APPENDIX 11/1 - RELEVANT LEGISLATION AND POLICY

1 In the context of this assessment, relevant legislation includes:

- Conservation of Habitats and Species Regulations 2017
- Wildlife and Countryside Act 1981
- Protection of Badgers Act 1992
- Natural Environment and Rural Communities (NERC) Act 2006

Conservation of Habitats and Species Regulations 2017

2 The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) transpose Council Directive 92/43/EEC on the Conservation of Natural Habitats and Wild Flora and Fauna (Habitats Directive) into English law, making it an offence to deliberately capture, kill or disturb wild animals listed under Schedule 2 of the Regulations. It is also an offence to damage or destroy a breeding site or resting place of such an animal (even if the animal is not present at the time).

Wildlife and Countryside Act 1981


4 Intentionally kill, injure or take any wild bird or their eggs or nests (with certain exceptions) and disturb any bird species listed under Schedule 1 to the Act, or its dependent young while it is nesting;

- Intentionally kill, injure or take any wild animal listed under Schedule 5 to the Act;
- intentionally or recklessly damage, destroy or obstruct any place used for shelter or protection by any wild animal listed under Schedule 5 to the Act;
- intentionally or recklessly disturb certain Schedule 5 animal species while they occupy a place used for shelter or protection;
- Pick or uproot any wild plant listed under Schedule 8 of the Act; or

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1 Disturbance, as defined by the Conservation of Habitats and Species Regulations 2010, includes in particular any action which impairs the ability of animals to survive, breed, rear their young, hibernate or migrate (where relevant); or which affects significantly the local distribution or abundance of the species.
• Plant or cause to grow in the wild any plant species listed under Schedule 9 of the Act.

**Protection of Badgers Act 1992**

5 The Protection of Badgers Act 1992 makes it illegal to kill, injure or take a badger or to intentionally or recklessly interfere with a badger sett. Sett interference includes disturbing badgers whilst they are occupying a sett or obstructing access to it.

**Natural Environment and Rural Communities (NERC) Act 2006**

6 The NERC Act 2006 places a duty on authorities to have due regard for biodiversity and nature conservation during the course of their operations. Section 41 of the Act (Section 42 in Wales) requires the publication of a list of habitats and species which are of principal importance for the purpose of conserving biodiversity. The Section 41 list (Section 42 in Wales) is used to guide authorities in implementing their duty to have regard to the conservation of biodiversity.

**National Planning Policy**

7 The recently revised National Planning Policy Framework (NPPF) published by the Ministry of Housing, Communities and Local Government in July 2018[1] sets out several recommendations as to how Local Planning Authorities should address and consider biodiversity matters in their local plans. Further to this the NPPF sets out measures to be taken when considering planning applications, as follows:

“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;

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.

176. The following should be given the same protection as habitats sites:

a) potential Special Protection Areas and possible Special Areas of Conservation;

b) listed or proposed Ramsar sites; and

c) 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.

177. The presumption in favour of sustainable development does not apply where development requiring appropriate assessment because of its potential impact on a habitats site is being planned or determined.

Warwickshire Waste Core Strategy (Adopted Local Plan 2013 – 2028)

8 The Waste Core Strategy (WCS) sets out the Spatial Strategy, Vision, Objectives and Policies for managing waste for the period up to 2028.

9 Policy CS2 sets out the spatial waste planning strategy for the county and indicates the broad locations for new waste developments and includes “sites operating under an existing waste management use” and “active mineral sites or landfills”. It adds that sites should be well located to sources of waste and the strategic transport infrastructure.

10 Policy DM1 provides that: “New waste development should conserve, and where possible enhance, the natural and built environment by ensuring that there are no unacceptable adverse impacts upon (inter alia):

- Natural resources (including water, air and soil); and
- Biodiversity.

Rugby Borough Council Local Plan 2011 – 2031

11 The Rugby Borough Council Local Plan 2011-2031 has several environmental policies including Policy NE1 : Protecting Designated Biodiversity and Geodiversity Assets.