

**Final Report on First Consideration of Oxford City Council's Biodiversity  
Duty**  
Under the Natural Environment and Rural Communities Act 2006

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**Produced By:** Principal Ecology and Biodiversity Officer, Oxford City Council

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**Reviewed By:** Head of Regeneration and Economy, Head of Corporate Property, Head of Corporate Strategy, Countryside Officer, Green Spaces Officer

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## **1. Introduction**

- 1.1. This report summarises the exercise undertaken in 2023 to consider the extent to which Oxford City Council is fulfilling its statutory duty to conserve and enhance biodiversity (hereafter referred to as the ‘biodiversity duty’).
- 1.2. This duty was strengthened on 1<sup>st</sup> January 2023, as Section 40 of the Natural Environment and Rural Communities (NERC) Act 2006 was amended by the Environment Act 2021.
- 1.3. The NERC Act 2006 identifies a ‘general biodiversity objective’ to conserve and enhance biodiversity in England. Section 40 impose a duty on public authorities, stating:
  - (1) A public authority which has any functions exercisable in relation to England must from time to time consider what action the authority can properly take, consistently with the proper exercise of its functions, to further the general biodiversity objective.
  - (1A) After that consideration the authority must (unless it concludes there is no new action it can properly take)—
    - (a) determine such policies and specific objectives as it considers appropriate for taking action to further the general biodiversity objective, and
    - (b) take such action as it considers appropriate, in the light of those policies and objectives, to further that objective.
- 1.4. While the wording of the general biodiversity objective is vague, the legislation places an emphasis on the conservation, restoration or enhancement of habitats and species of principal importance, as defined under Section 41. There are 56 habitats and 943 species identified.
- 1.5. The legislation required the first consideration described in (1) to be completed by 1<sup>st</sup> January 2024. This report is the summary of that first consideration.
- 1.6. Section 40 states the requirements of (1A)(a) can be met by revising any existing policies and specific objectives for taking action to further the general biodiversity objective. It also sets a deadline for when each determination must be completed:
  - (1E) A determination required by subsection (1A)(a) must be made as soon as practicable after the completion of the consideration to which it relates.
- 1.7. No definition is provided for what constitutes “practicable”. For the purposes of this report, practicable is interpreted to mean ‘able to be done or put into practice successfully, with consideration for Council financial and staff resource’.
- 1.8. The remainder of this report sets out the methodology followed when the consideration was undertaken in 2023, and the results of the consideration. It proposes what additional policies and objectives could be employed with a view to meeting the biodiversity duty.

- 1.9. This report was produced by the Council's Principal Ecology and Biodiversity Officer in March 2024, who left shortly after. There is a shortage of ecology expertise, due to the increasing legislative requirements (LNRS, BNG etc) and the Council has been unable to recruit a permanent replacement. At this time, this is impacting on how roles and responsibilities relating to the biodiversity duty will be allocated. More importantly it means that it is not practicable yet to carry out many of the actions stemming from the first considerations.

## **2. Methodology**

### **Background**

- 2.1. The prospect of an enhanced biodiversity duty was raised internally in a briefing note entitled 'Implications of the Environment Act for the Oxford City Council' in July 2022. A report entitled 'Enhanced Biodiversity Duty' was submitted to the Net Zero Steering Group in April 2023, proposing a methodology for undertaking the first consideration.

### **Policy and Strategy Review**

- 2.2. In the report to the Net Zero Steering Group, it was noted there was no single database detailing how biodiversity is considered in the different service areas of the Council. Numerous existing policies and strategies exist but are not centrally co-ordinated. The document that most closely represented an over-arching view of how biodiversity was considered in the organisation was the Biodiversity Action Plan for Oxford City Council 2015 – 2020.
- 2.3. The actions identified in that document formed the starting place for the consideration exercise, in line with the report to the Net Zero Steering Group, though this was subsequently broadened into a review of a wider pool of existing policies and strategies by the Principal Ecology and Biodiversity Officer. This included the following documents:
- Green Spaces Strategy (link [here](#)).
  - A Biodiversity Action Plan for Oxford City Council 2015 – 2020 (publicly unavailable).
  - Biodiversity Review for Oxford City Council Parks and Nature Areas 2020 (link [here](#)).
  - Review of Biodiversity Action Plan Sept 2023 (link [here](#)).
  - Oxford Urban Forest Strategy: A Master Plan to 2050 (link [here](#)).
  - Long Grass Verges Review (link [here](#)).
  - Oxford Local Plan 2036 (link [here](#)).

### **Interviews and Information Gathering**

- 2.4. The approach proposed to the Net Zero Steering Group also included an information-gathering exercise with several service areas within the council, described as follows:

*It is also proposed that ES [the Environmental Sustainability team] is responsible for drawing together the first 'consideration' due in December of this year. To do so, we require service areas across the council:*

- a. To nominate a relevant contact for the ES team to work with to complete the 'consideration'.*
- b. To summarise what actions they have taken to conserve biodiversity in the past few years, and what actions they are planning take in the future, at both a strategic and operational level.*
- c. To assess how effective the actions taken recently have been and what barriers they encountered (if any)*

- d. In collaboration with ES identify the opportunity for further enhancement of biodiversity.*
- 2.5. Following consultation with heads of relevant service areas, it was considered the most efficient way of achieving the above was through interviews with the Principal Ecology and Biodiversity Officer. Interviews were completed between September and November 2023 with the heads of the following services: Corporate Assets, Green Spaces, Regeneration, and Housing Services.
- 2.6. No interviews were undertaken with Planning, as work was already progressing on a review of planning policies related to biodiversity in support of the development of the Oxford Local Plan 2040. That work is referenced in this report where relevant. No interviews were undertaken with Oxford Direct Services who manage Countryside and Parks. Both, these teams, will be essential in providing evidence and information for the Biodiversity Duty report due for 1<sup>st</sup> Jan 2026.

### **Government Guidance**

- 2.7. Prior to these interviews being undertaken, national government guidance was published, in May 2023, regarding how public authorities understand and comply with the biodiversity duty.
- 2.8. The guidance included details relating to local nature recovery strategies, species conservation strategies, and protected sites strategies – three new approaches to nature conservation established by the Environment Act 2021. No such strategies of relevance to Oxford City existed at the time the consideration was undertaken, and therefore they did not form part of the exercise (but will need to be accounted for in future considerations).
- 2.9. It should be noted that Oxfordshire County Council is the Responsible Authority for producing the county’s Local Nature Recovery Strategy (LNRS). Oxford City Council is a Supporting Authority and has contributed to the organisation of stakeholder engagement for the LNRS.
- 2.10. The guidance includes a section on actions public authorities could take in pursuit of meeting the biodiversity duty (link [here](#)), noting that actions could be included within an existing strategy monitoring environmental performance or set out in a new document. This element of the guidance also noted authorities should consider the biodiversity duty when undertaking a strategic environmental assessment, environmental impact assessment, or Habitats Regulations Assessment (HRA).
- 2.11. The guidance additionally provides advice in the following areas, which formed part of the consideration undertaken:
- Managing land to improve biodiversity
  - Educating, advising, and raising awareness
  - Reviewing internal policies and processes
  - Preparing for Biodiversity Net Gain (BNG)

### **Review**

- 2.12. It is proposed this report is submitted to the Net Zero Steering Group for review and discussion, ahead of a determination being made regarding what policies and objectives should be adopted to ensure Oxford City Council complies with the NERC Act 2006 (as amended).

### **3. Policy and Strategy Review**

#### **Green Spaces Strategy 2013-2027**

- 3.1. This strategy acknowledged the biodiversity duty held by the council under the NERC Act 2006 – at which point it was solely to *conserve* biodiversity – stating that:

*“Oxford City Council is currently producing a Biodiversity Strategy to ensure a joined up approach to biodiversity conservation and enhancement. The strategy will set out how Oxford City Council is fulfilling its duties as set out in the NERC Act 2006, and, with effective partnership working, integrate biodiversity conservation efforts across the city.”*

- 3.2. The document contained its own objective relating to biodiversity – Objective 21 – that established a series of specific actions, primarily with completion dates between 2013 and 2020. Some actions were identified as ongoing and remain pertinent, including the identification and eradication of invasive species.

#### **A Biodiversity Action Plan for Oxford City Council 2015 – 2020**

- 3.3. The council’s Biodiversity Action Plan (BAP) set objectives focused on the Council’s roles as landowner, regulator, and facilitator. It committed the Council to undertaking numerous actions, mainly relating to leisure, parks, communities, property, and planning.
- 3.4. No formal framework for tracking the delivery of these actions was established and maintained across that period and therefore there is no centralised information available on which actions were delivered, how successfully, what barriers were encountered to their delivery, and why certain actions could not be delivered.

#### **Biodiversity Review for Oxford City Council Parks and Nature Areas 2020**

- 3.5. A review of some elements of the BAP was published in June 2020. As the name indicates, it was limited to actions relating to parks and nature reserves owned by the council and included a review to “identify further potential to increase habitat or enhance existing ones”. The document did not consider other aspects of the council’s role as a landowner, or its regulatory function, as captured in the BAP.
- 3.6. The document detailed out a five-year action plan, in which specific projects were identified across a range of sites. It stressed the need for ongoing commitment and resources to deliver those projects.

#### **Review of Biodiversity Action Plan Sept 2023**

- 3.7. A list of the ‘top 12 priority projects’ was established in the Biodiversity Review. An assessment of progress with these projects was published in September 2023, finding a range of projects

had been completed successfully – including meadow restoration across several sites – but identifying funding constraints as an ongoing issue with others.

**Oxford Urban Forest Strategy: A Master Plan to 2050**

- 3.8. This strategy, adopted September 2021, presented detailed information on the canopy cover in Oxford, and established a range of objectives covering areas including managing the city’s existing resource, improving biosecurity, increasing canopy cover, and increasing diversity (among others). This document also identified a need for additional resource.

**Long Grass Verges Review**

- 3.9. Grass verges in Oxford City are mown by Oxford Direct Services (ODS). In 2021 verges in 26 locations were allowed to grow longer, with mowing limited to a single cut in late-summer 2021 and cuttings removed. Following consultation with residents, this list was revised down to 21 locations in 2022.
- 3.10. It is understood that in 2023 a new verge maintenance policy was introduced across the city as whole, entailing a single cut each year with arising left in situ. This has been revised to two cuts for 2024, with the exception of eight locations to be subject to a single cut and arisings removed. These locations were identified following botanical survey work undertaken last summer.

**Oxford Local Plan 2036**

- 3.11. The extant local plan was adopted in June 2020. It contains one policy of direct relevance to biodiversity (Policy G2) and several others indirectly relevant, including those in relation to green infrastructure, trees, and hydrology. Policy G2 details protection afforded to designated sites and biodiversity net gain.

#### **4. Reporting Requirements**

4.1. Oxford City Council is required to meet specific reporting requirements in relation to the Biodiversity Duty under Section 40A of the NERC Act 2006 (as amended). These are as follows:

(3) A biodiversity report so published must contain—

- (a) a summary of the action which the authority has taken over the period covered by the report for the purpose of complying with its duties under section 40(1) and (1A),
- (b) a summary of the authority's plans for complying with those duties over the period of five years following the period covered by the report,
- (c) any quantitative data required to be included in the report by regulations under subsection (8)(b), and
- (d) any other information that the authority considers it appropriate to include in the report.

4.2. These are also tied up with reporting requirements related to the delivery of biodiversity net gain (BNG). Section 40A also establishes the following:

(4) If the authority is a local planning authority, its biodiversity report must also contain

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- (a) a summary of the action taken by the authority in carrying out its functions under Schedule 7A to the Town and Country Planning Act 1990 (biodiversity gain as condition of planning permission) over the period covered by the report,
- (b) information about any biodiversity gains resulting or expected to result from biodiversity gain plans approved by the authority during that period, and
- (c) a summary of the authority's plans for carrying out those functions over the five year period following the period covered by the report.

4.3. Oxford City Council's first report can be **published** no later than 1<sup>st</sup> January 2026. All subsequent biodiversity reports must be published no more than five years after the previous report. All reports must be published within 12 weeks of the period assessed.

4.4. Adopting a framework for monitoring what actions are adopted and implemented in relation to the statutory duty (as recommended in Section 5 of this report) could provide a base for this reporting. If this recommendation is accepted, the council should make a specific officer role responsible for collating and maintaining this framework, and in turn for undertaking the necessary reporting.

## 5. Interviews and Information Gathering

### Actions Taken

- 5.1. The Green Spaces and Parks and Countryside teams have led numerous initiatives to conserve and enhance biodiversity on land owned and managed by Oxford City Council. Many of these initiatives have been delivered under the strategies outlined in Section 3 of this report, and a few are highlighted and summarised below:
- Tree Planting
    - At least 5,000 planted in the last five years.
    - This figure includes approximately 4,000 whips in Burgess Field, recently assessed as holding sufficient value to qualify as an Oxford City Wildlife Site.
  - Meadow Restoration
    - Annual cutting regime adopted on numerous sites (rather than monthly) to facilitate wildflower growth, seeding, and propagation, including Cutteslowe Park, King George's Field and Oatlands Recreational Ground.
    - Showman's Field also restored to sensitive management from heavy mowing and generating such a rise in value as to see the site designated as a Local Wildlife Site.
  - Roadside Verges
    - A programme of reduced mowing and cutting removal trialled from 2021 onwards.
    - Verges at eight locations will continue to be subject to this approach in 2024 with a view to preserving and enhancing their floristic diversity over time.
  - Specific Projects
    - Delivery of habitat enhancements to facilitate the delivery of biodiversity net gain, including wetland restoration at Rivermead Nature Park.
    - Adopting a new approach to retaining fallen dead wood across multiple sites, including Bury Knowle Park, Headington Hill, South Park, Florence Park.
- 5.2. There is minimal supply of land owned by Oxford City Council on which habitat enhancements can be delivered. Large areas are either already being targeted (e.g. Shotover), perform a specific recreational function (e.g. South Park) or are otherwise constrained (e.g. former landfill sites). The focus is therefore on enhancing existing areas of value for nature.
- 5.3. This is reflected in the feasibility review into the potential for biodiversity offsetting to be delivered on council-owned land. Under the Environment Act 2021, development must deliver at least a 10% net gain in biodiversity, as measured by the Statutory Biodiversity Metric. This requirement was introduced for major development on 12<sup>th</sup> February 2024 and will follow for minor development on 2<sup>nd</sup> April 2024 (noting there are some exemptions, including householder planning applications). If the developer cannot or does not wish to meet this requirement on-site, they can pay a third-party to deliver habitat enhancements elsewhere (known as offsetting) or else they can purchase statutory credits. The Environmental Sustainability team is leading a review into parcels of council-owned land identified by the

Corporate Property team to determine whether they could be used for delivering such habitat enhancements.

- 5.4. Biodiversity has also featured prominently in work undertaken by the Planning team. Hiring a full-time Principal Ecology and Biodiversity Officer in 2021 led to the number of planning applications receiving ecological consideration more than doubling (increasing from approximately 250 annually to 650). The range and extent of information considered also expanded over that period, accounting for biodiversity net gain (BNG). This increased the workload for Development Management officers at all levels, in addition to increasing the demand for legal resource to secure BNG.
- 5.5. Elsewhere within the Planning team, biodiversity has featured prominently in drafting the Oxford Local Plan 2040. The number of local policies directly relevant to nature conservation is proposed to increase from one to three, with the draft plan including detailed policies relating to designated sites, biodiversity net gain, and wider ecological enhancements. There is also direct overlap between the delivery of high-quality green infrastructure sought across several other policies and achieving positive biodiversity outcomes. The draft plan was also subject to a Habitats Regulations Assessment (HRA) to assess whether it would adversely affect the integrity of the Oxford Meadows Special Area of Conservation (SAC).
- 5.6. The Planning Policy team has also funded and overseen the procurement and delivery of three projects related to nature conservation in support of the new local plan:
  - A desk-based review of Local Wildlife Sites (LWS) and Oxford City Wildlife Sites (OCWS) to understand what data is held in relation to each.
    - This follows the formal designation of the sites in 2018 following a review of and widespread survey effort in the former 'Sites of Local Importance to Nature Conservation'.
  - A programme of survey of sites potentially suitable for designation.
    - This included sites previously earmarked as 'potential' LWS and OCWS in 2018 that lacked sufficient data to inform a determination, and additional parcels of land identified as likely holding value in the subsequent years.
  - A hydrogeological study of the Lye Valley Site of Special Scientific Interest (SSSI).
    - A study of the hydrological and geological conditions of the SSSI and its catchment area and how these conditions relate to its ecology, vital to understanding the implications of development on the SSSI.
- 5.7. The prominence of consideration for Biodiversity in other services areas within Oxford City, has been less. Unless via planning, engagement arises indirectly; for example, when making decisions around land use (Corporate Property), completing standalone projects in communal green spaces (Housing Services), or fulfilling specific planning requirements (Regeneration Team).
- 5.8. There is currently no unified approach to considering biodiversity across Oxford City Council; nor a framework dictating when habitats or protected species require consideration, what this

entails, and who is responsible for that consideration. Furthermore, no single officer has responsibility for ensuring such an approach is adopted.

### **Barriers Encountered**

5.9. In the course of the consideration of Oxford City Council's biodiversity duty, different barriers were identified to conserving and enhancing biodiversity. They are summarised below:

- Funding and Staff Resources
  - There is no funding or spare staff capacity for survey work to inform habitat creation and management; reliance is placed on the judgement of Oxford City Council and ODS staff (in particular the Countryside Team) utilising what information/resource is available.
  - Furthermore, there is no resource available for delivering additional habitat enhancements, whether this were to capture revised management of nature reserves or a more a widespread cut-and-collect programme for verges.
- Expertise
  - Multiple service areas identified a reliance on outside expertise when undertaking any work related to biodiversity. This related to both conserving biodiversity on land or in buildings owned by the council, as well as potential enhancements.
- Conflicting Views and Priorities
  - Adopting new management practices on any piece of land is a form of change, and change brings challenges with internal and external stakeholders. A prime example is the split in popular opinion regarding the management of roadside verges or use of Council land for Biodiversity Net Gain.

5.10. Each of these barriers will require consideration when determining what additional policies and objectives Oxford City Council, if any, can reasonably adopt and implement with a view to meeting the biodiversity duty. Such policies and objectives will likely require addition resource, expertise, and stakeholder management.

### **Identified Gaps**

5.11. During this consideration of Oxford City Council's biodiversity duty, a series of specific gaps have emerged in relation to biodiversity, which are summarised below.

5.12. Oxford City Council does not have a process for assessing potential **protected species constraints** for work undertaken by or on behalf of Oxford City Council, other than that provided by the planning process. Rather, there appears to be a reliance on contractors undertaking work for the council to ensure the relevant legislation and professional guidelines are adhered to. This includes (but is by no means limited to) work undertaken by ODS. There is no internal process for assessing compliance with, for example: the Wildlife and Countryside Act 1981, The Conservation of Habitats and Species Regulations 2017, and the Protection of Badgers Act 1992, which are relevant for maintenance of buildings and trees, as well as the management of green

spaces. Where reliance is placed on ODS it is unclear what the nature of this arrangement is, and whether ODS possess sufficient ecological expertise to adopt this responsibility.

- 5.13. There is no protocol for identifying and **managing invasive species** on Oxford City Council land. When such species are recorded, they are dealt with on a case-by-case basis, but without recourse to any funding or expertise in addressing them. In the case of plant species listed on Schedule 9 of the Wildlife and Countryside Act 1981 (as amended) Oxford City Council has a responsibility not to allow such species to spread to the wild (e.g. Japanese Knotweed, Himalayan Balsam).
- 5.14. There is no **programme for monitoring biodiversity** on council-owned parks and nature reserves, nor for assessing management outcomes. Such knowledge would help prioritise management according to the council's resource constraints. In addition, Oxford City Council is the only council in the county that does not contribute financially to the Oxfordshire Local Wildlife Sites (LWS) project run by the Berkshire, Buckinghamshire and Oxfordshire Wildlife Trust (BBOWT). Consequently, the monitoring of LWS undertaken by BBOWT does not incorporate any sites within the city.
- 5.15. A small number of the parks and nature reserves owned by Oxford City Council are subject to **formal habitat management plans**. Producing such plans requires resource and expertise in habitat creation and habitat management, which in turn should draw on several disciplines (e.g. land management, ecology, hydrology). The council does not have the resource of expertise to produce such plans more widely, with plans produced for a small number of key sites (such as the recently updated and high quality plan for Shotover).

## **6. Assessment and Actions**

- 6.1. There are no formal assessment criteria for determining whether Oxford City Council is effectively meeting its statutory duty to conserve and enhance biodiversity, in part because of the potentially very broad scope of what can or should be considered. It is nevertheless clear numerous relevant initiatives have been and continue to be delivered to this end, but also that there are gaps. .
- 6.2. In 2023 the council resolved to produce a Biodiversity Strategy for Oxford covering both internal and external considerations: capturing the work of the council but within the broader objective of safeguarding and enhancing biodiversity across the city as a whole. A Steering Group was established but work has not progressed since due to resource constraints. It is recommended that this work resumes as soon as resourcing allows, as its scope addresses the gaps identified in Section 4 of this document.
- 6.3. The existing policies and strategies reviewed above set out actions the council is taking to conserve and enhance biodiversity. The lack of a formal framework for tracking the delivery of these actions hinders the ability to assess whether sufficient actions are being taken. For example, the gap identified above regarding protected species constraints, was also an action in the BAP produced in 2015. It is recommended that such a framework is devised, implemented, and – crucially – maintained in the long-term. This could be developed alongside the Biodiversity Strategy.
- 6.4. However, the following gaps should be examined and addressed, as practicably as resources allow, as they concern legislative compliance:
  - Adopting a process for assessing potential protected species constraints for work undertaken by or on behalf of Oxford City Council; and
  - A protocol for identifying and managing invasive species on Oxford City Council land.
- 6.5. In the absence of the above, compliance with legislation relevant to nature conservation depends on individuals in any given project team having sufficient ecological expertise to determine when issues may arise, what assessments are required, and who is qualified to undertake them. While assessments may be undertaken by an external contractor, there is still a clear need for internal processes and protocols.