fully compensated for. It is these existing habitats that make the route so rich in reptiles, birds and invertebrates amongst other groups. If the habitat loss is not adequately compensated for then it is inevitable that the exceptional populations of these species will be substantially negatively impacted.

Without this information we do not consider the following NPPF paragraphs will have been complied with:

NPPF paragraphs 174 and 175 state:

“174. 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 biodiversity⁵⁶; wildlife corridors and stepping stones that connect them; and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation⁵⁷; 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.

175. 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;”

We do not consider that the TWAO application should be determined until the above issues are resolved.

Milton Keynes Wildlife Corridors

Milton Keynes has a network of wildlife corridors (Railway, Road, Wetland, Woodland) which are treated by the planning authority as equivalent to Local Wildlife Sites. Inevitably the EW Rail works and the Railway corridors coincide to some extent and there is also potential impact on other Wildlife Corridors. Impact on the Wildlife Corridors should be avoided wherever possible, and compensation provided where impacts are unavoidable. In particular the lineside habitat creation and management should ensure that the Railway Corridors continue to provide viable wildlife corridors.

4. Habitats

We have already set out in Section 3 above how the compensation for habitats lost is not sufficient. We do not repeat that text here but provide additional text to set out our concerns.

NPPF paragraph 174 states:

“174. 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 biodiversity⁵⁶; wildlife corridors and stepping stones that connect them; and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation⁵⁷; 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 addition to impacts on designated sites, the proposal will have significant impacts on priority habitat and other local wildlife-rich habitats as referred to in the NPPF excerpts above. Impacts on priority habitat should be avoided if at all possible, with mitigation/compensation only considered as a last resort. Impacts on other habitats should be minimised, and where unavoidable all habitat loss should be fully compensated for to achieve a net gain for biodiversity.

We highlight here particular concerns regarding the habitats present on the mothballed line and its embankment as these are of value for many groups of species, even when not priority habitat:

Priority habitats:

Deciduous woodland (of particular value to flora and breeding birds).

Species-rich grassland (of particular value to flora, invertebrates, reptiles

Open Mosaic Habitat on Previously Developed Land (of particular value to flora, invertebrates and reptiles).

Hedgerows (of particular value to breeding birds, wintering foraging birds, and invertebrates, particularly black and brown hairstreak).

Other habitats:

Scrub (of particular value to breeding birds, wintering foraging birds, and invertebrates, particularly black and brown hairstreak).

Any areas of open habitats / bare ground which do not meet Open Mosaic priority habitat (of value to flora, invertebrates and reptiles).

Semi-improved grassland on embankments (of value to invertebrates, reptiles, small mammals and birds)

We do not consider that the ES or the Further Environmental Information has set out in sufficient detail the compensation that will be provided for impacts on these habitats. Whilst we welcome the provision of Table 9.15 in the 2i Project Wide Chapter 9 Ecology section which sets out the area in hectares of each habitat to be lost, as already indicated above, and below in the Woodland section, the Table 9.15 is not yet complete (and, as stated above, we could not find an updated version in the Further Environmental Information) and currently shows significant losses for some habitats.

We would emphasise that the loss of any priority habitat as a result of the EW Rail project is a matter of great concern, resulting in serious impact on wildlife. Whilst some loss along the route of the line is inevitable if the project is approved, all efforts should be taken to avoid losses of priority habitat. Whilst the route of the line itself is hard to move, we do not consider it acceptable for construction sites / access routes etc. to result in the loss of significant areas of priority habitat, as there is more flexibility regarding the location of a construction site/access route than for the line itself. We have not had time to fully assess all the construction site locations as yet but we object to the location of site B6 at Newton Longville Brickpits due to impact on a BNS, priority habitat and species.

Selected policy drivers for the protection of priority habitat are given below:

In addition to NPPF paragraph 174 already quoted above, paragraph 175 states:

“175. 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; “

We make below some general points regarding how different habitats are dealt with across the entire project area:

Woodland

Table 9.15 in 2i Project-Wide Chapter 9 Ecology sets out that 56.7 hectares of broadleaved semi-natural woodland is to be lost. This is a highly significant amount of such a vital habitat. As yet, Table 9.15 indicates that 6.8 hectares are to be reinstated/gained. Paragraph 9.5.18 on the preceding page states that “The gains listed do not include the habitats that will be created in Route Section B (except for B2, B7 and B13), D and E ECS”. We find it immensely concerning that EW Rail are bringing forward this application without yet having identified sites to create sufficient habitat to at least replace what is lost. Bearing in mind how long it will take to grow to maturity the

DEFRA biodiversity accounting metric would indicate that a considerably larger amount of woodland would need to be planted than that lost in order to achieve net gain (as required by NPPF paragraph 170) or even just no net loss in biodiversity, and in order to comply with the above quoted paragraphs 174 and 175.

Proposals must be brought forward prior to this TWAO application being determined setting out the creation of sufficient woodland to achieve a net gain in this habitat.

Scrub

The application sets out that 37.6 ha of dense scrub and 2 hectares of scattered scrub will be lost. Although scrub is not accorded priority habitat status, its value for wildlife is immense and the loss of this amount of scrub habitat is a significant concern. The value of scrub to wildlife in the area includes:

- habitat for black and brown hairstreak butterflies. Much of the EW Rail line lies within the core area nationally for these two species;
- habitat for other invertebrates which are significant in the area;
- breeding, foraging and sheltering habitat for breeding, non-breeding and wintering birds, including numerous Amber and Red listed species that are present in the area.
- habitat for some exceptional assemblages of reptiles;
- foraging habitat for bats, and for many other mammal species.

Proposals must be brought forward prior to this TWAO application being determined setting out the creation of sufficient scrub to achieve a net gain in this habitat.

Grassland

Table 9.15 sets out that 3 hectares of unimproved and 20.1 hectares of semi-improved grassland will be lost.

We cite the case already made above in the introduction regarding the value of priority habitat and the value that should be afforded to it.

In 2014 Natural England published a revision to Chapter 3 (Lowland Grasslands) of the Guidelines for the Selection of Biological SSSIs. This document recognised that certain types of lowland grassland priority habitat (including MG5 and MG4 and types of lowland calcareous grassland found in the area affected by the project such as CG2, CG4 and CG5, the principal grassland priority habitats involved here) were now so rare and threatened that the standard SSSI protocols of selecting a sample of sites that meet SSSI standards were no longer appropriate and that “all examples greater than 0.5 ha should be selected.” The ES should assess blocks of MG4/MG5/CG2/CG4/CG5 habitat greater than 0.5 ha in area on the basis that they may qualify as SSSIs.

The above mentioned Chapter 3 is available at:

[http://jncc.defra.gov.uk/pdf/SSSI_Chptr03_revision_2014\(v1.0\).pdf](http://jncc.defra.gov.uk/pdf/SSSI_Chptr03_revision_2014(v1.0).pdf)

Proposals must be brought forward prior to this TWAO application being determined setting out the creation of sufficient species-rich grassland to achieve a net gain in this habitat.

We do not consider that the ES has set out in sufficient detail the compensation that will be provided for impacts on these habitats. As already indicated above the Table 9.15 is not yet complete and currently shows significant losses for some habitats. The TWAO application should not be determined until all the Ecological Compensation Sites to compensate for impact on these designated sites have been identified and full details of the habitat creation in those sites set out sufficiently to achieve a net gain in these habitats.

Without this information we do not consider the following NPPF paragraphs will have been complied with:

NPPF paragraphs 174 and 175 state:

“174. 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 biodiversity⁵⁶; wildlife corridors and stepping stones that connect them; and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation⁵⁷; 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.

175. 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;”

We do not consider that the TWAO application should be determined until the above issues are resolved.

5. Species

We provide comments in respect to some species groups. We have not had time to assess all species groups. The absence of comment on a group should not be taken as meaning we have no concerns on the approach taken with that group. Please refer to the ecology section of responses from local authorities for more details on concerns in relation to other species groups.

Surveys

We share the concern of other consultees that many surveys are yet to be completed.

Reptiles

We wrote the following in our response to the EW Rail Stakeholder Consultation:

“We highlight that the mothballed line in particular is likely to support populations of adder, grass snake, common lizard and slow worm. Detailed surveys and avoidance/mitigation proposals will be required.

Whilst we appreciate that in legal terms adders are no more protected than the other reptile species we would emphasise that we consider the fact that two separate adder records have been recorded along the mothballed line between Bicester and Milton Keynes as being of exceptional interest. There are very few sites known for adder in Buckinghamshire and Oxfordshire. As such we would suggest that particular emphasis is placed on assessing the line for adders.”

We stand by the above and now have the following additional comments:

We welcome the detailed survey information that has been provided. This confirms our belief that the project area, and particularly the section between Bicester and Milton Keynes is of exceptional value for reptiles. Although we have not had time to check this out, parts of the line may well be of a standard that they could be designated LWS purely for their reptile populations. The ES acknowledges the high value of this section of the line for reptiles and the considerable impact of the works and resulting large scale loss of reptile habitat. Whilst the ES acknowledges the exceptional value of the line for reptiles, we do not consider that mitigation has been set out in sufficient detail at this stage for it to be evident that populations of reptiles will be maintained and there will be no adverse effect.

The situation is similar to that already set out with habitats. There is insufficient detail regarding the habitat creation for the Ecological Compensation Sites that have been identified.

We would welcome further discussion with EW Rail regarding the mitigation and compensation sites proposed. We are not convinced that the unique habitat that has developed on the line, where succession is greatly slowed by the combination of substrate and management, and where both N and S aspects are provided, can be replaced by the habitats proposed on a series of mitigation sites largely created on flat land that is currently farmed and likely to have high nutrient status. We would welcome a meeting with the reptile specialist from the project team to discuss the provision. We are concerned that in particular the sites will lack the open substrate and N-S aspects that the line provides. We seek assurance that the particular conditions of the mothballed line will be replicated as closely as possible. The mothballed line in particular, but also potentially some other sections of the line, are probably some of the best sites in Buckinghamshire for reptiles. The ES acknowledges this high value but the lack of detail of the mitigation provided means we do not consider there is enough evidence to be confident that there will be no adverse impact on reptiles.

Outside of the records for adder provided by EW Rail we are aware of one other site in Buckinghamshire (in the Chilterns) where we have been informed by developers in the last few years that adders are present. There is the possibility of the adder becoming extinct or close to extinct in North Buckinghamshire/Milton Keynes unless compensatory habitat is successful. This is a matter of great concern and we would welcome a meeting with the project reptile specialist regarding this matter.

We do not consider that the TWAO application should be determined until the above issues are resolved.

Invertebrates

We wrote the following in our response to the EW Rail Stakeholder Consultation:

“We welcome the proposals for detailed invertebrate surveys. We consider that the route, particularly the mothballed route, is likely to support along much of the line a significant range of invertebrates including black and brown hairstreak, dingy skipper and, possibly, wood white.

We would emphasise again that in our experience it is vital the non-presence of an existing record should not in any way be taken as suggesting it is unlikely that a species is present and that where there is habitat that is likely to support invertebrates meeting these criteria: protected species / Species of Principal Importance (SPI) / UK Biodiversity Action Plan (BAP) / Red Data Book (RDB) / Scarce invertebrates, then invertebrate surveys should take place. These surveys should include black and brown hairstreak, dingy skipper and wood white.

With respect to assessing habitat we would emphasise that we consider that the vast majority of the line, particularly the mothballed line, will be of significant value to invertebrates.”

We stand by the above and now have the following additional comments:

For both the black and brown hairstreak the project lies within their core area within the UK. One reason that this is their core area is the high content of blackthorn within hedgerows and scrub in North Buckinghamshire. The EW rail line, particularly the mothballed section, contributes greatly to this provision of blackthorn. Therefore there is significant potential impact on both black and brown hairstreak. The mitigation should ensure that the needs of each of these species is met in terms of the different growth types/structures of blackthorn that each species favours. We can provide further information on this on request.

At present we are greatly concerned that there will be insufficient habitat creation to fully compensate for the impact of the clearance of scrub. Table 9.15 on page 67 of “Environmental Statement Volume 2i Project Wide Chapter 9 Ecology” shows that 37.6 hectares of dense scrub will be lost. At present only 18 hectares are indicated to be reinstated/gained. Paragraph 9.5.18 on the preceding page states that “The gains listed do not include the habitats that will be created in Route Section B (except for B2, B7 and B13), D and E ECS”. But we cannot find any indication how much scrub is intended to be created as compensation once sites have been identified. Due to the time it takes for scrub to mature then we would expect compensation to create significantly more habitat than what is lost. With the information that is set out at present then we are greatly concerned that there will be significant adverse impact on these rare butterflies in their key stronghold within the UK.

We welcome the recognition by the ES that the line is of high value for invertebrates. We would welcome further discussion with EW Rail regarding the mitigation and compensation sites proposed. We are not convinced that the unique habitat that has developed on the line where succession is greatly slowed by the combination of substrate and management, and where both N and S aspects are provided, can be replaced by “a mosaic of grassland, scrub and wetland” on a series of mitigation sites largely created on flat land that is currently farmed and likely to have high nutrient status.

The invertebrate populations that have developed on the line depend on the unique habitat characteristics. We are concerned that the sites will lack in particular the open substrate and N-S aspects that the line provides. We also seek assurance that the particular conditions of the mothballed line will be replicated as closely as possible. The mothballed line in particular and other sections of the line are possibly some of the best sites in Buckinghamshire for invertebrates. The ES acknowledges this high value but the lack of detail of the mitigation provided means we do not consider that there is evidence there will be no adverse impact on populations.

We do not consider that the TWAO application should be determined until the above issues are resolved.

Birds

We wrote the following in our response to the EW Rail Stakeholder Consultation:

“We welcome the proposals for surveys for both breeding and wintering birds. We consider that the route, particularly the mothballed route, is likely to support along much of the line a significant range of breeding birds. We would emphasise that in our experience it is vital the non-presence of an existing record should not in any way be taken as indicating it is unlikely that a species is present and that where there is habitat that is likely to support bird species as follows:

Those listed on Schedule 1 of the Wildlife and Countryside Act (1981) (as amended) or on Annex 1 of the Birds Directive;

Species of Principal Importance listed on Section 41 the NERC Act (2006);

and those listed on the RSPB’s Birds of Conservation Concern register;

then breeding / wintering bird surveys should take place. We would suspect that this should result in the vast majority of the line, particularly the mothballed line, being surveyed for breeding birds. For the mothballed line in particular, in our opinion rather than focusing too much on selection of sites that walking along the line doing territory mapping along the full length is likely to be the best option.

The Conservation of Habitats and Species (Amendment) Regulations 2012 require authorities to “take such steps in the exercise of their functions as they consider appropriate to secure the objective in paragraph (3), so far as lies within their powers”. The objective being: “the preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in the United Kingdom”, subject to taking appropriate account of economic and recreational requirements.

Numerous bird species will be impacted. We point out that the scrub in the Calvert Jubilee/Grebe Lake area is used by breeding turtle doves, and this must be taken into account in terms of avoidance/compensation measures.”

We welcome the valuation of bird populations as being of county level. However we are greatly concerned as there is insufficient evidence of mitigation at present to be sure that no adverse impact on these diverse bird populations will occur.

For example, across the whole project 37.6ha of dense scrub is expected to be removed according to a table in the Net Positive Appendix. This habitat, as already set out in the habitats section above, provides valuable resource to numerous breeding birds, some of which are Amber and Red listed, some are priority species and some are neither. It also provides foraging/sheltering habitat to wintering and non-breeding birds, again some of which are Amber and Red listed, some are priority species and some are neither. But all of them fall within the purview of the above-mentioned comment we have already made: *“The Conservation of Habitats and Species (Amendment) Regulations 2012 require authorities to “take such steps in the exercise of their functions as they consider appropriate to secure the objective in paragraph (3), so far as lies within their powers”. The objective being: “the preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in the United Kingdom”, subject to taking appropriate account of economic and recreational requirements.”* and the species which are priority species fall within the planning policy of paragraph 174 of the NPPF.

As already discussed above in relation to invertebrates only 18 hectares of dense scrub is so far identified to be created. As set out earlier in the habitats section there is also a lack of detail on the habitats to be created in the Ecological Compensation Sites and not all sites appear to have been identified yet.

At present the provision for birds is not sufficient to comply with the requirements of the NPPF or *The Conservation of Habitats and Species (Amendment) Regulations 2012* so that for all species EW Rail can genuinely claim that they have contributed to “*the preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in the United Kingdom*”, The Net Positive aim of the project should lead to an aspiration for there to be more numerous and diverse bird populations after the development than before, so we would expect the final ES to see a commitment to a genuine net gain for all birds”.

We do not consider that the TWAO application should be determined until the above issues are resolved.

6. Ecological Networks

The NPPF states in paragraph 174:

“174. 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 biodiversity⁵⁶; wildlife corridors and stepping stones that connect them; and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation⁵⁷; 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.”

The final ES should therefore consider opportunities for habitat protection, restoration and creation in the appropriate local ecological networks, which are the Biodiversity Opportunity Areas (BOAs) in Buckinghamshire and the Conservation Target Areas (CTAs) in Oxfordshire. We are not saying that this has not been dealt with in the ES but due to lack of time we have not the opportunity to fully assess how this aspect has been considered so far. BOAs are local ecological networks, established by the Buckinghamshire and Milton Keynes Biodiversity Partnership and are the areas referred to in the NPPF above as “*areas identified by local partnerships for habitat restoration or creation*”. BOAs are considered to be the most important areas for wildlife conservation in Buckinghamshire and Milton Keynes where targeted conservation action will have the greatest benefit. The main aim within BOAs is to restore biodiversity at a landscape-scale through the maintenance, restoration and creation of BAP priority habitats. BOAs provide a key focus for delivery of the Buckinghamshire and Milton Keynes Biodiversity Action Plan (BAP). CTAs are synonymous with BOAs.

The Phase 2 proposed line runs:

within 250m to the Ray BOA/CTA just to the E of Bicester (see http://www.buckinghamshirepartnership.co.uk/media/1022753/upper_ray_boa_statement_dec_2010.pdf and <http://www.wildoxfordshire.org.uk/wp-content/uploads/2014/02/Ray-CTA.pdf>). The Ray BOA/CTA also lies within a BBOWT Living Landscape Project Area (see <http://www.bbowl.org.uk/what-we-do/living-landscapes/upper-river-ray-floodplain>);

within 500m of the Bernwood BOA between Bicester and Milton Keynes (see http://www.buckinghamshirepartnership.co.uk/media/1022478/bernwood_boa_statement_dec%202010.pdf);

directly through Whaddon Chase BOA to the SW of Milton Keynes (see http://www.buckinghamshirepartnership.co.uk/media/1022763/whaddon_chase_boa_statement_dec_2010.pdf)

within 750m of the Greensand Ridge BOA (see http://www.buckinghamshirepartnership.co.uk/media/1022618/greensand%20ridge_boa_statement_dec_2010.pdf)

These ecological networks would make particularly good locations for habitat restoration and creation requirements identified as necessary to achieve “biodiversity net positive”. We highlight below key restoration and creation habitat aspirations for these areas:

Ray BOA/CTA:

Lowland Meadow (including MG4 floodplain meadows): Restoration, Creation
Ponds: Restoration, Creation
Rivers: Restoration
Hedgerows: Restoration

Bernwood BOA:

Woodland: Restoration, Creation
Wood Pasture & Parkland: Restoration
Lowland Meadows: Restoration, Creation
Ponds: Restoration, Creation
Hedgerows: Restoration, Creation

Whaddon Chase BOA:

Fens: Restoration, Creation
Hedgerows: Restoration, Creation
Lowland Meadows: Restoration, Creation
Woodlands: Restoration, Creation
Wood-pasture & Parkland: Restoration
Ponds: Restoration, Creation

Greensand Ridge BOA:

Lowland Heathland: Restoration, Creation
Lowland Acid Grassland: Restoration, Creation
Lowland Fen: Restoration
Hedgerows: Restoration
Lowland Meadows: Restoration
Ponds: Restoration, Creation
Wood Pasture & Parkland: Restoration
Woodlands: Restoration

There are also a number of local BOAs in Buckinghamshire that the line runs through and which would also potentially make good locations for habitat compensation:

Claydon and Padbury Streams BOA; North Bucks Fens BOA; Milton Keynes City BOA; Ouzel Valley BOA.

Further details on these BOAs are available from:

<http://www.buckinghamshirepartnership.co.uk/biodiversity/biodiversity-opportunity-areas/>

7. Connectivity

Both the Lawton Review – Making Space for Nature (commissioned by DEFRA) and Biodiversity 2020 (DEFRA) emphasised the importance of maintaining and enhancing ecological connectivity. It is not clear from the information supplied whether the proposals will include any fencing over and above that already present. Any linear fencing that is necessary is likely to impact on the permeability of the landscape, potentially separating populations of land animals. Purpose-built green bridges should be implemented at strategic locations determined in consultation with local biodiversity stakeholders. These should be wide enough to act as genuine wildlife corridors and should take account of the document: “Natural England Commissioned Report NECR181; Green Bridges; A literature review. July 2015”.

8. Conclusion

Holding objection: BBOWT objects to the EW Rail TWAO application for the reasons set out in the response above.

We would be happy to meet with representatives from EW Rail to find solutions to the concerns we have set out above.

Appendix 1

Net Gain for biodiversity from developments

Introduction

This note has been produced in January 2017 by the Berkshire, Buckinghamshire and Oxfordshire Wildlife Trust to set out the national policy background for planned development, that is development brought forward through the spatial planning process, to contribute to the provision of net gains for biodiversity.

The note sets out the relevant sections of the government’s policy on planning, as embodied in the National Planning Policy Framework (NPPF), and in the guidance that supports the interpretation of the NPPF. It then details the relevant sections of the Natural Environment White Paper, which, pending the production of the 25 year plan for the Natural Environment due to be drafted this year (2017), remains the Government’s current policy statement on biodiversity issues.

We then highlight relevant parts of the recent review of HS2 Ltd.’s approach to biodiversity impacts carried out by Natural England at the request of the High Speed Rail (London - West Midlands) Bill Select Committee (Commons).

Examples are provided of bodies engaged with the planning process who have developed approaches designed to provide a net gain in biodiversity. Finally we add our interpretation of implications of the information.

Throughout this note we have ensured that quotations are accurate at the current time. However, planning policy changes rapidly, and care should be taken to check that the information remains current. Where possible we have provided links to the relevant information to make checking as simple as possible. Where context is required we have used **bold type** to emphasise the sections of text directly related to net gain for biodiversity.

National policy and guidance

This section of this note contains quotes from the National Planning Policy Framework (NPPF), the Government's guidance that supports the interpretation of the NPPF, provided only on the .gov.uk website,

The National Planning Policy Framework

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/60777/2116950.pdf

NPPF paragraph 7 states:

*"7. There are three dimensions to sustainable development: economic, social and environmental. **These dimensions give rise to the need for the planning system to perform a number of roles:.....***

- *an environmental role – contributing to protecting and **enhancing our natural, built and historic environment**; and, as part of this, **helping to improve biodiversity**, use natural*

resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy."

NPPF paragraph 8 states:

*"**to achieve sustainable development**, economic, social and **environmental gains** should be sought jointly and simultaneously through the planning system..."*

NPPF paragraph 9 states:

*Pursuing sustainable development involves seeking **positive improvements in the quality of the built, natural and historic environment**, as well as in people's quality of life, including (but not limited to):.....*

- ***moving from a net loss of bio-diversity to achieving net gains for nature;***

NPPF paragraph 17 states:

*"Within the overarching roles that the planning system ought to play, a set of core land-use planning principles should underpin both plan-making and decision-taking. These 12 principles are that **planning should:.....***

.....contribute to conserving and enhancing the natural environment"

NPPF paragraph 109 states:

“The planning system should contribute to and enhance the natural and local environment by:

*minimising impacts on biodiversity and **providing net gains in biodiversity where possible**, contributing to the Government’s commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;”*

NPPF paragraph 114 states:

“114. Local planning authorities should:

- set out a strategic approach in their Local Plans, planning positively for the creation, protection, **enhancement** and management **of networks of biodiversity** and green infrastructure....”

NPPF paragraph 118 states:

“118. When determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:

- *if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;.....*
- ***opportunities to incorporate biodiversity in and around developments should be encouraged;***”

NPPF paragraph 152 states:

“Local planning authorities should seek opportunities to achieve each of the economic, social and environmental dimensions of sustainable development, and net gains across all three.”

NPPF paragraph 157 states:

“Crucially, **Local Plans should:**

[...]

- **contain a clear strategy for enhancing the natural**, built and historic **environment**, and supporting Nature Improvement Areas where they have been identified.”

NPPF paragraph 187 states:

“.....Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area.”

NPPF planning guidance (provided only on .gov.uk)

<http://planningguidance.planningportal.gov.uk/blog/guidance/natural-environment/biodiversity-ecosystems-and-green-infrastructure/>

“Is there a statutory basis for planning to seek to minimise impacts on biodiversity and provide net gains in biodiversity where possible?”

Yes. [Section 40 of the Natural Environment and Rural Communities Act 2006](#), which places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity. A key purpose of this duty is to embed consideration of biodiversity as an integral part of policy and decision making throughout the public sector, which should be seeking to make a significant contribution to the achievement of the commitments made by Government in its [Biodiversity 2020 strategy](#).....

The National Planning Policy Framework is clear that pursuing sustainable development includes moving from a net loss of biodiversity to achieving net gains for nature, and that a core principle for planning is that it should contribute to conserving and enhancing the natural environment and reducing pollution.

See related policy: [paragraph 9](#) ; [paragraph 17 – 7th bullet](#); [paragraph 109](#); [paragraph 113](#); [paragraph 114](#); [paragraph 117](#); [paragraph 118](#); [paragraph 119](#); [paragraph 157 – last bullet](#)”

The Natural Environment White Paper

Issued in 2011 by the Coalition Government, the Natural Environment White Paper remains the Government’s formal policy, although a green paper setting the framework for a 25 year plan for the natural environment is expected imminently.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228842/8082.pdf

The Executive Summary states:

“5. Past action has often taken place on too small a scale. We want to promote an ambitious, integrated approach, creating a resilient ecological network across England. We will move from net biodiversity loss to net gain, by supporting healthy, well-functioning ecosystems and coherent ecological networks.....

“6..... Through reforms of the planning system, we will take a strategic approach to planning for nature within and across local areas. This approach will guide development to the best locations, encourage greener design and enable development to enhance natural networks. We will retain the protection and improvement of the natural environment as core objectives of the planning system. We will establish a new, voluntary approach to biodiversity offsets and test our approach in pilot areas.”

The white paper states:

“2.33... The Government expects the planning system to deliver the homes, business, infrastructure and thriving local places that the country needs, while protecting and enhancing the natural and historic environment.

2.35...We need a more strategic and integrated approach to planning for nature within and across local areas, one that guides development to the best locations, encourages greener design and enables development to enhance natural networks for the benefit of people and the environment as part of sustainable development. We will retain protection and improvement of the natural environment as core objectives for local planning and development management.

2.8....We will move progressively from net biodiversity loss to net gain, by supporting healthy, well-functioning ecosystems and establishing more coherent ecological networks.”

Natural England's review of HS2 Ltd's No Net Loss Metric

In preparing the Bill to bring forward the first phase of the High Speed Two rail proposals, HS2 Ltd, the government owned company established to deliver the project, set themselves a target of No Net Loss to biodiversity from the scheme. An independent review of HS2 Ltd's approach was requested by the High Speed Rail (London - West Midlands) Bill Select Committee (Commons), which was carried out by Natural England.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/565691/review-of-hs2-no-net-loss-metric.pdf

“10.34 Looking ahead to HS2 Phase 2, and having regard for the emerging commitments to achieving a net gain for biodiversity by other infrastructure providers such as Network Rail and Highways England, there is clearly an impetus to make a greater contribution to biodiversity conservation for HS2 Phase 2. The terms ‘net positive’ or ‘net gain’ are now commonly used to signal a commitment to achieving a biodiversity credit rather than simply preventing a deficit.

*10.35 The NPPF requires development to achieve a net gain where possible. It is also a principle promoted by the aforementioned international biodiversity offsetting standard (BBOP, 2012). **Natural England advises that in applying this national policy and conforming to international standards, it should be assumed that achieving a net gain is possible, unless there are clear justifications as to why it is not possible. If biodiversity declines are to be reversed, a net gain approach needs to be embedded as standard practice.** Phase 2 is an opportunity for innovative and exiting biodiversity projects to be realised under a net gain approach, with the benefit of a considerable timeframe in which to develop stakeholder relations, commission research and gather evidence.*

Recommendation

*10.36 It is recommended that for Phase 2 **the metric should be applied for the purpose of meeting a net gain objective in order to fully accord with national policy, rather than simply aiming to achieve NNL.**”*

Industry approaches to net gain in biodiversity:

CIRIA CIEEM IEMA Biodiversity Net Gain – Principles and Guidance for UK Construction and Developments

<http://www.cieem.net/biodiversity-net-gain-principles-and-guidance-for-uk-construction-and-developments>

Principle 5: **“Make a measurable Net Gain contribution - Achieve a measurable, overall gain for biodiversity** and the services ecosystems provide while directly contributing towards nature conservation priorities.”

The Berkeley Group

Berkeley Group have committed to achieving a net gain in biodiversity on their developments - see <https://www.berkeleygroup.co.uk/sustainability/environmental-sustainability>

Network Rail

For the proposed East-West Rail line, Network Rail are committed to providing a net gain in biodiversity. The EIA Scoping Report states in paragraph 9.6.2: “A biodiversity unit calculation to measure losses and gains in biodiversity will be applied to the Scheme.....**In line with Network Rail objectives the Scheme is aiming for a measurable net biodiversity gain**”

https://consultations.networkrail.co.uk/communications/ewr-phase-2/supporting_documents/Scheme%20Scoping%20Report%20Final%20inc.%20Appendices.%20Version%201.3.pdf

BBOWT’s conclusions

The NPPF sets out clearly that Local Plans must result in a net gain in biodiversity (e.g. paragraphs 7, 8, 9, 17, 109, 152 and NPPF guidance). In so doing the NPPF is putting in place the means to secure a contribution to the aims of the Natural Environment White Paper which states “**We will move from net biodiversity loss to net gain**” and specifically references the planning system.

In effect, Local Plans can only achieve a net gain in biodiversity if the vast majority of applications approved under the Local Plan achieve a net gain in biodiversity and so it is reasonable therefore to make a net gain in biodiversity an expectation of each application either directly themselves, or through a mechanism for pooled contributions where one exists.

In their Review of the HS2 No Net Loss metric Natural England advises that “*in applying this national policy and conforming to international standards, **it should be assumed that achieving a net gain is possible, unless there are clear justifications as to why it is not possible.***”

Paragraph 118 of the NPPF sets out that where significant harm to biodiversity cannot be avoided (and makes clear that alternatives should be sought as a first principle), mitigation or compensation should be put in place which serves the aim of enhancing biodiversity. It follows therefore that, where applications cannot achieve a net gain on-site, off-site compensation which provides a net gain to biodiversity must be delivered.