

Hedgehog Highways – Petition Response

Committee considering report:	Council
Date of Committee:	20 July 2023
Portfolio Member:	Councillor Tony Vickers
Date Head of Service agreed report:	19/06/2023
Date Portfolio Member agreed report:	19/06/2023
Report Author:	Bryan Lyttle Planning Policy Manager
Forward Plan Ref:	C4404

1 Purpose of the Report

- 1.1 The Council received a petition for debate at Full Council on the 6th October to consider establishing Hedgehog Highways in new developments. This report considers the matters raised through the petition and proposes a way forward to support a greater understanding and promotion of the requirements of hedgehogs in West Berkshire.

2 Recommendations

- 2.1 To recognise that the aims of the motion are already covered by policies in both the West Berkshire Local Plan and also the Local Plan Review 2039.
- 2.2 To investigate the possibility of a Hedgehog Positive Campaign to encourage all residents to adopt Hedgehog Highways.

3 Implications and Impact Assessment

Implication	Commentary
Financial:	There is no budget to promote the Hedgehog
Human Resource:	None
Legal:	None
Risk Management:	As stated in report

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Property:	None.			
Policy:	As stated in the report			
	Positive	Neutral	Negative	Commentary
Equalities Impact:				
A Are there any aspects of the proposed decision, including how it is delivered or accessed, that could impact on inequality?		X		None
B Will the proposed decision have an impact upon the lives of people with protected characteristics, including employees and service users?		X		None
Environmental Impact:		x		
Health Impact:		x		
ICT Impact:		x		
Digital Services Impact:		x		
Council Strategy Priorities:				
Core Business:				

Data Impact:		X		
Consultation and Engagement:	Planning Advisory Group (March 2023).			

4 Executive Summary

4.1 The Council received a petition with over 1,500 signatures at Council on the 6th October 2022. The petition set out:

“We, the undersigned, petition the Council to reconsider the decision not to make hedgehog highways a planning condition for major planning applications. We support Newbury Town Council's request that new housing developments should include five inch (13cm) holes at the bottom of fences to help hedgehogs move freely in order to feed and breed. Far from being an over-burdening condition, as claimed by West Berkshire Council, it is a common sense measure that would protect this vulnerable species. According to the State of Britain's Hedgehogs report, numbers are down in rural areas by between 30% and 75% since 2000.

The government's Natural Environment guidance recommends planning conditions that benefit wildlife including hedgehog highways, bat boxes and swift bricks. WBC already regularly conditions bat boxes.

(<https://www.gov.uk/guidance/natural-environment#biodiversity-geodiversity-and-ecosystems>)

Hedgehog highways would also help WBC meet obligations to achieve biodiversity net gain on developments and contribute to the creation of Nature Recovery Networks.

We therefore urge West Berkshire Council to reconsider the shortsighted decision and adopt planning conditions in line with government guidance”.

4.2 The issue was first discussed at the Planning Advisory Group in July 2022 and it was further considered in March 2023. West Berkshire contains 70,000 residential properties but only adds approximately 500 new residential properties (flats and houses) every year which means that the protection of hedgehogs via the planning system would have a very limited impact.

4.3 Both proposed policy LPR SP11 and others in the Local Plan Review and also those in the West Berkshire Core Strategy provide protection for designated species. A policy that only targets one species would be at the detriment of other equally important species across West Berkshire and does not comply with the tests set out in paragraph 5.13 as required under the planning legislation.

5 Supporting Information

Background

- 5.1 On 11th July 2022 the Newbury Town Council Planning and Highways Committee resolved “to adopt a policy of requiring hedgehog friendly fencing in all housing developments. This fencing would include a 13cm hole in the bottom of a fence that allows hedgehogs to move freely between gardens to find food and find a mate”. It also resolved to “Lobby West Berkshire Council to make granting of planning permission for housing developments and look to get the need for hedgehog highways identified in the Local Plan”. West Berkshire Council received the request on the 12th July and the matter was discussed under Any Other Business on the 21st July at the Planning Advisory group.
- 5.2 It was noted that “this could not be included in the Local Plan as it could not be justified as West Berkshire did not have specific evidence showing that the loss of hedgehogs was a particular problem in West Berkshire”.
- 5.3 A response was provided to the Town Council on the 28th July which was considered by the NTC Planning and Highways Committee on the 1st August who again agreed to petition the Local Planning Authority for the inclusion of a policy.
- 5.4 The Council received a petition at Council on the 6th October 2022. The petition set out
- 5.5 “We, the undersigned, petition the Council to reconsider the decision not to make hedgehog highways a planning condition for major planning applications. We support Newbury Town Council's request that new housing developments should include five inch (13cm) holes at the bottom of fences to help hedgehogs move freely in order to feed and breed. Far from being an over-burdening condition, as claimed by West Berkshire Council, it is a common sense measure that would protect this vulnerable species. According to the State of Britain's Hedgehogs report, numbers are down in rural areas by between 30% and 75% since 2000.
- 5.6 The government's Natural Environment guidance recommends planning conditions that benefit wildlife including hedgehog highways, bat boxes and swift bricks. WBC already regularly conditions bat boxes.

(<https://www.gov.uk/guidance/natural-environment#biodiversity-geodiversity-and-ecosystems>)
- 5.7 Hedgehog highways would also help WBC meet obligations to achieve biodiversity net gain on developments and contribute to the creation of Nature Recovery Networks.
- 5.8 We therefore urge West Berkshire Council to reconsider the shortsighted decision and adopt planning conditions in line with government guidance”.
- 5.9 The petition has over 1,500 verified signatories and is therefore tabled for debate at Council after coming before the Planning Advisory Group (PAG) once more. According to Part 13 the Council's Constitution (excerpt below for reference), this petition response has been determined to go to Council for consideration.

“Process when an Ordinary Petition is received

The Petitions officer will arrange for each ordinary petition to be reported to the next convenient meeting of the Executive, Council, Committee, Commission or Sub-Committee of Council which has the power to take a decision on the matter”.

Supporting information

Legislation – Plan Making

- 5.10 The procedures for producing a Local Plan are set out in legislation including the Town and Country Planning Act 1990, the Planning and Compulsory Purchase Act 2004 and the Town and Country Planning (Local Planning Regulation) (England) (Amendment) Regulations 2017. In addition, the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG) provide more detailed advice.
- 5.11 The PPG makes it clear that the role of the Local Plan is to set out a vision and framework for future development of the area, addressing the needs and opportunities in relation to housing, the economy and infrastructure as well as providing a basis for conserving and enhancing the natural and historic environment, mitigating and adapting to climate change and achieving well design places.
- 5.12 In particular the PPG states, local plan requires proportionate, relevant and up-to-date evidence to support policies in the plan.

Legislation – Development Management

- 5.13 Section 70(1)(a) of the Town and Country Planning Act 1990 enables the Local Planning Authority in granting planning permission to impose “such conditions as they think fit”. The approach taken must satisfy the sequential tests laid before under guidance from Para 55 and 56 of the NPPF which makes clear that planning conditions should; be used to make unacceptable development acceptable, kept to a minimum, and only used where they are;

Necessary

Relevant to planning and the development to be permitted

Enforceable

Precise and

Reasonable.

Other

- 5.14 Mention is made of the British Hedgehog Preservation Society (BHPS) and the Peoples Trust for Endangered Species (PTES) publication “Hedgehogs and development” which appears to have been published in 2019/2020.
- 5.15 This is document makes it clear that Hedgehogs (*Erinaceus Europaeus*) are protected by British law under Schedule 6 of the Wildlife and Countryside Act 1981, making it

illegal to kill or capture, under the Wild Mammals Protection Act (1996) which prohibiting cruelty and mistreatment and they are listed as a Species of Principle Importance in England under the Natural Environment and Rural Communities (NERC) Act 2006 Section 41.

5.16 Subsequently these laws already make hedgehogs a material consideration for LPAs during the planning process. The document does not call on LPA to make policies regarding connectivity in developments for ground dwelling species but states “depending on your ecologist’s assessment, they may propose mitigation measures, habitat enhancement works and/or monitoring”. It goes on “surveys for hedgehogs are not essential under planning regulations, however LPAs may sometimes require surveys to be conducted, particularly where hedgehogs are considered a local conservation priority, or the proposed development could have significant impacts at the population level”.

Evidence

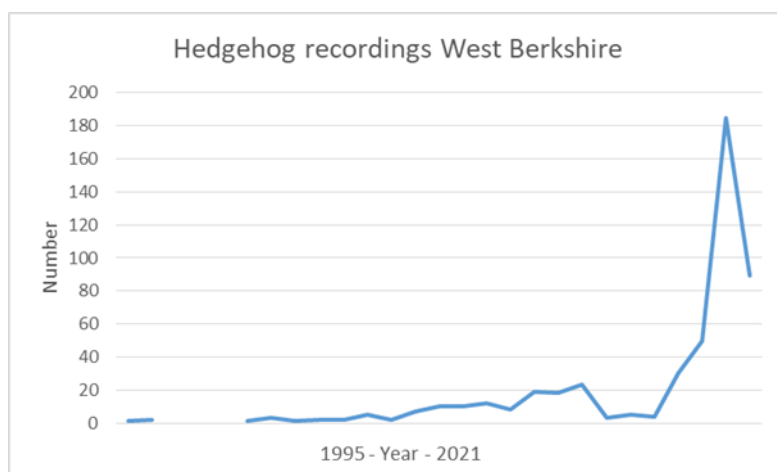
5.17 The State of Britain’s Hedgehogs 2022 (BHPS and PTES) highlights that: Nationally there is a long historic decline; urban areas have a stable population that might be recovering; rural populations continue to decline and that the issue is more acute in the east of the country. As part of the evidence base for this study PTES commissioned a research report from the National Gamebag Census – Trends and Distribution of Hedgehogs Reported to GWCTs National Gamebag Census from 1981 to 2019 – A report to the People’s Trust for Endangered Species.

5.18 The reasons for the decline in hedgehogs is complex and ranges from predators (badgers, foxes, dogs and cats) to poisoning (intended and unintended (i.e slug pellets) vehicular traffic and obesity.

5.19 Dating back to 1995, the Thames Valley Ecological Records Centre (TVERC) are able to provide data on protected species in West Berkshire that are either recorded by them or by volunteers who report to them. The annual TVERC data for West Berkshire is shown in the Table over and represents the following information: a sighting no info; an adult; alive hedgehog, a dead hedgehog, an individual, a juvenile, a male, a group of 2, a group of 3, a group of 4 or a group of 5. The total number of hedgehogs is recorded.

5.20 It is believed that the spike for 2020 is an unintended consequence of the Covid 19 lock down, with more people spending time in their gardens or out and about in nature when the lock down restrictions were lifted. It is too early to say if the increase in recordings in 2020 and 2021 will continue.

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Annual Hedgehog Records for West Berkshire – TVERC

Current Policy

5.21 The West Berkshire Core Strategy 2012 – 2026 Policy CS 17 relates to Biodiversity and Geodiversity (Appendix 1) the supporting text of which at paragraph 5.111 makes reference to “individual wildlife species which receive statutory protection under international and national legislation.

5.22 However, the Local Plan Review Policy SP11 which relates to Biodiversity and geodiversity (Appendix 2) is much expanded and the supporting text of which makes direct reference to “protected species” in paragraphs 5.83 and 5.84. If each protected species was to have its own planning policy local plans would become incredibly long as the UK Protected and notable species includes: Bats (17 species); Great Crested Newts; Reptiles; Water Vole; Otter; Hazel Dormouse; Badgers; Birds; White Clawed Crayfish plus a number of plants.

5.23 With regards to development management the existing planning policy guidance is enough to require ecological evidence to be submitted as part of the planning application and if applicable a suitable condition for ecology included in the decision letter. This could include a hedgehog suitable fence if it was suitable for the proposed development but it does not require a blanket policy based on no evidence. It is also of significance that while West Berkshire has just over 70,000 residential properties it only has just over 500 new residential builds (of both flats and houses) each year.

Motion to Council

5.24 The motion to Council requests two specific actions in reconsidering the decision, which would meet the obligations to meet Biodiversity Net Gain.

5.25 As outlined in paragraph 5.13 in order to meet the legislative tests set out any condition on hedgehog highways on major development would need to be: necessary, relevant, enforceable, precise and reasonable.

5.26 It is clear that the provision of a fence with 13cm holes would pass the test of precision, but a policy requiring it for all major development (residential or not) would not be

relevant or reasonable to all such applications. For example the redevelopment of the Kennet Centre in central Newbury would be caught by such a policy and this would clearly not pass the relevant or reasonable test.

- 5.27 The issue of necessity could be argued by the decline mentioned by BHPS and PTES but unfortunately this is national data and not local. Furthermore, the data used by PTES, the National Gamebag Census is in direct contradiction to the local evidence provided by TVERC and while there is a dramatic increase between 2019 and 2020 and a dramatic decrease between 2020 and 2021 the long term trend of this data does not show that West Berkshire has such an issue with hedgehogs to necessitate such a policy.
- 5.28 Enforceability is also problem in such as once the house is built there is nothing under planning legislation to prevent the 13 cm hole from being blocked up or removed by the householder. Finally, with regards to Biodiversity Net Gain (BNG) there is a widespread misunderstanding that the provision of bat boxes / swift boxes or hedgehog highways contributes to BNG unfortunately they don't. The Environment Act 2021 is very clear BNG relates to habitat and habitat enhancement and the calculation in accordance with the biodiversity metric.
- 5.29 Finally, with just over 500 new residential dwellings built each year, it is clear that if it was possible for “planning” to respond it would take a very long time to reverse any local decline, therefore other options should be explored.

6 Alternative Approach

- 6.1 Having established that unfortunately “planning” is not the suitable route for the introductions of Hedgehog Highways, other authorities have via their environmental services undertaken public information services promoting their use, getting people to check bonfires, piles of leaves etc for hibernating Hedgehogs and generally raising awareness of their plight.

7 Other options considered

- 7.1 To not include a policy on Biodiversity and Geodiversity would mean the local plan would not be compliant with national policy.
- 7.2 As stated in paragraph 5.22 to include a separate policy for every protected species would result in a plan that was incredibly long and very resource intensive in that each policy would have to have the evidence of that species in West Berkshire and why the policy was needed – species only found here, species in significant decline more so that regionally or nationally.

8 Conclusion

- 8.1 Proposed policy LPR SP11 and others in the plan provide enough protection for designated species without the need to include a policy that only targets one species and does not comply with the tests set out in paragraph 5.13 as required under the planning legislation. Each of these test has been explained away in 5.25 – 5.28.

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- 8.2 This policy does require ecological evidence to be provided when necessary and as a result of this site specific information dedicated species specific conditions can be included.
- 8.3 However, the continued reporting of hedgehogs in West Berkshire is to be encouraged. Information relating to the number, type age, status (alive or dead) and location can be directly passed on to TVERC or sent to Ecology@WestBerks.gov.uk for recording and adding to our local evidence base. The possibility of the alternative approach in raising awareness of the plight of the hedgehog by others should be investigated.

9 Appendices

- 9.1 Appendix A – West Berkshire District Council Core Strategy Policy
- 9.2 Appendix B – West Berkshire District Council Plan Review Submitted Policy

Subject to Call-In:

Yes: No:

- The item is due to be referred to Council for final approval
- Delays in implementation could have serious financial implications for the Council
- Delays in implementation could compromise the Council's position
- Considered or reviewed by Scrutiny Commission or associated Committees, Task Groups within preceding six months
- Item is Urgent Key Decision
- Report is to note only

Wards affected: All

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Policy CS 17

Biodiversity and Geodiversity

Biodiversity and geodiversity assets across West Berkshire will be conserved and enhanced.

Habitats designated or proposed for designation as important for biodiversity or geodiversity at an international or national level or which support protected, rare or endangered species, will be protected and enhanced. The degree of protection given will be appropriate to the status of the site or species in terms of its international or national importance.

Development which may harm, either directly or indirectly,

- locally designated sites (Local Wildlife Sites and Local Geological Sites), or
- habitats or species of principal importance for the purpose of conserving biodiversity, or
- the integrity or continuity of landscape features of major importance for wild flora and fauna

will only be permitted if there are no reasonable alternatives and there are clear demonstrable social or economic benefits of regional or national importance that outweigh the need to safeguard the site or species and that adequate compensation and mitigation measures are provided when damage to biodiversity/geodiversity interests are unavoidable.

In order to conserve and enhance the environmental capacity of the District, all new development should maximise opportunities to achieve net gains in biodiversity and geodiversity in accordance with the Berkshire Biodiversity Action Plan and the Berkshire Local Geodiversity Action Plan. Opportunities will be taken to create links between natural habitats and, in particular, strategic opportunities for biodiversity improvement will be actively pursued within the Biodiversity Opportunity Areas identified on the Proposals Map in accordance with the Berkshire Biodiversity Action Plan.

5.111 The most important sites for biodiversity and individual wildlife species which receive statutory protection have protection under international and national legislation. Special Protection Areas (SPA) and Special Areas of Conservation (SAC) are internationally important and are afforded the highest level of protection. Candidate SACs and proposed SPAs will be afforded the same level of protection as those already designated.

Appendix 2

Local Plan Review 2022 – 2039 Proposed Policy SP11

Policy SP11

Biodiversity and geodiversity

Development proposals will be required to demonstrate how they conserve and enhance biodiversity and/or geodiversity including their long-term future management and deliver a minimum 10% Biodiversity Net Gain.

Development will be permitted where it:

- a. Protects biodiversity and/or geodiversity value and implements appropriate conservation management. The degree of protection will be proportionate to the status of the site or species in terms of its international, national and/or local importance;
- b. Avoids fragmentation and maximises opportunities for restoration, enhancements and connection of linear features which enables strong connectivity of biodiversity as part of an integrated habitat network (including links to habitats outside the district);
- c. Incorporates beneficial biodiversity and/or geodiversity conservation features and enhances existing features, including those that will help wildlife to adapt to climate change where appropriate;
- d. Provides or retains appropriate buffer zones between development proposals and designated sites, habitats for protected or priority species or main rivers, which are informed by detailed site-based assessment;
- e. Provides coherent ecological connectivity and permeability that is integrated and linked to the wider green infrastructure and any nature recovery network identified as relevant to the location;
- f. Seeks to eradicate or control any invasive non-native species present on site; and
- g. Is compatible with any Biodiversity Action Plan, Local Nature Recovery Strategy and /or other strategic conservation management plans for species or habitats that have been formally adopted by the Council.

In addition to the above, where specific identified sites are to be affected the following will be taken into account:

Internationally Designated Sites

Development likely to result in a significant effect on an internationally designated site will be subject to assessment under the Habitats Regulations and will not be permitted unless it can be demonstrated that there are no alternatives following/through appropriate derogation tests for the proposal and that any adverse effects on the integrity of the site can be fully avoided, mitigated and/or compensated and proposals are in the public interest.

Nationally Designated Sites

Development which is likely to have any adverse impact on the notified features of a nationally designated site will not normally be permitted. In exceptional circumstances, a proposal may be found acceptable where it can be demonstrated that:

- j. A suitable alternative site with a lesser impact than that proposed is not available;
- k. The on-site benefits of the proposal clearly outweigh the impacts on the notified features of the site and where applicable, the overall site or habitat network;
- l. All appropriate mitigation measures have been proposed and secured through the development management process; and
- m. Does not prevent future attainment of nationally protected sites from meeting Favourable Condition, or to provide enhancements to enable the nationally designated sites to meet Favourable Condition as per their Conservation Objectives.

Irreplaceable Habitats

Proposals which are likely to result in the loss or deterioration of an irreplaceable habitat (such as ancient woodland, ancient or veteran trees, ancient hedgerows, traditional unimproved meadows/ancient grasslands and lowland fens) will only be permitted for wholly exceptional reasons where:

- o. The need and benefits of the development in that location clearly and unambiguously outweigh the loss;

- p. It has been adequately demonstrated that the irreplaceable habitat cannot be retained with the proposed scheme; and
- q. Appropriate compensation measures are provided on site wherever possible and off site where this not is feasible. The scale and quality of the compensation measures required will be commensurate to the loss or deterioration of the irreplaceable habitat and will be considered on a site by site basis, including long term management and maintenance.

Sites of Local Importance

Development proposals affecting sites of local importance should always seek to contribute to their favourable management in the long term.

Where a proposal is likely to result in harm to sites of local importance (including habitats or species of principal importance for biodiversity, and sites that meet the criteria for designation as a Local Wildlife Site or designation as a Local Geological Site), developers will be required to accord with the following sequential approach:

- r. Firstly, seek an alternative site in the District with a lesser impact than that proposed;
- s. Secondly, if the first is not possible, demonstrate mitigation measures can be taken on site; and
- t. Thirdly, and as a last resort, seek appropriate compensation measures, on site wherever possible and off site where this is not feasible including long term management and maintenance.

Biodiversity Net Gain

All proposals should demonstrate a minimum biodiversity net gain of 10% via a Biodiversity Net Gain Plan using the most up to date biodiversity accounting metric developed by Natural England and provide details of the long-term maintenance and management of the net gain. This should be delivered on site in the first instance, or through biodiversity off setting where appropriate.

Major developments in particular must include measures to deliver biodiversity gains through opportunities to:

- u. Restore and enhance existing features on site;
- v. Create additional habitats and ecological networks on site which help support the District's wider ecological network; and
- w. The linking of existing habitats within West Berkshire to create links between ecological networks and where possible, with adjoining features.

5.111 The most important sites for biodiversity and individual wildlife species which receive statutory protection have protection under international and national legislation. Special Protection Areas (SPA) and Special Areas of Conservation (SAC) are internationally important and are afforded the highest level of protection. Candidate SACs and proposed SPAs will be afforded the same level of protection as those already designated.