

# A47/A11 Thickthorn Junction

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## **6.3 Environmental Statement Appendices**

**Appendix 8.13 – Legislation and policy  
framework**

APFP Regulation 5(2)(a)

Planning Act 2008

Infrastructure Planning (Applications: Prescribed  
Forms and Procedure) Regulations 2009

March 2021

Infrastructure Planning

Planning Act 2008

**The Infrastructure Planning  
(Applications: Prescribed Forms and  
Procedure) Regulations 2009**

The A47/A11 Thickthorn Junction  
Development Consent Order 202[x]

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**ENVIRONMENTAL STATEMENT APPENDICES**  
**Appendix 8.13 – Legislation and policy framework**

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# 1. Planning policy

## 1.1. National Policy Statement for National Networks (NPS NN)

- 1.1.1. The NPS NN (2014) outlines government planning policies to deliver nationally significant infrastructure projects (NSIPs) and provides planning guidance for these projects and the basis for the examination by the Examination Authority and decisions by the Secretary of State. The NPS NN states that development should avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives. Where significant harm cannot be avoided or mitigated, as a last resort, appropriate compensation measures should be sought.

### National Policy Statement for National Networks (2014) (Section 5.20)

- 1.1.2. The statement details the:
- “need for development of road, rail and strategic rail freight interchange projects on the national networks”
  - “the policy on which decisions on major road and rail projects will be made”.
- 1.1.3. Section 5.24 of the statement details the decision-making process for developments in relation to designated sites (section 5.27-5.31), irreplaceable habitats (including ancient woodland and veteran trees) (section 5.32), biodiversity within and around developments (section 5.33), other habitats and species, and mitigation for the aforementioned features (section 5.34-5.35).

## 1.2. National Planning Policy Framework (2019) (Section 15)

- 1.2.1. Following the publication of the National Planning Policy Framework (NPPF) in March 2012, which was previously revised in July 2018, a further revised version has been published in February 2019.
- 1.2.2. The specific policies reaffirm the contents and protection previously accorded to designated sites, species and habitats in NPPF (2012). Additional updates seek to provide further protection for biodiversity at the same time as addressing the need for new homes. However, the Office of the Deputy Prime Minister (ODPM) 06/2005: Biodiversity and Geological Conservation - Statutory Obligations and their impact within the Planning System (the guidance document that accompanied Planning Policy Statement 9:PPS9) has not been withdrawn and, where more detailed guidance is required than is given within the NPPF, local planning authorities will continue to rely on ODPM 06/2005.
- 1.2.3. Paragraph 170 of the NPPF (2019) 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;
- c) maintaining the character of the undeveloped coast, while improving public access to it where appropriate;
- 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;
- e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and
- f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.”

1.2.4. Paragraph 171 of the NPPF (2019) states that "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 (where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality); 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.”

1.2.5. Paragraph 172 states that: “Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Parks and the Broads. The scale and extent of development within these designated areas should be limited. Planning permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of: a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy; b) the cost of, and scope for, developing outside the designated area,

or meeting the need for it in some other way; and c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.”

- 1.2.6. Paragraph 173 states that: “Within areas defined as Heritage Coast (and that do not already fall within one of the designated areas mentioned in paragraph 172), planning policies and decisions should be consistent with the special character of the area and the importance of its conservation. Major development within a Heritage Coast is unlikely to be appropriate, unless it is compatible with its special character.”
- 1.2.7. Paragraph 174 states that: “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.”
- 1.2.8. Paragraph 175 states that: “When determining planning applications, local planning authorities should apply the following principles:
- a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;
  - b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;
  - c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists; and
  - d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.”

- 1.2.9. Paragraph 176 states that: “The following should be given the same protection as habitats sites: potential Special Protection Areas and possible Special Areas of Conservation; listed or proposed Ramsar sites; and sites identified, or required, as compensatory measures for adverse effects on habitats sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites”.
- 1.2.10. Paragraph 177 states that: “The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site”.

### **Statement 9 (PPS9): Biodiversity and Geological Conservation (2005) (withdrawn)**

- 1.2.11. Planning policy statement 9 (now withdrawn and replaced by the NPPF (2019)) “...sets out planning policies on protection of biodiversity and geological conservation through the planning system”. The policies set out in PPS9 “...will need to be taken into account by regional planning bodies in the preparation of regional spatial strategies, by the Mayor of London in relation to the spatial development strategy for London, and by local planning authorities in the preparation of local development documents. They may also be material to decisions on individual planning applications”. PPS9 sets out government objectives to “promote sustainable development”, “conserve, enhance and restore the diversity of England’s wildlife and geology” and “contribute to rural renewal and urban renaissance...”.

### **ODPM 06/2005: Biodiversity and Geological Conservation – Statutory Obligations and their impact within the Planning system.**

- 1.2.12. The ODPM 06/2005 “... provides administrative guidance on the application of the law relating to planning and nature conservation as it applies in England”. This guidance document accompanied planning policy statement 9 (PPS9) (2005) which has now been withdrawn. However, where more detailed guidance is required than is given within the NPPF, local planning authorities will continue to rely on ODPM 06/2005.

## **1.3. Planning Policy (regional) – The East of England Plan (2008)**

### **POLICY ENV1: Green Infrastructure**

- 1.3.1. Policy ENV1 of The East of England Plan (2008) states “Areas and networks of green infrastructure should be identified, created, protected, enhanced and managed to ensure an improved and healthy environment is available for present and future communities”. The policy details requirements local development

documents should meet with regards to green infrastructure and lists areas and significant green infrastructure projects and proposals within the region which are considered “assets of regional significance for the retention, provision and enhancement of green infrastructure”.

### **Policy ENV3: Biodiversity and Earth Heritage**

- 1.3.2. Policy ENV3 sets out a list of means by which “planning authorities and other agencies should ensure that the region’s wider biodiversity, earth heritage and natural resources are protected and enriched through the conservation, restoration and re-establishment of key resources”. The policy also states that “planning authorities and other agencies should ensure that internally and nationally designated sites are given the strongest level of protection and that development does not have adverse effects on the integrity of sites of European or international importance for nature conservation”.

## **1.4. Planning Policy (Local) – The Joint Core Strategy for Broadland, Norwich and South Norfolk Local Plan (Adopted January 2014) (Objective 9)**

- 1.4.1. Objective 9 of the spatial planning objectives in the Joint Core Strategy for Broadland, Norwich and South Norfolk is “To protect, manage and enhance the natural, built and historic environment, including key landscapes, natural resources and areas of natural habitat or nature conservation value”.

### **Policy 1: Addressing climate change and protecting environmental assets.**

- 1.4.2. Policy 1 contributes to spatial planning objectives 1 (to minimise the contributors to climate change and address its impact) and 9 (detailed above) and lists nine targets for all development, and four additional targets for development in areas not protected through international or national designations, in order to achieve the spatial objectives.

### **Policy 18: The Broads**

- 1.4.3. Policy 18 contributes to spatial planning objectives 1, 8 (to positively protect and enhance the individual character and culture of the area) and 9, and states that particular regard must be given to “maintaining and enhancing” the area “...while ensuring no detrimental impact on the Broadland SPA, Broadland Ramsar and Broads SAC”.

## **1.5. Norfolk Biodiversity Action Plan (Norfolk BAP)**

- 1.5.1. Established in 1996, the Norfolk Biodiversity Partnership brings together local authorities, statutory agencies and voluntary groups in pursuit of a shared vision - the conservation, enhancement and restoration of the county's biological diversity.



To achieve this vision, the partnership is involved in a wide-ranging programme of work. Amongst other activities, it prepares and implements action plans for some of the county's most threatened habitats and species and promotes the integration of biodiversity into strategies, plans and programmes, including Sustainable Community Strategies and Local Development Frameworks. Habitat Action Plans relevant to the Proposed Scheme include: allotments, cereal field margins, hedgerows, ponds, lowland mixed deciduous woodland. Species Action Plans relevant to the Proposed Scheme include barbastelle bat, brown hare, brown long-eared bat, noctule bat, soprano pipistrelle bat, barn owl, turtle dove, woodlark, swift, song thrush, skylark, reed bunting and grey partridge.

## 2. Key international and European legislation

### 2.1. The Habitats Directive (Council Directive 92/43/EEC1992)

2.1.1. The Directive protects over 1000 animal and plant species and over 200 'habitat types' which are of European importance.

### 2.2. The Birds Directive (Council Directive 2009/147/EC2009)

2.2.1. The European Union meets its obligations for bird species under the Bern Convention and Bonn Convention by means of Directive 2009/147/EC (Birds Directive) on the conservation of wild birds.

2.2.2. Council Directive 2009/147/EC on the conservation of wild birds provides for the conservation and management of all wild bird species naturally occurring in the European Union, their nests, eggs and habitats. The Birds Directive bans activities that directly threaten birds (e.g. deliberate killing and destruction of nests and young), regulates hunting of selected species, bans non-selective and large scale killing of birds, and promotes research for bird conservation and management. Article 4(4) of the Birds Directive requires that member states "should strive to avoid pollution or deterioration of habitats." The Conservation of Habitats and Species (Amendment) Regulations 2017 provide a fuller transposition of the Birds Directive into English law. Regulation 8 introduces a new Regulation 9A to the Habitats Regulations for duties of appropriate authorities in relation to wild bird habitat. Regulation 9A(3) addresses the transposition of Article 2 of the Birds Directive, while Regulation 9A(8), requiring competent authorities to "use all reasonable endeavours" to "avoid any pollution or deterioration of habitats of wild birds."

2.2.3. Annex 1 of the EC Birds Directive also lists rare and vulnerable species of wild birds that are subject to special conservation measures.

### 2.3. Bonn Convention

2.3.1. The Bonn Convention (1979) provides protection to migratory species and their habitats. There are a number of legally binding international agreements, including:

- African Eurasian Migratory Waterbird Agreement (AEWA)
- Memorandum of Understanding on the Conservation of Migratory Birds of Prey in Africa and Eurasia
- Convention on the Conservation of Migratory Species (CMS)

## 2.4. Bern Convention

- 2.4.1. The Bern Convention (1982) aims to ensure the protection of wild plant and animal species. The obligations of the Convention is transposed into national law by the Wildlife and Countryside Act 1981 (as amended). At the European level, the obligations are met by means of the Directive 2009/147/EC on the conservation of wild birds (the Birds Directive).

## **3. Key national legislation**

### **3.1. Conservation of Habitats and Species Regulations 2017 (as amended)**

- 3.1.1. The Regulations are the principal means by which Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the “Habitats Directive”) is transposed for England and Wales and territorial seas.

### **3.2. The Wildlife & Countryside Act 1981 (as amended)**

- 3.2.1. The Act is the principal mechanism for the protection of wildlife in Great Britain. This legislation is the means by which the Convention on the Conservation of European Wildlife and Natural Habitats (the ‘Bern Convention’) and the European Union Directives on the Conservation of Wild Birds (2009/147/EC) and Natural Habitats and Wild Fauna and Flora (92/43/EEC) are implemented in Great Britain. Part I of the Act provides for the protection of birds, other wild animals and specified plants. It also makes it an offence to plant or otherwise cause to grow non-native invasive plant species.

### **3.3. The Countryside and Rights of Way (CRoW) Act 2000**

- 3.3.1. The Act covers access to open country, public rights of way, the designation of Areas of Outstanding Natural Beauty (AONB) and nature conservation, by strengthening the protection given to Sites of Special Scientific Interest (SSSI) and threatened species.

### **3.4. The Protection of Badgers Act 1992**

- 3.4.1. The Act provides special measures for protection of badgers and their setts in Great Britain.

### **3.5. Hedgerows Regulations 1997**

- 3.5.1. Under the regulations it is against the law to remove or destroy certain hedgerows classed as 'important hedgerows' without permission from the local planning authority.

### **3.6. The Natural Environment and Rural Communities Act 2006**

- 3.6.1. The Act defines a list of species of flora and fauna and habitats of principal importance for the purpose of conserving biodiversity. The act provides that any public body or statutory undertaker in England and Wales must have regard to the purpose of conservation of biological diversity in the exercise of their functions with regard to the species and habitats on this list.

### **3.7. Highways England Biodiversity Action Plan (HEBAP) 2015**

- 3.7.1. The HEBAP is Highways England’s plan to protect and increase biodiversity on the roads networks as one component part of their forthcoming Environment Strategy. Highways England “expect management to be guided by the principles of Natural England’s The Mosaic Approach: Managing Habitats for Species.” In addition, “expect efforts to target priority habitats and species (as identified under the Natural Environment and Rural Communities Act 2006, Section 41) however it is understood that in certain environments, for example in urban areas with few protected species, other habitats and species may be more suitable.”

## 4. Conservation guidelines

### 4.1. Birds of Conservation Concern

4.1.1. The Birds of Conservation Concern 4: The Red List for Birds was published in December 2015. The document is commonly referred to as the UK Red List for birds., This is the fourth review of the status of birds in the UK, Channel Islands and Isle of Man, and updates the last assessment in 2009. Using standardised criteria, 244 species with breeding, passage or wintering populations in the UK were assessed by experts from a range of bird non-governmental organisations (NGOs) and assigned to the red, amber or green lists of conservation concern.

- Red List species are those whose breeding population or range is rapidly declining (50% or more in the last 25 years), have declined historically and not recovered, or those of global conservation concern.
- Amber List species are those whose breeding population is in moderate decline (25 – 49% in the last 25 years), rare breeders, internationally important and localised species and those of unfavourable conservation status in Europe.

### 4.2. The IUCN Red List of Threatened Species

The IUCN Red List of Threatened Species is widely recognized as the most comprehensive, objective global approach for evaluating the conservation status of plant and animal species. The introduction in 1994 of a scientifically rigorous approach to determine risks of extinction that is applicable to all species, has become a world standard.