

Examination of the Tunbridge Wells  
Borough Local Plan

**Tunbridge Wells Borough Council  
Hearing Statement**

**Matter 15: The Natural  
Environment (Policies EN9,  
EN10, EN12, EN13, EN14, EN20,  
EN21, EN22, EN23, EN24, EN25,  
EN26, EN27 and EN28)  
Issue 2: Environmental Protection**

Document Reference: TWLP/080



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# Matter 15 – The Natural Environment (Policies EN9, EN10, EN12, EN13, EN14, EN20, EN21, EN22, EN23, EN24, EN25, EN26, EN27 and EN28)

## Issue 2 – Environmental Protection

**Inspector’s Question 1: [consistency of Plan with paragraph 179 of the NPPF]**

*Is the Plan consistent with paragraph 179 of the Framework insofar as the protection and enhancement of biodiversity and geodiversity is concerned?*

### **TWBC response to Question 1**

1. The requirements of NPPF paragraph 179 are met through the Council’s evidence base for the natural environment and a combination of Natural Environment Policies in the Submission Local Plan (SLP), including EN9 Biodiversity Net Gain, EN10 Protection of Designated Sites and Habitats, EN12 Trees Woodland, Hedges and Development, EN13 Ancient Woodland, and EN14 Green, Grey and Blue Infrastructure. These policies are supported by a range of borough and Kent-wide evidence base/resources and policy documents including:

Tunbridge Wells Borough Council

High Weald AONB Management Plan [[CD 2.1](#)]

Biodiversity Evidence Base Update [[CD 3.91](#)]

Green Infrastructure Framework Update [[CD 3.94](#)]

Rural Lanes Supplementary Planning Guidance [[CD 3.117](#)]

Borough Landscape Character Assessment SPD [[PS 019](#)]

A revision of the [Ancient Woodland Inventory for Tunbridge Wells Borough](#) 2007

## Kent wide

Kent Nature Partnership Biodiversity Strategy 2020 to 2045

Kent Landscape Information System which includes;

- Habitat data from 1990, 2003 and 2012
- Historic land use data
- Environmental designations
- Biodiversity Opportunity Areas

Kent and Medway Biological Records Centre

2. Paragraph 179 of the NPPF sets out what plans should do to “*protect and enhance biodiversity and geodiversity*” and has two parts a) and b), which are copied and addressed separately below.

***“(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”***

3. The policy mapping for the SLP shows sites for nature conservation that have been identified by the Council and Natural England. As is shown by the Key to the Policies Maps [\[CD 3.59a\]](#), sites listed under Policies EN10 Protection of Designated Sites and Habitats and EN13 Ancient Woodland are included in the Policy mapping. The supporting text for Policy EN10 in the SLP lists the types of sites and how they have been identified and these are summarised in table 9 page 358:

Level	Type	Designation	Number of sites
International	Biodiversity	Natura 2000 sites (collectively including Special Protection Areas (SPAs), Special Areas of Conservation (SACs) and Ramsar Sites)	0 (But Ashdown Forest SPA and SAC in Wealden is assessed in the HRA)
National	<u>Biodiversity And Geodiversity*</u>	Site of Special Scientific Interest (SSSI)	10
County	Biodiversity And Geodiversity	Local Wildlife Sites (LWS)	60
		Regionally Important Geological Sites (RIGS)	1
		Roadside Nature Reserves (RNR)	3
Local	Biodiversity	Sites of Local Nature Conservation Value (SLNCV)	16
		Local Nature Reserves (LNR)	4
		Candidate Local Nature Reserves (CLNR)	9

*\*Please note the correction to SSSIs – Geodiversity is added as two SSSI sites in the borough are designated solely on the basis of their geology and some other sites contain important geological features. This is a further proposed Modification, as underlined above.*

4. In terms of wider habitats and species, the Council’s Biodiversity Evidence Base [[CD 3.91](#)] maps land use (Map 2 page 8), Broad habitats (Map 3 page 19), Semi natural priority habitats (Map 4 page 14) and the Natural England Priority Habitat Inventory (Map 5 page 17). The document also includes species information relevant to the Borough and available species records for all proposed allocations (part 3 page 43 to 294).
5. The biodiversity evidence base also includes mapping of notable areas for conservation action, including Biodiversity Opportunity Areas (Map 6 page 21) and B-Lines (Map 7 page 22). The information referred to above and other environmental data sets are held on the Council’s GIS system and have been used to prepare the Green Infrastructure Framework [[CD 3.94](#)] and in particular to analyse existing provision of Green infrastructure (GI) and where gaps might occur to “provide a focus for GI provision particularly with regards habitats and habitat connectivity” (paragraph 3.10).

6. The supporting text for Policy EN 9 highlights the guidance that needs to be considered when preparing proposals for landscape and biodiversity (para 6.138) and includes the *“Kent Habitat Survey, Biodiversity Action Plans, Biodiversity Opportunity Area statements, pollinator action plans, the Kent Environment Strategy, and the Kent Nature Partnership Biodiversity Strategy, as well as the High Weald AONB Management Plan and its supporting documents”*.
7. The safeguarding required by the NPPF is provided for within Policy EN 10 where the policy wording is that *“Development proposals that would have a direct or indirect adverse effect on the nature conservation or geological interest of a designated site of national, regional, or local importance will not normally be permitted”* and provides stringent criteria where such harm might be justified. Further protection is provided for through Policy EN 9 criterion 2, which requires all development to demonstrate *“that the proposals have adopted a strict approach to the mitigation hierarchy (i.e. avoid, mitigate, compensate) and are able to justify all unavoidable impacts on biodiversity”*, which follows the guidance in paragraph 180 a) of the NPPF. Further protection of Trees, Woodlands, Hedges, as well as Ancient Woodland and veteran trees, is provided for by Policies EN12 and EN 13 respectively.
8. Para 179 a) contains footnote 62 which refers to Nature Recovery Network and the supporting text for Policy EN 9 refers to Nature Recovery Plans (para 6.139). Nature Recovery Network is a defined term in the NPPF Glossary:

*“An expanding, increasingly connected, network of wildlife-rich habitats supporting species recovery, alongside wider benefits such as carbon capture, water quality improvements, natural flood risk management and recreation. It includes the existing network of protected sites and other wildlife rich habitats as well as and landscape or catchment scale recovery areas where there is coordinated action for species and habitats”*.
9. The [Government’s Nature Recovery Network \(NRN\) Policy Paper April 2022](#) explains that the NRN is a commitment of the 25 year Environment Strategy and that it will be delivered through Local Nature Recovery Strategies (LNRs) and these are now established through the Environment Act 2021, with full details to be provided through secondary legislation. It is then appropriate that the reference to Nature Recovery Plans under Policy EN9 should be altered to Local Nature Recovery Strategies. The Council

now propose this as a modification - that is: remove references in the SLP to 'Nature Recovery Plans' and replace with 'Local Nature Recovery Strategies'.

10. The Kent Nature Partnership has carried out preparatory work on a Nature Recovery Strategy, but work has paused as further announcements on the structure and funding to be provided through the secondary legislation of the Environment Act 2021.

***“(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.”***

11. Policy EN14 Green, Grey and Blue Infrastructure not only seeks to protect but also to *“maximise opportunities for new infrastructure that supports climate change adaptation and ecosystem services, and makes a positive contribution to strengthening and restoring a healthy and integrated network of habitats and green spaces for the benefit of nature, people, and the economy. Green, grey, and blue infrastructure may be a multi-functional feature, which includes the provision of improved connections for people, or stepping stones/corridors for wildlife”*.
12. In relation to the requirement for biodiversity net gain, the Council has moved from a policy for no net loss to a clear policy for a 10% net gain as set out in Policy EN9 with a commitment to develop further guidance. The Council is already applying net gain to new development and has adopted an interim strategy for off-site net gain where necessary. The Council has also made specific reference to wider strategies for conservation including Biodiversity Action Plans in the supporting text for Policy EN9 and in the policy wording of EN14.
13. In addition to all the measures above in relation to a) and b), it should be noted that much of the work undertaken by other partnerships of which Tunbridge Wells Council is a member also supports paragraph 179 of the NPPF. The High Weald AONB Joint Advisory Committee, of which the Council is a member and active supporter, undertake various land management projects, community engagement and awareness raising projects and provide advice to landowners and developers. The Kent High Weald Partnership (who only operates in the borough) manage a number of greenspaces on behalf of the Borough Council and parish councils, undertake landscape/ecological

enhancements, organise and deliver education events, volunteering days and community events related to landscape and nature conservation.

14. In summary, the Council believes that the SLP is fully consistent with paragraph 179 of the NPPF and its policies are supported by an extensive evidence base and ongoing partnership working with Kent Nature Partnership and others.
15. It is notable that Natural England do not believe that the policies referred to above are unsound, but have continued to work with the Council to improve policies and reach agreement on any possible changes. This is set out in the SoCG with Natural England section 10 [[CD 3.132c\(v\)](#) Appendix H to J pages 115 to 161].



## Inspector's Question 2: [Policy EN11 - justification for 7km zone around Ashdown Forest SPA and SAC]

***What is the justification for the 7km zone around the Ashdown Forest Special Protection Area ('SPA') and Special Area of Conservation ('SAC') referred to in Policy EN11? Is the zone of influence likely to change?***

### **TWBC response to Question 2**

16. For the first part of this question in relation to the justification for the 7km zone, the Inspector is referred to Stage One, Matter 1, Issue 2, Question 1 [[TWLP/002](#)] which asked ***“what is the justification for the 7km ‘zone of influence’ used in the HRA?”***. In its response, the Council set out how the zone was established through visitor surveys and that the zone was now formalised through agreements supported by SoCG with the other LPAs concerned with Ashdown Forest and Natural England.
17. In relation to the second part of the question, about whether the zone of influence likely to change, the Inspector is referred Stage One, Matter 1, Issue 2, Question 2 [[TWLP/002](#)] which, noting the possibility of revision, asked ***“why and when is that likely to occur?”*** In its response, the Council set out how the 7km zone forms a key part of the Strategic Access Management and Monitoring (SAMM) Strategy for Ashdown Forest, which requires monitoring to ensure that it continues to be effective.
18. Should monitoring indicate that it is necessary, the zone can be altered to ensure that suitable mitigation is in place to protect the Ashdown Forest from visitor pressure. However, while monitoring continues, there is currently no suggestion that this is likely.

## Inspector's Question 3: [Policy EN11 - mitigation for windfall housing in the 7km zone?]

***Where windfall housing developments fall within the 7km zone, how will the mitigation referred to in Policy EN11 be provided? Will the policy be effective?***

### **TWBC response to Question 3**

19. The red line of all planning applications at Tunbridge Wells Borough are automatically screened against constraints which includes the Ashdown Forest “zone of influence” and, if the site is within the 7km zone, this is reported to the Development Management case officer responsible for the application. This triggers the need for mitigation in respect of Ashdown Forest. The screening will also advise the case officer where a site falls outside of the 7km zone of influence up to a distance of 15km which is a prompt for officers to consider, on a case-by-case basis, if an application is likely to require mitigation for Ashdown Forest even though it is beyond the 7km zone.
20. As to the main thrust of this question, ***how will the mitigation referred to in Policy EN11 be provided?***, the Inspector is referred to Stage One, Matter 1, Issue 2, Question 3 which asked “***what is required of development proposals within 7km***” and are the requirements clear and Question 4 which asked:
- “Where contributions to Strategic Access Management and Monitoring (‘SAMM’) and Suitable Alternative Natural Greenspace (‘SANG’s) are required, how will the Council ensure that the necessary mitigation is provided?”***
21. In summary, the response to those questions explains that the SAMM contributions is covered by a legal agreement between the SAMMS Partnership members, and that SANGS provision will be subject to discussion and agreement with LPAs in the SAMMS Partnership. The mitigation funded by SAMMS contribution is devised and implemented through the SAMM Partnership which includes the Commons Conservators and Natural England; evidence of delivery has been provided (Stage 1 Matter 1 Issue 2 Question 4 paragraph 40 and 41).
22. For SANGS, there will be a separate financial contribution which will be dependent upon the cost of providing the specific SANG and will need to be discussed with the providing Authority. SANGS sites are delivered to a specification agreed with Natural England

and a number are already up and running with under consideration as explained in earlier responses (for example, Stage 1 Matter 1 Issue 2 Question 4 paragraph 37 to 39 [\[TWLP/002\]](#)).

23. This approach has been in operation within several LPAs for a number of years now and so there is every reason to have confidence that the policy will be effective.

## Inspector's Question 4: [Policy EN12 – meaning of 'adversely affects' and effectiveness of policy]

***Is it clear what is meant by 'adversely affects' for the purposes of Policy EN12? Is the policy effective?***

### **TWBC response to Question 4**

24. The importance of trees (and hedgerows) is set out in the supporting text at paragraphs 6.169 and 6.170 and in particular notes that *"the trees form a unifying element that eases the visual transformation between land use types, as well as defining ridgelines, contributing to local character, forming structure for green space, providing wildlife corridors, creating reservoirs for biodiversity, intercepting rainfall, and helping to reduce flood risk"*. Consequently, it is right that the Council seeks to protect them, and this is consistent with the NPPF paragraph 174 b).
25. The use of the phrase *"adversely affects"* is taken to be in the normal definition of the word, i.e. having a negative or harmful effect. The application of the wording is qualified in that the policy states that it applies *"especially"* to those that are listed in criteria 1 to 8 and, whilst the policy has a presumption in favour of retention and enhancement of trees and hedgerows, it does allow for removal where:
- "a. the removal of any trees would be in the interests of good arboricultural practice;*  
*or*  
*b. the need and/or public benefit of the proposed development outweighs the amenity value of any trees or hedges removed"*.
26. In any event, the supporting text and the advice note at the end of the policy advise that *"development proposals will be assessed using the latest edition of BS 5837: Trees in Relation to Design, Demolition and Construction (or subsequent revision) to ensure that development does not result in unnecessary damage to, or loss of, trees"* (paragraph 6.175). BS 5837 advises how to undertake an assessment of the impact on trees including direct and indirect effects, and an assessment of any potentially damaging activities proposed in the vicinity of retained trees. The policy also advises on tree replacement and management.

27. In summary the phrase “*adversely affects*” has its usual meaning but is supported by reference and application of a suitable technical standard in the form of BS 5837: Trees in Relation to Design, Demolition and Construction. The policy and supporting text provide suitable guidance to cover tree protection, replacement, and management and is therefore considered to be an effective policy.

## Inspector's Question 5: [Policies EN12 and 13 – justification for and appropriateness of 25m buffer]

***What is the justification for the 25m buffer referred to in the supporting text (paragraph 6.171) to Policies EN12 and EN13? Will this be appropriate in all instances?***

### **TWBC response to Question 5**

28. The importance of Ancient Woodland is reflected in Paragraph 180 c) of the NPPF requires that “*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*” (underlining added).
29. Planning Practice Guidance advises that “*Local planning authorities need to consider both the direct and indirect impacts on ancient woodland and ancient or veteran trees when assessing development proposals and the scope for avoiding or mitigating adverse impacts*” (Paragraph: 033 Reference ID: 8-033-20190721 Revision date: 21 07 2019) and refers readers to Standing Advice from Natural England.
30. The standing advice from Natural England on [Ancient woodland, ancient trees and veteran trees: advice for making planning decisions](#) is published on the Government's website and is titled ‘*How to assess a planning application when there are ancient woodland, ancient trees or veteran trees on or near a proposed development site*’ and was published on 14 January 2022.
31. The guidance is that planning authorities should consider both direct and indirect effects both during construction and on completion of the development and consider in their decision making:
- conserving and enhancing biodiversity
  - avoiding and reducing the level of impact of the proposed development on ancient woodland and ancient and veteran trees
32. Under mitigation it suggests the use of buffer zones and in the advice for buffer zones advises:

*“For ancient woodlands, the proposal should have a buffer zone of at least 15 metres from the boundary of the woodland to avoid root damage (known as the root protection area). Where assessment shows other impacts are likely to extend beyond this distance, the proposal is likely to need a larger buffer zone. For example, the effect of air pollution from development that results in a significant increase in traffic.*

*For ancient or veteran trees (including those on the woodland boundary), the buffer zone should be at least 15 times larger than the diameter of the tree. The buffer zone should be 5 metres from the edge of the tree’s canopy if that area is larger than 15 times the tree’s diameter. This will create a minimum root protection area.*

*Where assessment shows other impacts are likely to extend beyond this distance, the proposal is likely to need a larger buffer zone”*

33. It is clear from this that the 15 metres is a **minimum** and is in consideration of only a likely root protection area excluding the possibility of veteran trees and that even to justify this an assessment is needed. If one assumed that a veteran tree were present within a block of woodland with a trunk diameter of 2m this would, under the Standing Advice, require a buffer of 30m from the tree. Under “*direct and indirect effects of development*” the guidance explains what effects are likely to arise and these include:
- *“damaging functional habitat connections, such as open habitats between the trees in wood pasture and parkland*
  - *increasing levels of air and light pollution, noise and vibration*
  - *changing the water table or drainage*
  - *changing the woodland ecosystem by removing the woodland edge or thinning trees - causing greater wind damage and soil loss*
  - *breaking up or destroying working connections between woodlands, or ancient trees or veteran trees - affecting protected species, such as bats or wood-decay insects*
  - *reducing the amount of semi-natural habitats next to ancient woodland that provide important dispersal and feeding habitat for woodland species*
  - *reducing the resilience of the woodland or trees and making them more vulnerable to change*

- *increasing the amount of dust, light, water, air and soil pollution*
- *increasing disturbance to wildlife, such as noise from additional people and traffic*
- *increasing damaging activities like fly-tipping and the impact of domestic pets*
- *increasing the risk of damage to people and property by falling branches or trees requiring tree management that could cause habitat deterioration”*

34. The Standing Advice includes a link to an assessment document ‘Assessment guide: ancient woodland, ancient and veteran trees’ (appendix 1), which provides a template of 11 questions “*to record the direct and indirect effects of a development proposal*”.
35. It is clear from the Standing Advice that 15m is not a mandatory distance but a minimum that reflects a standard root protection area that is subject to further assessment and does not account for the likely presence of veteran trees or consider matters such as disturbance, changes in water tables or drainage, falling branches or falling trees and fragmentation of connections between woodland. However, in practice, the 15m has become the default and assessments are not generally provided.
36. The wording in the supporting text at paragraph 6.171 does not impose a new minimum standard that conflicts with the standing advice, but rather takes a precautionary stance where there is no survey or assessment that allows for the presence of veteran trees and takes into account likely fall heights and falling branches. The text in the same paragraph also makes it clear that it “*expects developers, through assessment, to confirm that this or any other distance is appropriate*”. The importance of the Natural England standing advice is also reiterated in the same paragraph where it states that “*the Council will have regard to Natural England and Forestry Commission Standing Advice for Ancient Woodlands.*”
37. In summary, the approach the Council is taking gives due weight to the importance of ancient woodland, enables it to properly take account of the possible “*loss or deterioration*” of ancient woodland in the decision-making process as required by national policy, is based on issues contained with the Natural England Standing Advice and does not conflict with it. In particular, it addresses a problem with the current widespread practice in relation to ancient woodland of using a 15m minimum buffer as a default that fails to undertake the proper assessment required by the Standing Advice.



38. It should be noted that this is no small issue for Tunbridge Wells borough, which contains more than 5,000 hectares of ancient woodland, making up more than 16% of the land cover of the borough. The Council considers that the supporting text is therefore reasonable, justified and in conformity with national policy and Natural England standing advice. The SoCG between the Council and Natural England (page 32) records that Natural England specifically support the paragraph that contains the reference to the 25m [\[CD 3.132 c\(v\)\]](#) Appendices H to J pages 115 to 161].

## Inspector's Question 6: [Policy EN14 – justification for protecting existing green, grey and blue infrastructure and effectiveness for new infrastructure]

*What is the justification for seeking to 'protect' existing green, grey and blue infrastructure? Will Policy EN14 be effective in maximising opportunities for new infrastructure?*

### TWBC response to Question 6

39. The NPPF refers to Green Infrastructure which is defined in the glossary as:

*"A network of multi-functional green and blue spaces and other natural features, urban and rural, which is capable of delivering a wide range of environmental, economic, health and wellbeing benefits for nature, climate, local and wider communities and prosperity".*

40. The Submission Local Plan uses the term Green, Grey and Blue Infrastructure as defined in the Glossary (page 502) as:

*"**Green** - network of natural and semi-natural features, including, for example, street trees, green roofs, parks, ponds, rivers, woodlands. **Grey** – human engineered infrastructure, including the pipes, pumps, ditches, and detention ponds engineered by people to manage stormwater. **Blue** - linked to water and includes pools, ponds and pond systems, and watercourses".*

41. The SLP definition merely adds man-made surface water drainage features which can also provide habitats, habitat connectivity, ecosystem service and visual amenity, but references to Green Infrastructure in the NPPF and Planning Practice Guidance are clearly relevant to Policy EN 14.

42. Paragraph 20 d) of the NPPF requires that Strategic policies to conserve and enhance Green Infrastructure and this is reinforced by paragraph 175 which advises that Plans should "*take a strategic approach to maintaining and enhancing networks of habitats and green infrastructure*". This requirement is set within Strategic Policy EN1 criterion 5.1:

## **“5. Biodiversity and geodiversity**

1. *Proposals should maximise opportunities for increasing biodiversity potential, and retaining and enhancing blue/green infrastructure features, including SuDS”;*

43. The importance of Green Infrastructure is reinforced by further references to Green Infrastructure elsewhere in the NPPF under Promoting healthy and safe communities (paragraph 92 c), Planning for Climate Change (paragraph 154 a), Flooding (paragraph 161c) and Ground Conditions and Pollution (paragraph 186). The requirement of the Policy for development proposals to “*identify and protect existing green, grey, and blue infrastructure and maximise opportunities for new infrastructure*” is then fully justified and consistent with the NPPF.
44. In order to be *effective in maximising the opportunities* for Green Infrastructure, the policy wording gives examples of the types of measures and features that are expected and provides examples for urban areas where existing and opportunities for new Green Infrastructure are limited. The supporting text (6.183) makes it clear that green infrastructure will be managed in the long term, secured by legal agreement/condition via a Landscape and Ecological Management Plan (LEMP) which allows for a greater confidence in the retention and enhance of existing Green Infrastructure and the success of new Green Infrastructure.
45. The policy specifically requires that for new Green Infrastructure are “*informed by and respond to*” a list of documents but most notably “*borough green infrastructure plans and mapping*”. This information is contained within the Green Infrastructure Framework for Pre-Submission Local Plan [CD 3.94]. This document provides information and advice on Green Infrastructure, including regional and strategic Green Infrastructure in the borough and that within adjoining authorities that connects with Tunbridge Wells borough and, importantly, has undertaken a gap analysis.
46. The Green Infrastructure Framework concludes that whilst “*the Borough is generally well endowed with GI*” (5.1) that there are some deficiencies, but notes that “*whilst existing actions and support for agencies and organisations can assist, and the Council intends to continue with these, the greatest opportunity for achieving meaningful and long lasting improvements and additional areas/features of GI is through the application*

of new policies to the planned growth in the borough for landscape, biodiversity and GI” (5.3). The report sets out the priorities to be followed (5.6):

*“Priorities for GI will vary across the borough depending upon the circumstances and the nature of the site, location or project concerned. Application of the mitigation hierarchy means that existing GI should be retained and enhanced in the majority of cases as a matter of course. The priority for intervention will then be improving connectivity through either habitat improvements, the provision of landscape and/or ecological buffers and/or through the provision of new features such as woodland, hedgerows, species rich grassland etc. that connects existing habitats. Such provision will be more effective where it can support and add to existing GI and protected/notable areas such as important wildlife corridors like rivers or existing designated sites such as LNRs, or where it can support strategic initiatives. Consequently, where GI is to be provided, it should prioritise proximity to existing sites and features and prioritise support for existing projects and policies for the area and have regard to:*

- *Landscape Character Assessment Strategies*
- *High Weald AONB Management Plan Objectives*
- *Biodiversity Opportunity Area Targets (or any replacement priorities identified through the review of the Kent Biodiversity Strategy)*
- *Strategic Projects for GI in Tunbridge Wells borough identified above*
- *Strategic Projects for GI in adjoining planning authorities”*

47. This paragraph highlights the application of the mitigation hierarchy with regards the retention of existing Green Infrastructure, which is contained in Policy EN9 criteria 2.

48. Through the requirements and supporting text of Policy EN 14 and with the support of other policies in the Plan, in particular EN1 and EN9, the Council believes that there can be a high degree of confidence that new development will identify, protect and enhance existing Green Infrastructure following the mitigation hierarchy and will be able to maximise the provision of new Green Infrastructure that has had regard for the priorities of the borough and that any such provision will be appropriately managed in the long term.

## **Inspector’s Question 7: [Policy EN20 – consistency with paragraph 175 of NPPF]**

***Is Policy EN20 consistent with paragraph 175 of the Framework, which states that plans should allocate land with the least environmental or amenity value, and 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?***

### **TWBC response to Question 7**

49. Policy EN 20 relates to both paragraph 174 and 175 of the NPPF. Paragraph 174 b) refers to recognition of “*the economic and other benefits of the best and most versatile agricultural land*” and paragraph 175 requires that plans should “*allocate land with the least environmental or amenity value where consistent with other policies in this Framework*” which is qualified by footnote 58:

*“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”.*

50. How ‘best and most versatile’ (BMV) is defined is explained in the supporting text for the policy (para 6.240) which also explains that widely available information is indicative and does not differentiate between grade 3a which is BMV and grade 3b which is not BMV. Based on provisional mapping Grade 3 land covers some 78% of the Borough and site-specific evidence on Agricultural Land Classification (ALC) suggests that within that around half is BMV (para 6.243). This conclusion is supported by the Defra Predictive [BMV Land Assessment](#) data published by Natural England which shows the borough have a mix between a Moderate and Low likelihood of BMV land.

51. In order to ensure that decision making does take BMV land into account as required by para 174/175 of the NPPF the decision maker will need either a detailed ALC survey of a site or they will need to make an assumption based on the likely ALC grade. As there is a probability that sites will contain some or all BMV land, a sentence has been added to the end of the policy which states that “*where site-specific ALC studies are not available, the Local Planning Authority will assume that the site is classified as best and most versatile*”.

52. The policy makes it clear that poorer quality agricultural land is to be preferred to higher quality land but that, consistent with the NPPF, also refers to “*other sustainability objectives*” providing an exception.
53. In order to reflect paragraph 174 b) of the NPPF and the need to recognise “*the economic and other benefits of the best and most versatile agricultural land*”, the policy wording states that planning applications will, where there is a loss of agricultural land, need to assess the impact “*on the wider farming resource, natural capital, and ecosystem services*”.
54. The Council considers that this policy is consistent with the NPPF and provides appropriate wording to ensure that BMV land is properly considered in development management decisions. It is notable that Natural England have made no suggestions to alter this policy.

## Inspector's Question 8: [Policies EN21 and 22 – why proposed changes are necessary for soundness]

***What are the suggested changes proposed to Policies EN21 and EN22 in the submission version Local Plan? Why are they necessary for soundness?***

### **TWBC response to Question 8**

55. There are two changes proposed to Policies EN21 and EN22 in the Submission version of the Local Plan. These are shown as corrections in the document [[CD 3.128](#)] on pages 383 and 385. They both relate to comments received at the Regulation 19 stage and recorded on page 389 of the Consultation Statement [[CD 3.134b](#)]. Both changes are to the supporting text rather than the policy itself. These are not considered necessary for soundness but are considered a helpful clarification and clearer advice.

#### **Policy EN21**

56. Policy EN21 incorporates two alterations to paragraph 6.250 that were both prompted by comments from the CPRE received during the Regulation 19 stage consultation.
57. The first comment stated the supporting text should set out a timescale for lowering the NOx from heating systems (from 40mg NOx per kWh) during the plan period. The respondent felt that by doing this would better help recognise the need to improve air quality over the period of this Plan. The Council responded by confirming that the standard being used is considered to be current good practice and that this topic will be monitored with further consideration given as part of the 5-year review of the Local Plan. The Council proposes including an additional sentence to the end of the paragraph to add further clarification, as set out below in paragraph 59 and listed as Modification Reference Number 131 [[CD 3.127](#)].
58. The second comment was that the wording in paragraph 6.250 “*to improve and maintain levels of air pollutants*” could unintentionally suggest that pollution should be worsened or maintained at unacceptable levels and did not adequately reflect the requirement to strive to minimise air pollutants to safe levels. Again, the Council agreed that this sentence could be more appropriately worded as set out below in paragraph 59 and as Modification Reference Number 130 [[CD 3.127](#)].

59. The exact changes to this paragraph are shown as follows:

*“The overall aim of Policy EN 21 is to ~~improve and maintain~~ secure safe levels of air pollutants through the development management process and to reduce exposure to poor air quality, thus supporting the Council’s Air Quality Action Plan 2018-2023. It has been developed having regard to the latest European and national legislation, in addition to national policy and best practice guidance documents, alongside the requirements of assessment and mitigation. This includes the current good practice expectation to install gas-fired boilers that do not exceed 40 mg NOx/kWh.”*

## **Policy EN22**

60. Policy EN22 incorporates a change to paragraph 6.257 and was prompted by a further comment from the CPRE which stated that emissions mitigation should not be limited to major developments. The Council agreed with this observation and that an amendment would ensure the supporting text is better aligned with the requirements intended for all development within the policy (Modification Reference Number 132 in [CD 3.127](#)).

61. The exact changes to this paragraph are shown as follows:

*“Where major development is proposed which could affect an AQMA, an emission mitigation assessment and cost calculation will be required. Smaller developments may, in certain situations, warrant assessment. The purpose of this calculation is to determine the amount of emissions a development is likely to produce, and the consequent monetary value that is expected to be needed for funding measures to mitigate those impacts on- or off-site. Off-site mitigation measures that could be funded include local car clubs, on-street electric vehicle charging, low emission buses, and bike/e-bike hire schemes or cycling infrastructure provision. In order for borough-wide improvements to be realised, the calculations will be based upon the proposed use without comparison to past use.”*



## **Inspector’s Question 9: [Policy EN27 – justification for requirement to accord with Council’s SPD: noise and vibration]**

***What is the justification for requiring development to accord with the Council’s latest SPD on noise and vibration? Do these specifications form part of the development plan for the area?***

### **TWBC response to Question 9**

#### **Supplementary Planning Document (SPD): Noise and Vibration**

62. As set out at paragraphs 6.294 and 6.295 in the supporting text to Policy EN27: Noise (see page 395 of the Submission Local Plan (SLP) [CD 3.128](#)), the Council’s [Noise and Vibration Supplementary Planning Document \(SPD\) November 2014](#) seeks to ensure there is sufficient mitigation for proposals that are likely to generate noise/vibration, or for proposals that may be affected by existing noise sources, to prevent substantial loss of amenity as a result of development.

63. Policy EN27 states that:

*“Development will only be permitted where it can be demonstrated (in line with the requirements of the Council’s latest adopted Noise and Vibration Supplementary Planning Document) that:*

- 1. For noise-generating development, nearby noise-sensitive uses (existing or planned, either through an extant planning permission or allocation in the Local Plan) will not be exposed to noise impact that will adversely affect the amenity of existing or future users; or*
- 2. For residential and other noise-sensitive development, users and occupiers will not be exposed to unacceptable noise disturbance from existing or planned uses.*

*Where appropriate, proposals will be required to mitigate noise impacts through careful planning, layout, and design.*

*In assessing mitigation proposals, account will be taken of:*

- a. the location, layout, and design of the proposed development;*
- b. existing levels of background noise;*
- c. measures to reduce or contain generated noise;*

*d. hours of operation and servicing.*

*Where noise-generating development or noise-sensitive development is proposed and is likely to result in, or be exposed to, significant or unacceptable noise disturbance, applications should be supported by a Noise Impact Assessment undertaken by a competent person (as defined by the NPPF)."*

64. The SPD is considered to be highly relevant to the application of the criteria set out in Policy EN27, as it provides the relevant detailed guidance needed by applicants in relation to noise and vibration assessments for different types of development and different noise sources, as well as appropriate design measures to mitigate any impacts of noise and vibration. Therefore, the requirement for development, where noise and vibration issues exist, to accord with the SPD is considered to be justified. The following sections of the SPD are considered to be of particular relevance:
65. Section 1 of the SPD includes advice on background noise levels and the implications of the impact of increased noise levels on health effects. As a starting point, it is expected that new development will not increase background noise levels.
66. Section 2 of the SPD provides guidance on the requirement for noise and vibration assessments which are a key aspect of the Policy. Paragraph 2.3 on page 4 of the SPD advises that the Council will require an assessment in situations where:
- there is a proposal for a development generating noise and/or vibration in a noise sensitive area (premises where noise is likely to cause or contribute to some harmful or otherwise unwanted effect, such as annoyance or sleep disturbance). These premises will include residential development, offices, hospitals, care homes and schools and other premises regularly occupied by people.
  - there is a proposal for a noise sensitive development in an existing noisy environment. There is no single noise-based measurement that can provide a minimum limit above which a noisy environment exists. A noisy environment is one where non-standard adaptations have to be made to the development in order to prevent harmful or otherwise unwanted effects, such as annoyance or sleep disturbance, being caused.

67. The SPD also advises that any such noise assessment should be carried out and produced by a suitably qualified acoustic consultant and must be carried out to the standards set out in BS 7445 1-3: 2003 (or updated guidance) and to report all information required in section 10 of BS 4142: 1997 (or updated guidance).
67. Section 3 of the SPD provides guidance on the relevant noise and vibration assessments to be undertaken for specific noise criteria relating to:
- a) Construction and Demolition Work
  - b) Noise from new development proposed near existing dwellings and other noise/vibration sensitive developments/areas – such as from industrial sources or commercial premises
  - c) New Dwellings and other Noise Sensitive Developments (e.g. schools and hospitals, etc) proposed near existing noise and/or vibration sources
68. While Section 5 of the SPD sets out design control measures such as the orientation of sensitive rooms, noise barrier walls/fences, sound insulation of building envelope, anti-vibration foundations.

### **The SPD and the Development Plan**

69. The SPD was produced in liaison with the Council's Environmental Protection Team. It supports existing policies and proposals contained within the adopted Site Allocations Local Plan 2016, the Core Strategy 2010 and saved policies from the Local Plan 2006. As set out above, the SPD is intended to provide detailed guidance on the implementation of national and local policy relating to the potential impact of noise and vibration arising from, or affecting, new development and is based on existing best practice carried out within Tunbridge Wells Borough Council.
70. The SPD is considered to be also relevant and supplementary to Policy EN 27 in the SLP in providing guidance particularly in relation to noise and vibration assessments. At the same time, the Council will duly undertake a review of its current SPDs to ensure consistency with the adopted Local Plan and, where necessary, update it.

### **Summary**

71. In summary, the SPD is considered to be highly relevant to the application of the criteria set out in Policy EN27, as it provides the guidance needed for applicants in relation to

planning proposals with noise and vibration implications. Therefore, the requirement for any such development to accord with the SPD is considered to be justified.

## Inspector's Question 10: [contribution of Plan to the remediation of contaminated and unstable land]

***Does the Plan contribute to and enhance the natural and local environment by remediating contaminated and unstable land, as required by paragraph 174 of the Framework?***

### **TWBC response to Question 10**

72. Paragraph 174 (e) of the NPPF states:

*“Planning policies and decisions should contribute to and enhance the natural and local environment by:*

*f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.”*

73. Firstly, the Plan does not make specific provision for the remediation of unstable land, as this is considered to be neither justified nor necessary for the local area of Tunbridge Wells where there is no recent history of instability of land. Should any such issues arise prior to or during the course of dealing with a planning application, then each case would be assessed on its merits in accordance with the advice set out under national guidance [PPG - gov.uk - land stability guidance](https://www.gov.uk/guidance/ppg-land-stability-guidance).

74. However, with regard to contaminated land, there are known areas of land contamination across the borough or there may be specific land uses which if redeveloped may present issues in relation to ground or land contamination (such as industrial uses, petrol stations). Therefore, the Plan does make provision for the assessment and remediation of contaminated land under the following sections/policies of the Submission Local Plan (SLP) [[CD 3.128](#)] :

#### **Section 5 – Place Shaping Policies**

75. The SLP [[CD 3.128](#)] makes provision for the remediation of contaminated land through strategic policies and site allocations in the Place Shaping Chapter, Section 5, notably:

- Policy AL/RTW 7 - Land at former Gas Works, Sandhurst Road (pages 94 to 96 of SLP) - criterion 3 seeks the provision of a land contamination survey as part of any

new redevelopment to demonstrate that any contamination associated with the site's former use can be adequately mitigated against;

- Policy AL/SO 3 - Land at Baldwins Lane, North Farm Road (pages 135 to 137 of SLP) - criterion 4 seeks provision of a land contamination survey as part of any redevelopment to demonstrate that any contamination associated with the former use of the site can be adequately mitigated;
- Policy AL/PE 5 - Land at Sturgeons fronting Henwood Green Road (pages 288 to 291 of SLP) - criterion 3 states that the proposal shall take account of the site's location in the contaminated land buffer;
- Policy AL/SA 2 - Sharps Hill Farm, Queen Street (pages 310 to 312 of SLP) - paragraph 5.786 on page 311 of SLP states that an area of contaminated land covers the north-west corner of the site and a preliminary risk assessment should be submitted with the application to fully assess this.

## **Section 6 – Development Management Policies**

76. Section 6 of the SLP, sets out the Development Management Policies which provide detail for decision making in relation to particular themes, including the natural environment, which would be applied to the assessment of development proposals. With regard to land contamination, relevant policies include:

- Policy EN24 Water Supply, Quality, and Conservation – paragraph 6.268 of the supporting text to this policy on page 338 of the SLP states that any site that may be contaminated to some degree by virtue of its previous usage forms a potential risk to water quality, especially if redevelopment takes place. The Environment Agency requests any potential developers of such a site to contact the Agency at their earliest opportunity to discuss the need for historical information and site investigations to determine the degree of contamination, if any, of both soil and ground water, and which will be in accordance with Policy EN 28: Land Contamination and the Council's Contaminated Land Supplementary Planning Document.
- Policy EN 28: Land Contamination – this is the key policy relating to land contamination, as set out on pages 397 - 399 of SLP. This Policy provides the

framework for considering planning applications where land contamination issues are involved and advises that all development proposals on land affected by contamination must be undertaken in accordance with the Council's latest adopted [Contaminated Land Supplementary Planning Document \(SPD\) September 2016](#). The Policy includes reference to this SPD and states:

*Development proposals on a site that is known, or suspected, to be affected by contamination will only be permitted (in line with the requirements of the Council's latest adopted Contaminated Land Supplementary Planning Document) where practicable and effective measures are taken to avoid:*

- 1. Exposing the future occupiers and users of the development or people in the locality to unacceptable risk to health;*
- 2. Threatening the structural integrity of any existing building or structure built on, or adjoining, the site;*
- 3. Causing the contamination of any watercourse, water body, or aquifer;*
- 4. Causing the contamination of adjoining land, its residents or users, or allowing such contamination to continue;*
- 5. Damaging or putting at unacceptable risk the quality of the natural environment.*

*A Risk Assessment, undertaken by a competent person (as defined by the NPPF) which includes a desk study, site walkover report, and preliminary risk assessment, must be provided at the earliest stage..."*

77. The purpose of the SPD is to ensure that any land that is developed, and that has a history of potentially contaminative use and/or has a sensitive end use, meets the requirement of being suitable for its new proposed use. Section 6 sets out what information an applicant should submit including advice on the required risk assessment that identifies the sources, pathways and receptors (pollutant linkages). While Section 12 sets out the general conditions (staged) that will be applied to a planning consent. These aim to:
- provide for preliminary risk assessment and conceptual model investigation and characterisation of the site to confirm the nature and extent of contamination and

validate the conceptual model and allow more refined risk assessment and appraisal of remedial options

- propose and receive approval for a remediation scheme that ensures the removal of unacceptable risks to make the site suitable for use, and
- submit and receive approval for a validation report that demonstrates the effectiveness of the remediation carried out

78. Policy EN28 also makes reference to other relevant guidance such as national guidance [PPG - gov.uk - guidance for land affected by contamination](https://www.gov.uk/guidance/ppg-guidance-for-land-affected-by-contamination) and advises applicants to contact the Environment Agency for advice before submitting an application.

### Summary

79. In summary, there are a range of objectives, policies and allocations across the SLP which seek to contribute to and enhance the natural and local environment through the remediation of contaminated land. It is therefore considered that the Plan does meet the requirements of paragraph 174(e) of the NPPF in this regard.



# Appendices

# **Appendix 1: Assessment guide: ancient woodland, ancient and veteran trees**

## Assessment guide: ancient woodland, ancient and veteran trees

Use this template to help you make planning decisions and keep a record of your assessment.

Follow the Natural England and Forestry Commission [standing advice](#) to help you make decisions on planning proposals that could affect ancient woodlands, ancient or veteran trees. Use this template to record the direct and indirect effects of a development proposal and any planning decisions you make.

### **Section 1: Has the developer provided all relevant information for you to make a planning decision?**

This could include:

- environmental impact assessment
- ecological baseline survey
- specialist species ecological survey
- tree survey
- soil survey
- hydrological survey
- historic environment survey
- landscape character assessment
- ancient woodland inventory status
- statutory and non-statutory protected sites search
- land management information, such as woodland management plans

1.1 Record the assessments and surveys provided, and any extra information you need from essential surveys that are missing or inadequate.

[Click or tap here to enter text.](#)

## **Section 2: Is there an alternative location for the proposal?**

Can the proposal be relocated or redesigned to avoid the ancient woodland, ancient and veteran trees?

Also consider alternative sites if the proposal is next to, or close to ancient woodland, ancient and veteran trees.

### 2.1 Record your findings

[Click or tap here to enter text.](#)

## **Section 3: To what extent would the development proposal affect ancient woodland, ancient and veteran trees?**

Assess the loss or damage of ancient woodland. What is the loss or damage in hectares or as a percentage of the whole, or the number of ancient and veteran trees affected?

The size of ecological loss is not always the overriding factor. A small loss from a small woodland could be more significant locally and ecologically than loss from a larger woodland. The loss of a single tree in a wood pasture or parkland could cause local extinction of rare wood-decay insects.

Does the ancient woodland or ancient and veteran tree provide habitat connections for woodland plants, birds and animals?

Small ancient woodlands might be remnants of larger woodlands and have a higher biodiversity importance than first assumed.

### 3.1 Record your findings

[Click or tap here to enter text.](#)

### 3.2 Record any proposed mitigation or enhancement measures, or local planning authority (LPA) requirements

[Click or tap here to enter text.](#)

## **Section 4: How well connected is the ancient woodland, ancient and veteran trees to the surrounding landscape?**

Is the site isolated or connected to other woodland?

Isolated woodland and trees are likely to be more vulnerable to the effects of development than connected woodland and trees.

Will the development proposal damage the connectivity?

Will there be a loss of adjacent semi-natural habitats and existing buffers with the ancient woodland or ancient and veteran trees?

Could you retain connecting habitats, such as hedgerows and copses? How could you maintain and enhance long-term protection?

An ancient woodland in a sparsely wooded area could be more vulnerable to the effects of development than ancient woodland in a more wooded area.

### **4.1 Record your findings**

[Click or tap here to enter text.](#)

### **4.2 Record any proposed mitigation or enhancement measures, or local planning authority (LPA) requirements**

[Click or tap here to enter text.](#)

## Section 5: Has the developer included a protected species survey with their application?

Are protected species affected by the development proposal?

Ancient woodland, ancient and veteran trees and adjacent semi-natural habitats are important to species, such as: dormice, bats, rare insects, lichens and fungi.

You may also need to assess the effect of noise and light pollution of the proposal on protected species.

Has the developer included avoidance and mitigation measures in their proposal?

See Natural England's [standing advice for protected species](#) for more information.

### 5.1 Record your findings

[Click or tap here to enter text.](#)

### 5.2 Record any proposed mitigation or enhancement measures, or local planning authority (LPA) requirements

[Click or tap here to enter text.](#)

## Section 6: Will the construction or operation of the development proposal directly or indirectly affect ancient woodland, ancient and veteran trees?

Effects to consider include:

- changes to woodland and tree habitat, including understory, ground flora and roots
- changes to functional habitat connections
- damage to soils, such as compaction
- changes to air quality, such as traffic and other pollution
- changes to ground water, from pollutants or changes in hydrology
- increased light pollution
- increased noise and vibration
- damage to archaeological features or heritage assets
- changes to landscape character
- risk of garden encroachment, including potential invasive species
- risk of damage to people and property by falling branches or trees requiring tree management that could cause habitat deterioration

Have the relevant assessments been carried out?

Has appropriate mitigation been proposed?

The effects of air and water pollution and hydrological changes can occur at significant distances away from the proposal site.

### 6.1 Record your findings

[Click or tap here to enter text.](#)

### 6.2 Record any proposed mitigation or enhancement measures, or local planning authority (LPA) requirements

[Click or tap here to enter text.](#)

## **Section 7: Will the proposal increase formal or informal public access to ancient woodland, ancient and veteran trees?**

A development proposal has the potential to cause damage from residents, visitors, domestic pets and new gardens. You should consider effects, such as:

- disturbance to wild birds and other protected species
- predation and soil enrichment from domestic pets
- trampling woodland flora and compacting soil around tree roots
- fly tipping and vandalism

### 7.1 Record your findings

Click or tap here to enter text.

### 7.2 Record any proposed mitigation or enhancement measures, or local planning authority (LPA) requirements

Click or tap here to enter text.

## **Section 8: Does the development proposal include an appropriate buffer of semi-natural habitat between ancient woodland, ancient and veteran trees and the development?**

Follow Natural England and Forestry Commission [standing advice](#) on the use buffer zones and their recommended types and sizes. No part of the development should be included in the buffer zone.

A tree survey is required to assess [root protection areas](#).

### 8.1 Record your findings

Click or tap here to enter text.

### 8.2 Record any proposed measures, or local planning authority (LPA) requirements

Click or tap here to enter text.



## Section 9: Does the proposal include a landscaping scheme?

Does a landscaping scheme include (preferably local) native species suitable for the proposed development site?

Exotic species can escape from gardens into adjacent woodland and compete with local, native species.

Does the landscaping scheme retain semi-natural features, such as mature trees and hedgerows?

Does the landscaping scheme include proposals for a buffer zone?

### 9.1 Record your findings

[Click or tap here to enter text.](#)

### 9.2 Record any proposed measures, or local planning authority (LPA) requirements

[Click or tap here to enter text.](#)

## Section 10: What is the current condition of the ancient woodland or ancient and veteran trees, and can it be improved?

Will the proposal lead to woodland or tree deterioration?

Ancient woodland can be improved by replacing non-native trees with native broadleaved trees and shrubs suitable for the area. Ancient and veteran trees can be improved by removing other trees growing within their canopy or removing access to them, for example.

You should not base your decision on the existing state of the woodland.

### 10.1 Record your findings

[Click or tap here to enter text.](#)

### 10.2 Record any proposed mitigation or enhancement measures, or local planning authority (LPA) requirements

[Click or tap here to enter text.](#)

## Section 11: Have all opportunities for enhancement been considered?

Consider if:

- the woodland or tree condition can be improved
- connectivity is enhanced
- long-term management is secured
- adjacent or nearby sites can be enhanced

11.1 Record your findings

[Click or tap here to enter text.](#)

11.2 Record any local planning authority (LPA) requirements

[Click or tap here to enter text.](#)

## Section 12: Summary of assessment

Summarise:

- all likely effects of the development proposal on ancient woodland, ancient and veteran trees
- any avoidance or mitigation measures included in the proposal

Decide if the proposal is in line with the NPPF 180(c). For more guidance, follow:

- the Natural England and Forestry Commission [standing advice](#) for more information about avoidance, mitigation and compensation
- paragraphs 33 and 34 of the [planning practice guidance](#)

12.1 What are the likely effects of the development proposal on ancient woodland or ancient and veteran trees?

[Click or tap here to enter text.](#)

12.2 Have all the likely effects of the development proposal been avoided or adequately mitigated, if so, how?

[Click or tap here to enter text.](#)

12.3 Will the proposal result in loss or deterioration of ancient woodland or ancient and veteran trees?

[Click or tap here to enter text.](#)

12.4 Are there wholly exceptional reasons to grant planning permission?

[Click or tap here to enter text.](#)

12.5 If exceptional reasons exist, is there an appropriate compensation strategy, secured through planning conditions or obligations?

[Click or tap here to enter text.](#)