



## **Preliminary Ecological Appraisal**

Land at Chandigrah, Summerhouse Lane, Harefield, Uxbridge UB9 6HS

Ms Lynda Nye-Rashkova

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### **Guidelines**

This assessment has been designed to meet:

- Chartered Institute of Ecology and Environmental Management 'Guidelines for Preliminary Ecological Appraisal Second Edition, December 2017'; and
- British Standard 42020 (2013) 'Biodiversity – Code of Practice for Planning and Development'.

### **Proportionality**

The work involved in preparing and implementing all ecological surveys, impact assessments and measures for avoidance, mitigation, compensation and enhancement should be proportionate to the predicted degree of risk to biodiversity and to the nature and scale of the proposed development. Consequently, the decision-maker should only request supporting information and conservation measures that are relevant, necessary and material to the application in question. Similarly, the decision-maker and their consultees should ensure that any comments and advice made over an application are also proportionate.

This approach is enshrined in Government planning guidance, for example, the National Planning Policy Framework for England 2019 paragraphs 174 and 175. The desk studies and field surveys undertaken to provide a preliminary ecological appraisal (PEA) might in some cases be all that is necessary. (BS 42020, 2013)

In consequence of the scale and intensity of the proposed development, the low impact on ecological receptors identified through both the site survey and search of local biological records, and the passive interface with the mitigation hierarchy, this plan-led report is considered adequate and proportionate. It communicates all relevant information necessary to determine a planning application or support the recommendations for further surveys.

## Executive Summary

Arbtech Consulting Ltd was commissioned by Ms Lynda Nye-Rashkova to undertake a Preliminary Ecological Appraisal (PEA) at Land at Chandighrah, Summerhouse Lane, Harefield, Uxbridge UB9 6HS to inform a planning application for a proposed residential development. The survey visit was completed on 22<sup>nd</sup> August 2022. The aim of the survey was to complete a UKHab Habitat Survey of the survey area (all land that will be impacted by the development proposals) and analyse this against a desk study.

This report is prepared to inform a planning application with the London Borough of Hillingdon. The proposed development is described as:

- Demolition of the existing buildings and the erection of 4 new dwellings

## **Recommendations - This is work you will need to commission (if any) to obtain planning permission or comply with legislation for other consent.**

| Ecological Factor                    | Recommendations  |
|--------------------------------------|--|
| <b>Designated sites</b>              | Natural England will need to be consulted on the likely risks of the works due to the proximity of the SSSI.   |
| <b>Notable habitats and plants</b>   | No further surveys required.<br>A Biodiversity Net Gain (BNG) metric report may be required by the LPA to outline how the site's baseline compares to that of the proposal.  |
| <b>Invasive / Non-native species</b> | No further surveys but remain vigilant.  |
| <b>Invertebrates</b>                 | No further surveys required.   |
| <b>Bats</b>                          | No further surveys required<br>Lighting mitigation may be required based on the outcome of the night bat survey(s).<br>If any bat roosts are confirmed from this survey schedule, a bat licence would be required to convert it into a dwelling as it would involve the disturbance, modification and/or destruction of roosts. This is applied for with the help of an ecologist after planning permission is granted but before commencement of works. |
| <b>Birds</b>                         | Works on the buildings and vegetation should be undertaken outside the period 1st March to 31st August. If this timeframe cannot be avoided, a close inspection of the building and vegetation should be undertaken immediately prior to the commencement of works by an experienced ecologist. All active nests will need to be retained until the young have fledged.  |
| <b>Reptiles</b>                      | No further surveys   |
| <b>Amphibians</b>                    | No further surveys   |
|                                      |  |

|                                  |  |
|----------------------------------|--|
| <b>Other Terrestrial Mammals</b> | <b>Badgers</b><br>No further surveys.                |
|                                  | <b>Water Vole</b><br>No further surveys.             |
|                                  | <b>Otter</b><br>No further surveys.                  |
|                                  | <b>Dormouse</b><br>No further surveys.               |
|                                  | <b>Hedgehogs</b><br>No further surveys are required. |

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## **1.0 Introduction and Context**

### **1.1 Background**

Arbtech Consulting Ltd was commissioned by Ms Lynda Nye-Rashkova to undertake a Preliminary Ecological Appraisal (PEA) at Land at Chandighrah, Summerhouse Lane, Harefield, Uxbridge UB9 6HS to inform a planning application for a proposed residential development. The survey visit was completed on 22nd August 2022. The aim of the survey was to complete a UKHab Habitat Survey of the survey area (all land that will be impacted by the proposals) and analyse this against a desk study.

No previous ecological surveys are known for the site.

### **1.2 Site Context**

The survey site is centred on National Grid Reference TQ 0435 9145 and has an area of approximately 0.248ha. The survey site consists of defunct agricultural buildings set in an area of hard standing, a small area of grass and scrub with boundary tree lines. A site of special scientific interest (SSSI) is found close to the east and south.

### **1.3 Scope of the Report**

This report describes the baseline ecological conditions at the site, evaluates habitats within the survey area in the context of the wider environment and describes the suitability of those habitats for notable or protected species. It identifies possible ecological constraints as a result of the proposed development and summarises the requirements for further surveys and mitigation measures to inform subsequent mitigation proposals, achieve planning or other statutory consent and to comply with wildlife legislation.

To achieve this, the following steps have been taken:

- A desk study has been carried out.
- A field survey has been undertaken to record baseline information on the site and surrounding area including habitat types and their suitability for notable or protected species.
- Invasive plant and animal species (such as those listed on Schedule 9 of the Wildlife & Countryside Act) have been identified.
- Potential impacts on features of value, as a result of the proposed development, have been identified.
- Recommendations for further surveys and mitigation have been made.
- Opportunities for the enhancement of the site for biodiversity have been set out.

A survey plan is presented in Appendix 1, proposed plans in Appendix 2 (where available), and a summary of relevant legislation is presented in Appendix 3.

### **1.4 Project Description**

This report is prepared to inform a planning application with the London Borough of Hillingdon. The proposed development is described as:

- Demolition of the existing buildings and the erection of 4 new dwellings

## **2.0 Methodology**

### **2.1 Desk Study**

The desk study included a review of statutory designated sites, notable habitats and granted European Protected Species Licence (EPSL) and notable species records held on magic.gov.uk database. An assessment of the surrounding landscape structure was also completed using aerial images from Google Earth and OS maps.

Additionally, to conform to best practice guidelines biological records data (BRD) within a 1km radius of the site will need to be obtained from the local biological records centre (Greenspace Information for Greater London, GIGL). This will be analysed and summarised in the conclusions and recommendations part of the report where relevant upon arrival.

The data search is confidential information that is not suitable for public release and has been analysed and summarised for presentation in this report. They can be provided on request by the LPA.

### **2.2 Field Survey**

The survey was undertaken by Craig Williams BSc, MSc, DIC, MRSB (Natural England Protected Species Licence Numbers: [Bats] (2018-33540-CLS-CLS) [Great Crested Newts] (2015-16682-CLS-CLS) [Barn Owls] (CL29/00097) on 22<sup>nd</sup> August 2022.

#### Preliminary Ecological Appraisal:

The methodology for the Phase 1 habitat survey is based on the best practice publication UKHabs (2018). All land parcels are described and mapped according to the appropriate habitat classification (see site map in Appendix 1). Where appropriate, target notes provide supplementary information on habitat conditions, features too small to map to scale, species composition, structure and management.

During the survey, habitats were assessed for their suitability to support protected species, and field signs indicating their presence recorded. The assessment takes into consideration the findings of the desk study, the habitat conditions on site and in the context of the surrounding landscape, and the ecology of the protected species. The likelihood of the presence of protected species is ranked; the habitats on site are evaluated against their likelihood to provide suitable habitat for protected species.

**2.3 Limitations**

It should be noted that whilst every effort has been made to describe the baseline conditions within the survey area, and evaluate these features, this report does not provide a complete characterisation of the site. This assessment provides a preliminary view of the likelihood of protected species being present. This is based on suitability of the habitats on the site and in the wider landscape, the ecology and biology of species as currently understood, and the known distribution of species as recovered during the searches of historical biological records.

- There were no specific limitations to the survey regarding, seasonality, biotic or abiotic factors (e.g., wasps, asbestos) visibility, safety, or adverse weather.



### 3.0 Results and Evaluation

#### 3.1 Desk Study Results

The desk study methodology as outlined in Section 2.1 has been carried out, and any relevant findings regarding sites, habitats or species will be incorporated into the conclusions and recommendations section of this report (Section 4.2) for ease of reading.

#### 3.2 Field Survey Results

The site of the proposed development consists of defunct agricultural buildings set in an area of hard standing, a small area of grass and scrub with boundary tree lines. A site of special scientific interest (SSSI) is found close to the east and south.

*Table 1: Weather conditions during the survey*

| Date: 22/08/2022 |      |
|------------------|------|
| Temperature      | 19°C |
| Humidity         | 67%  |
| Cloud Cover      | 20%  |
| Wind             | 4mph |
| Rain             | None |

### **3.3 Site Descriptions and Photos**

*UKHab codes in brackets when they first appear in text.*

#### Developed land – buildings and artificial sealed surface [u1b5, u1c]

##### Buildings

There are two buildings on site, a southern barn designated as B1 and a northern barn designated as B2.

B1 is a breeze block and corrugated sheet-built barn, with a shallowly gabled roof also of corrugated sheets. Small overlaps on the gable ends leave shallow and wide recesses unsuitable for roosting. It has a simple metal frame without a ridge board with thin trusses and the northern elevation with two large openings. There are no internal voids and is used for wood storage inside. No bat droppings are found internally or externally, although two swallow nests are present at the eastern end.

B2 is very similar to B1, being a breeze block and corrugated sheet walled and roofed barn, although has a closing door on the northern elevation. No bat evidence is found internally or externally.

##### Hard standing

Most of the interior of the site is concrete hard standing, with occasional small sycamore and buddleia.

##### Line of trees [w1g6]

A line of cypress and laurel trees runs along the southern and western boundaries, and a line of broadleaved trees runs along the eastern and northern boundary on a small embankment with birch, hazel, sycamore, field maple and ash. None have any internal roosting value.

##### Mixed scrub, scattered [h3h, 10]

A small area of scattered mixed scrub is found behind the barns in the east of the site, with bramble, hawthorn, elder, and nettle, ash saplings and buddleia.

##### Modified grass [g4]

A small area of rank, modified grass is found in the north of the site, with dominant ragwort, nettle, creeping thistle and burdock.

##### Walls and fence [u1e 69]

A short wire fence runs around the site.



Photo 1: Looking east at the site along the existing access drive.



Photo 2: Looking east across the site, with B1 on the right and B2 on the left





Photo 3: Looking at the northern elevation of B1



Photo 4: Inside B1



Photo 5: The western and southern elevations of  
B2



Photo 6: Inside B2





Photo 7: Looking east across the site, with B1 on the right and B2 on the left



Photo 8: Looking west across the site, with B1 on the left.

## 4.0 Conclusions, Impacts and Recommendations

### 4.1 Informative Guidelines

#### Likelihood of the presence of protected species

Where physical evidence of the presence of protected species is indeterminate during the survey, the habitats on site are evaluated as to their likelihood to provide sheltering, roosting, foraging, basking or nesting habitat. The likelihood of occupancy of protected species is ranked according to the criteria listed in Table 1.

Where this report supports a planning application, the ecological interest of the study area (including the survey area) and the proposed development has also been evaluated in terms of the planning policies relating to biodiversity. It is clearly stated where a preliminary value can be given and where further information is required.

Appropriate justification for this assessment is provided in Section 2.3 and Table 1 of this report.

### 4.2 Evaluation

Taking the desk study and site survey results into account, the following conclusions for ecological factors has been reached.

Table 2: Evaluation of site

| Ecological Factor       | Survey assessment conclusions (with justification)  | Foreseen impacts   | Recommendations   | Enhancements<br>The Local Planning Authority has a duty to ask for enhancements under the NPPF |
|-------------------------|---|--|---|--|
| <b>Designated sites</b> | <p>Old Park Wood Site of Special Scientific Interest (SSSI) is located ~5m to the east and ~5m to the south over small tracks.</p> <p>No known non-statutory sites are located nearby.</p> <p>No National Networks Sites (SAC, SPA, Ramsar) are</p> | <p>The conversion of the barns into new residential dwellings is unlikely to affect the close by Site of Special Scientific Interest during use, and there is an absence of functionally linked habitat. The construction works themselves are unlikely to impact the designated site due to their relatively limited nature, which is unlikely to</p> | <p>Natural England will need to be consulted on the likely risks of the works due to the proximity of the SSSI.</p> | N/A  |

|                                      |  |  |  |   |
|--------------------------------------|--|--|--|---|
|                                      | located within 10km of the site.   | generate significant dust, litter, pollutants etc especially as the site is slightly depressed into the ground.        |  |   |
| <b>Notable habitats and plants</b>   | No notable or priority habitats are found on site, although ancient woodland is found in the nearby SSSI.  | No impacts foreseen on the nearby ancient woodland from the works of use of the site after development.                | No further surveys required.<br><br>A Biodiversity Net Gain (BNG) metric report may be required by the LPA to outline how the site's baseline compares to that of the proposal.                                  | Any new trees or shrubs planted should be of native species of local provenance. These and other measures could be outlined in an ecological enhancement plan for the site. |
| <b>Invasive / Non-native species</b> | No invasive and non-native problematic species recorded on site, aside from buddleia.  | N/A  | No further surveys but remain vigilant.  | N/A   |
| <b>Invertebrates</b>                 | Although they may be useful for a range of generalist invertebrates, the small area of modified grass habitat and scattered scrub is unlikely to contain notable or protected assemblages. | None foreseen.   | No further surveys required.   | Beetle loggeries of semi-sunken vertical timbers would provide habitat for larvae.  |
| <b>Bats</b>                          | The locality of the site has good bat habitat value with local ancient woodland, large gardens, hedges, water courses (River Colne) and reservoirs providing                               | No impacts on roosting value foreseen.<br><br>Bat commuting around the site may be affected by any increased lighting. | No further surveys required<br><br>Lighting mitigation may be required based on the outcome of the night bat survey(s).<br><br>If any bat roosts are confirmed from this survey schedule, a bat licence would be | Bat boxes could be installed on the converted buildings or retained trees, between 4-5m high, on the south or western elevation and with unobstructed access.               |



|                 |  |  |   |  |
|-----------------|--|--|---|--|
|                 | <p>commuting and foraging value.</p> <p>The barn buildings (B1 and B2) on site have no features of roosting value and no evidence was found. No roosting features were found on any tree on site.</p> <p>The boundaries of the site may be used by commuting bats.</p>             |  | <p>required to convert it into a dwelling as it would involve the disturbance, modification and/or destruction of roosts. This is applied for with the help of an ecologist after planning permission is granted but before commencement of works.</p>  |  |
| <b>Birds</b>    | <p>Birds were seen to nest within B1, and they could also use B2 and the trees on site in the active season.</p> <p>There is no habitat for other schedule 1 birds of the Wildlife and Countryside Act 1981 (as amended) e.g., peregrine falcons, barn owls or black redstart.</p> | Any works on the buildings or vegetation could destroy nests if undertaken within the breeding season. | Works on the buildings and vegetation should be undertaken outside the period 1st March to 31st August. If this timeframe cannot be avoided, a close inspection of the building and vegetation should be undertaken immediately prior to the commencement of works by an experienced ecologist. All active nests will need to be retained until the young have fledged. | <p>Woodcrete bird boxes should be installed on the new buildings and retained trees on site, e.g., swift boxes which are used by a range of species), and also 25mm hole and 32mm hole variants. These should be erected 3-5m high, out of direct sunlight to prevent overheating, out of artificial lighting, and with clear flight paths.</p> <p>These measures could be outlined in the ecological enhancement plan for the site.</p> |
| <b>Reptiles</b> | There is no suitable reptile habitat on the survey site, only a small area of  | None foreseen.   | No further surveys  | Areas of long grass and log piles/hibernacula around the site would provide reptile benefits.  |

|                                  |   |                                     |  |   |
|----------------------------------|---|-------------------------------------|--|---|
|                                  | modified grass and scattered scrub.<br><br>No reptile EPSLs were identified within influencing distance of the site.  |                                     |  |   |
| <b>Amphibians</b>                | There are no suitable aquatic or terrestrial habitats on site for protected amphibians. No ponds are known in the vicinity (within 250m) which are critical for the amphibian life cycle.<br><br>No great crested newt EPSLs were identified within influencing distance of the site. | None foreseen.                      | No further surveys                       | A small wildlife pond (no fish or waterfowl provision) on site would bring the best enhancement for amphibians.   |
| <b>Other Terrestrial Mammals</b> | <b>Badgers</b><br>No badger setts or field signs were observed on site.   | <b>Badgers</b><br>None foreseen.    | <b>Badgers</b><br>No further surveys.    | <b>Badgers</b><br>Planting fruit trees on the developed site will provide additional foraging resources for badgers.<br><br>These measures could be outlined in the ecological enhancement plan for the site. |
|                                  | <b>Water Vole</b><br>No habitat value.  | <b>Water Vole</b><br>None foreseen. | <b>Water Vole</b><br>No further surveys. | <b>Water Vole</b><br>N/A  |

|  |  |  |  |  |
|--|--|--|--|--|
|  | <b>Otter</b><br>No habitat value.  | <b>Otter</b><br>None foreseen.           | <b>Otter</b><br>No further surveys.                  | <b>Otter</b><br>N/A  |
|  | <b>Dormouse</b><br>No suitable habitat for dormouse is found on site. The small lengths of tree line in the boundary are not suitable due to a lack of suitable forage plants. | <b>Dormouse</b><br>None foreseen.        | <b>Dormouse</b><br>No further surveys.               | <b>Dormouse</b><br>N/A   |
|  | <b>Hedgehogs</b><br>Hedgehogs may currently use the site for commuting or foraging.  | <b>Hedgehogs</b><br>No impacts foreseen. | <b>Hedgehogs</b><br>No further surveys are required. | <b>Hedgehogs</b><br>Permeability of any new fences is essential to retain commuting routes, and 13cm <sup>2</sup> gaps should be included frequently and to every garden.<br><br>Hedgehog houses (made of wood without wires which can injure) could be installed in quiet corners.<br><br>These measures could be outlined in the ecological enhancement plan for the site. |

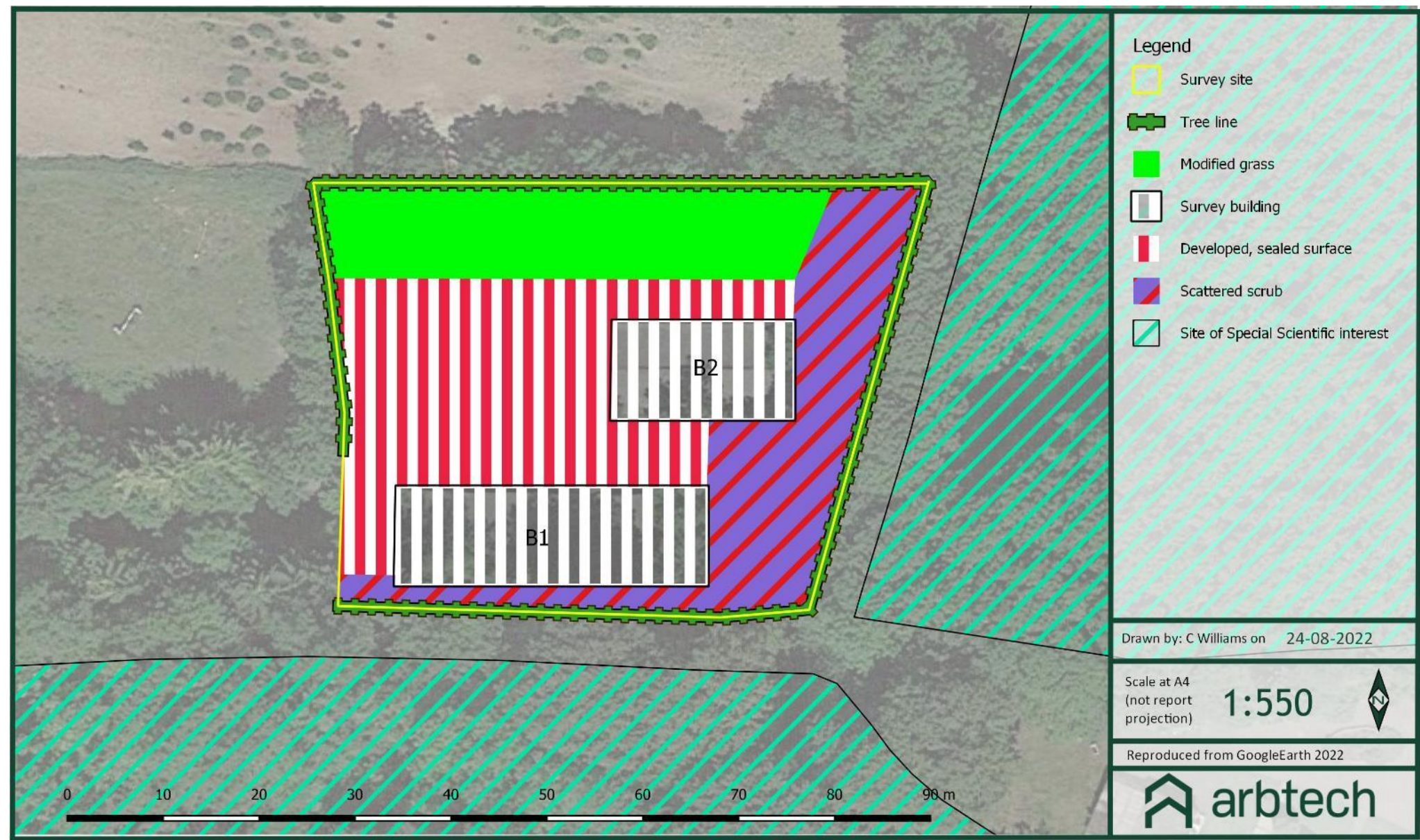
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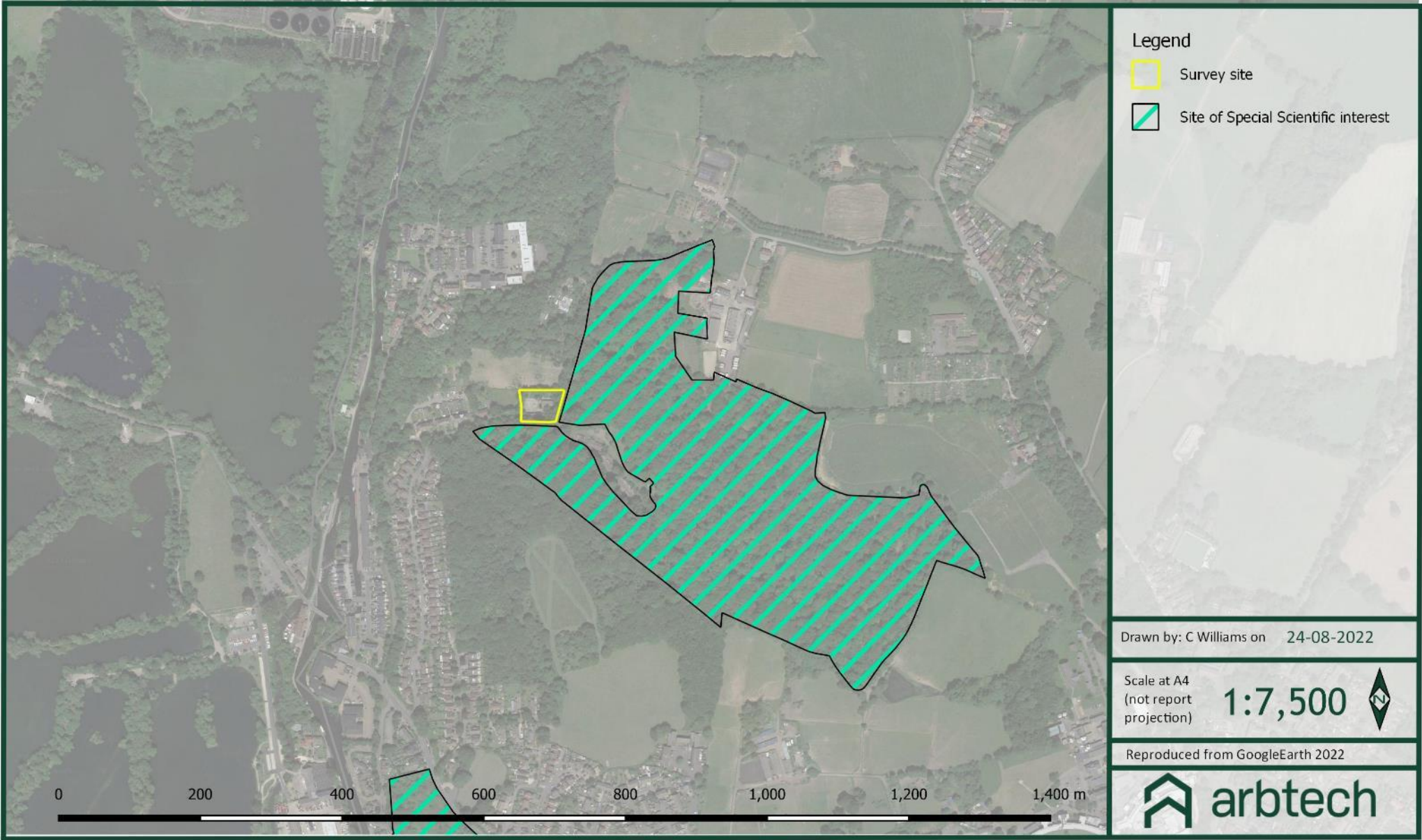


Appendix 1.1: Habitat Survey Map





Appendix 1.2: Landscape



Appendix 2: Proposed Site Plan



Proposed Site Plan  
Scale 1:200



|  |  |                                    |                |
|--|--|------------------------------------|----------------|
| <b>MCA</b> ARCHITECTS  |  | MICHAEL CONOLEY ASSOCIATES         |                |
| PROJECT<br>Proposed Residential Development<br>at Chandigrah, Summerhouse Lane, Harefield, UB9 6HS |  | DATE<br>08.23                      | SCALE<br>1:200 |
| DRAWING NO.<br>1682  |  | DATE<br>16.02                      | SCALE<br>A1    |
| DRAWING TITLE<br>Proposed Site (Block) Plan  |  | DRAWING NUMBER<br><b>1682/P-01</b> |                |



## Appendix 3: Legislation and Planning Policy

### LEGAL PROTECTION

#### **National and European Legislation Afforded to Habitats**

##### ***International Statutory Designations***

Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) are sites of European importance and are designated under the EC Habitats Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora (the Habitats Directive) and the EC Birds Directive 2009/147/EC on the conservation of wild birds (the Wild Birds Directive) respectively. Both form part of the wider Natura 2000 network across Europe.

Under the Habitats Directive Article 3 requires the establishment of a network of important conservation sites (SACs) across Europe. Over 1000 animal and plant species, as well as 200 habitat types, listed in the directive's annexes are protected in various ways:

**Annex II species** (about 900): core areas of their habitat are designated as Sites of Community importance (SCIs) and included in the Natura 2000 network. These sites must be managed in accordance with the ecological needs of the species.

**Annex IV species** (over 400, including many Annex II species): a strict protection regime must be applied across their entire natural range, both within and outside Natura 2000 sites.

**Annex V species** (over 90): their exploitation and taking in the wild is compatible with maintaining them in a favourable conservation status.

SPAs are classified under Article 2 of the Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds both for rare bird species (as listed on Annex I) and for important migratory species.

The Conservation of Habitats and Species Regulations 2017 (as amended) form the legal basis for the implementation of the Habitats and Birds Directives in terrestrial areas and territorial waters out to 12 nautical miles in England and Wales (including the inshore marine area) and to a limited extent in Scotland and Northern Ireland.

Ramsar sites are designated under the Convention on Wetlands of International Importance, agreed in Ramsar, Iran, in 1971. The Convention covers all aspects of wetland conservation and recognises the importance of wetland ecosystems in relation to global biodiversity conservation. The Convention refers to wetlands as “*areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres*”. However, they may also include riparian and coastal zones. Ramsar sites are statutorily protected under the Wildlife & Countryside Act 1981 (as amended 01.04.1996) with further protection provided by the Countryside and Rights of Way (CROW) Act 2000. Policy statements have been issued by the Government in England and Wales highlighting the special status of Ramsar sites. The Government in England and Wales has issued policy statements which ensure that Ramsar sites are afforded the same protection as areas designated under the EC Birds and Habitats Directives as part of the Natura 2000 network (e.g. SACs & SPAs). Further provisions for the protection and management of SSSIs have been introduced by the Nature Conservation (Scotland) Act 2004.

***National Statutory Designations***

Sites of Special Scientific Interest (SSSI) are designated by nature conservation agencies in order to conserve key flora, fauna, geological or physio-geographical features within the UK. The original designations were under the National Parks and Access to the Countryside Act 1949 but SSSIs were then re-designated under the Wildlife & Countryside Act 1981 (as amended). As well as reinforcing other national designations (including National Nature Reserves), the system also provides statutory protection for terrestrial and coastal sites which are important within the European Natura 2000 network and globally.

***Local Statutory Designations***

Local authorities in consultation with the relevant nature conservation agency can declare Local Nature Reserves (LNRs) under the National Parks and Access to the Countryside Act 1949. LNRs are designated for flora, fauna or geological interest and are managed locally to retain these features and provide research, education and recreational opportunities.

***Non- Statutory Designations***

All non-statutorily designated sites are referred to as Local Wildlife Sites (LWS) and can be designated by the local authority for supporting local conservation interest. Combined with statutory designation, these sites are considered within Local Development Frameworks under the Town and Country Planning system and are a material consideration during the determination of planning applications. The protection afforded to these sites varies depending on the local authority involved.

Regionally Important Geological Sites (RIGs) are the most important geological and geomorphological areas outside of statutory designations. These sites are also a material consideration during the determination of planning applications.

**The Hedgerow Regulations 1997**

The Hedgerow Regulations 1997 are designed to protect 'important' countryside hedgerows. Importance is defined by whether the hedgerow (a) has existed for 30 years or more; or (b) satisfies at least one of the criteria listed in Part II of Schedule 1 of the Regulations.

Under the Regulations, it is against the law to remove or destroy hedgerows on or adjacent to common land, village greens, SSSIs (including all terrestrial SACs, NNRs and SPAs), LNRs, land used for agriculture or forestry and land used for the keeping or breeding of horses, ponies or donkeys without the permission of the local authority. Hedgerows 'within or marking the boundary of the curtilage of a dwelling-house' are excluded.

**National and European Legislation Afforded to Species*****The Conservation of Habitats and Species Regulations 2017 (as amended)***

The Conservation of Habitats and Species Regulations 2017 (as amended) aims to promote the maintenance of biodiversity by requiring the Secretary of State to take measures to maintain or restore wild species listed within the Regulations at a favourable conservation status.

The Regulations make it an offence (subject to exceptions) to deliberately capture, kill, disturb, or trade in the animals listed in Schedule 2, or pick, collect, cut, uproot, destroy, or trade in the plants listed in Schedule 4. However, these actions can be made lawful through the granting of licenses by the appropriate authorities. Licenses may be granted for a number of purposes (such as science and education, conservation, preserving public health and safety), but only after the appropriate authority is satisfied that there are no satisfactory alternatives and that such actions will have no detrimental effect on wild population of the species concerned.

### ***The Wildlife and Countryside Act (WCA) 1981 (as amended)***

The Wildlife and Countryside Act (WCA) 1981 (as amended) implements the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention 1979, implemented 1982) and implements the species protection requirements of EC Birds Directive 2009/147/EC on the conservation of wild birds in Great Britain (the birds Directive). The WCA 1981 has been subject to a number of amendments, the most important of which are through the Countryside and Rights of Way (CROW) Act (2000).

Other legislative Acts affording protection to wildlife and their habitats include:

- Deer Act 1991
- Natural Environment & Rural Communities (NERC) Act 2006
- Protection of Badgers Act 1992
- Wild Mammals (Protection) Act 1996

### ***Badgers***

Badgers *Meles meles* are protected under The Protection of Badgers Act 1992 which makes it an offence to:

- Wilfully kill, injure, take, or attempt to kill, injure or take a badger
- Cruelly ill-treat a badger, including use of tongs and digging
- Possess or control a dead badger or any part thereof
- Intentionally or recklessly damage, destroy or obstruct access to a badger sett or any part thereof
- Intentionally or recklessly disturb a badger when it is occupying a badger sett
- Intentionally or recklessly cause a dog to enter a badger sett
- Sell or offers for sale, possesses or has under his control, a live badger

Effects on development works:

A development licence will be required from the relevant countryside agency (i.e. Natural England, Natural Resources Wales, Scottish Natural Heritage) for any development works likely to affect an active badger sett, or to disturb badgers whilst they occupy a sett. Guidance has been issued by the countryside agencies to define what would constitute a licensable activity. It is not possible to obtain a licence to translocate badgers.

### **Birds**

With certain exceptions, all birds, their nests and eggs are protected under Sections 1-8 of the WCA. Among other things, this makes it an offence to:

- Intentionally (or recklessly in Scotland) kill, injure or take any wild bird
- Intentionally (or recklessly in Scotland) take, damage or destroy (or, in Scotland, otherwise interfere with) the nest of any wild bird while it is in use or being built
- Intentionally take or destroy an egg of any wild bird
- Sell, offer or expose for sale, have in his possession or transport for the purpose of sale any wild bird (dead or alive) or bird egg or part thereof.
- Intentionally or recklessly obstruct or prevent any wild bird from using its nest (Scotland only)

Certain species of bird, for example the barn owl, bittern and kingfisher receive additional protection under Schedule 1 of the WCA and are commonly referred to as “Schedule 1” birds.

This affords them protection against:

- Intentional or reckless disturbance while it is building a nest or is in, on or near a nest containing eggs or young
- Intentional or reckless disturbance of dependent young of such a bird
- In Scotland only, intentional or reckless disturbance whilst lekking
- In Scotland only, intentional or reckless harassment

Effects on development works:

Works should be planned to avoid the possibility of killing or injuring any wild bird or damaging or destroying their nests. The most effective way to reduce the likelihood of nest destruction in particular is to undertake work outside the main bird nesting season which typically runs from March to August. Where this is not feasible, it will be necessary to have any areas of suitable habitat thoroughly checked for nests prior to vegetation clearance.

Schedule 1 birds are additionally protected against disturbance during the nesting season. Thus, it will be necessary to ensure that no potentially disturbing works are undertaken in the vicinity of the nest. The most effective way to avoid disturbance is to postpone works until the young have fledged. If this is not feasible, it may be possible to maintain an appropriate buffer zone or standoff around the nest.

### **Amphibians and Reptiles**

The sand lizard *Lacerta agilis*, smooth snake *Coronella austriaca*, natterjack toad *Epidalea calamita*, pool frog *Pelophylax lessonae* and great crested newt *Triturus cristatus* receive full protection under Habitats Regulations through their inclusion on Schedule 2. Regulation 41 prohibits:

- Deliberate killing, injuring or capturing of Schedule 2 species
- Deliberate disturbance of species in such a way as:

- To impair their ability to survive, breed, or reproduce, or to rear or nurture young;
- To impair their ability to hibernate or migrate
- To affect significantly the local distribution or abundance of the species
- Damage or destruction of a breeding site or resting place

With the exception of the pool frog, these species are also listed on Schedule 5 of the WCA and they are additionally protected from:

- Intentional or reckless disturbance (at any level)
- Intentional or reckless obstruction of access to any place of shelter or protection
- Selling, offering or exposing for sale, possession or transporting for purpose of sale.

Other native species of reptiles are protected solely under Schedule 5, Section 9(1) & (5) of the WCA, i.e. the adder *Vipera berus*, grass snake *Natrix natrix*, common lizard *Zootoca vivipara* and slow-worm *Anguis fragilis*. It is prohibited to:

- Intentionally or recklessly kill or injure these species.

Effects on development works:

A European Protected Species Licence (EPSL) issued by the relevant countryside agency (i.e. Natural England, Natural Resources Wales, Scottish Natural Heritage) will be required for works likely to affect the breeding sites or resting places amphibian and reptile species protected under Habitats Regulations. A licence will also be required for operations liable to result in a level of disturbance which might impair their ability to undertake those activities mentioned above (e.g. survive, breed, rear young and hibernate). The licences are to allow derogation from the relevant legislation, but also to enable appropriate mitigation measures to be put in place and their efficacy to be monitored.

Although not licensable, appropriate mitigation measures may also be required to prevent the intentional killing or injury of adder, grass snake, common lizard and slow worm, thus avoiding contravention of the WCA.

### **Water Voles**

The water vole *Arvicola terrestris* is fully protected under Schedule 5 of the WCA. This makes it an offence to:

- Intentionally kill, injure or take (capture) water voles
- Intentionally or recklessly damage, destroy or obstruct access to any structure or place used for shelter or protection
- Intentionally or recklessly disturb water voles while they are occupying a structure or place used for shelter or protection

Effects on development works:

If development works are likely to affect habitats known to support water voles, the relevant countryside agency (i.e. Natural England, Natural Resources Wales, Scottish Natural Heritage) must be consulted. It must be shown that means by which the proposal can be re-designed to avoid contravening the legislation have been fully explored e.g. the use of alternative sites, appropriate timing of works to avoid times of the year in which water voles are most vulnerable, and measures to ensure minimal habitat

loss. Conservation licences for the capture and translocation of water voles may be issued by the relevant countryside agency for the purpose of development activities if it can be shown that the activity has been properly planned and executed and thereby contributes to the conservation of the population. The licence will then only be granted to a suitably experienced person if it can be shown that adequate surveys have been undertaken to inform appropriate mitigation measures. Identification and preparation of a suitable receptor site will be necessary prior to the commencement of works.

### **Otters**

Otters *Lutra lutra* are fully protected under the Conservation Regulations through their inclusion on Schedule 2. Regulation 41 prohibits:

- Deliberate killing, injuring or capturing of Schedule 2 species
- Deliberate disturbance of species in such a way as:
- To impair their ability to survive, breed, or reproduce, or to rear or nurture young;
- To impair their ability to hibernate or migrate
- To affect significantly the local distribution or abundance of the species
- Damage or destruction of a breeding site or resting place

Otters are also currently protected under the WCA through their inclusion on Schedule 5. Under this Act, they are additionally protected from:

- Intentional or reckless disturbance (at any level)
- Intentional or reckless obstruction of access to any place of shelter or protection

Effects on development works:

A European Protected Species Licence (EPSL) issued by the relevant countryside agency (i.e. Natural England, Natural Resources Wales, Scottish Natural Heritage) will be required for works likely to affect otter breeding or resting places (often referred to as holts, couches or dens) or for operations likely to result in a level of disturbance which might impair their ability to undertake those activities mentioned above (e.g. survive, breed, and rear young). The licence is to allow derogation from the relevant legislation but also to enable appropriate mitigation measures to be put in place and their efficacy to be monitored

### **Bats**

All species are fully protected by Habitats Regulations 2010 as they are listed on Schedule 2. Regulation 41 prohibits:

- Deliberate killing, injuring or capturing of Schedule 2 species (e.g. All bats)
- Deliberate disturbance of bat species in such a way as:
- To impair their ability to survive, breed, or reproduce, or to rear or nurture young;
- To impair their ability to hibernate or migrate
- To affect significantly the local distribution or abundance of the species
- Damage or destruction of a breeding site or resting place

Bats are afforded the following additional protection through the WCA as they are included on Schedule 5:

- Intentional or reckless disturbance (at any level)
- Intentional or reckless obstruction of access to any place of shelter or protection

Effects on development works:

A European Protected Species Licence (EPSL) issued by the relevant countryside agency (i.e. Natural England, Natural Resources Wales, Scottish Natural Heritage) will be required for works are likely to affect a bat roost or an operation which are likely to result in an illegal level of disturbance to the species will require an EPSM licence. The licence is to allow derogation from the legislation through the application of appropriate mitigation measures and monitoring.

### **Hazel Dormice**

Hazel dormice *Muscardinus avellanarius* are fully protected under Habitats Regulations through their inclusion on Schedule 2. Regulation 41 prohibits:

- Deliberate killing, injuring or capturing of Schedule 2 species
- Deliberate disturbance of species in such a way as:
  - To impair their ability to survive, breed, or reproduce, or to rear or nurture young;
  - To impair their ability to hibernate or migrate
- To affect significantly the local distribution or abundance of the species
- Damage or destruction of a breeding site or resting place

Dormice are also protected under the WCA through their inclusion on Schedule 5. Under this Act, they are additionally protected from:

- Intentional or reckless disturbance (at any level)
- Intentional or reckless obstruction of access to any place of shelter or protection

Effects on development works:

Works which are liable to affect a dormice habitat or an operation which are likely to result in an illegal level of disturbance to the species will require a European Protected Species Licence (EPSL) issued by the relevant countryside agency (i.e. Natural England, Natural Resources Wales (NB: Hazel Dormouse are entirely absent from Scotland)). The licence is to allow derogation from the legislation through the application of appropriate mitigation measures and monitoring.

### **White Clawed Crayfish**

There is a considerable amount of legislation in place in an attempt to protect the White-clawed crayfish *Austropotamobius pallipes*. This species is listed under the European Union's (EU) Habitat and Species Directive and is listed under Schedule 5 of the Wildlife and Countryside Act (1981). This makes it an offence to:

- Protected against intentional or reckless taking
- Protected against selling, offering or advertising for sale, possessing or transporting for the purpose of sale

It is also classified as Endangered in the IUCN Red List of Endangered Species. As a result of this and other relevant crayfish legislation such as the Prohibition of Keeping of Live Fish (Crayfish) Order 1996, a series of licences are needed for working with White-clawed and non-native crayfish. These are:



- A licence to handle crayfish (therefore survey work) in England
- A licence for the keeping of crayfish in England and Wales with an exemption for Signal crayfish (England).
- People in the post-code areas listed with crayfish present prior to 1996 do not need to apply for consent for crayfish already established. It does not, however, allow any new stocking of non-native crayfish into waterbodies. Consent for trapping of non-native crayfish for control or consumption is most likely to be granted in Thames and Anglian regions in the areas with "go area" postcodes.
- Harvesting of crayfish is prohibited in much of England and in any part of Scotland and Wales.

Effects on development works:

The relevant countryside agency (i.e. Natural England, Natural Resources Wales, Scottish Natural Heritage) will need to be consulted about development which could impact on a watercourse or wetland known to support white clawed crayfish. Conservation licences for the capture and translocation of crayfish can be issued if it can be shown that the activity has been properly planned and executed and thereby contributes to the conservation of the population. The licence will only be granted to a suitably experienced person if it can be shown that adequate surveys have been undertaken to inform appropriate mitigation measures. Identification and preparation of a suitable receptor site will be necessary prior to the commencement of the works.

### **Wild Mammals (Protection Act) 1996**

All wild mammals are protected against intentional acts of cruelty under the above legislation. This makes it an offence to mutilate, kick, beat, nail or otherwise impale, stab, burn, stone, crush, drown, drag or asphyxiate any wild mammal with intent to inflict unnecessary suffering.

To avoid possible contravention, due care and attention should be taken when carrying out works (for example operations near burrows or nests) with the potential to affect any wild mammal in this way, regardless of whether they are legally protected through other conservation legislation or not.

### **Legislation Afforded to Plants**

With certain exceptions, all wild plants are protected under the WCA. This makes it an offence for an 'unauthorised' person to intentionally (or recklessly in Scotland) uproot wild plants. An authorised person can be the owner of the land on which the action is taken, or anybody authorised by them.

Certain rare species of plant, for example some species of orchid, are also fully protected under Schedule 8 of the Wildlife and Countryside Act 1981 (as amended). This prohibits any person from:

- Intentionally (or recklessly in Scotland) picking, uprooting or destruction of any wild Schedule 8 species (or seed or spore attached to any such wild plant in Scotland only)
- Selling, offering or exposing for sale, or possessing or transporting for the purpose of sale, any wild live or dead Schedule 8 plant species or part thereof
- In addition to the UK legislation outlined above, several plant species are fully protected under Schedule 5 of The Conservation of Habitats and Species Regulations 2010. These are species of European importance. Regulation 45 makes it an offence to:
  - Deliberately pick, collect, cut, uproot or destroy a wild Schedule 5 species
  - Be in possession of, or control, transport, sell or exchange, or offer for sale or exchange any wild live or dead Schedule 5 species or anything derived from such a plant.



Effects on development works:

A European Protected Species Licence (EPSL) will be required from the relevant countryside agency (i.e. Natural England, Natural Resources Wales, Scottish Natural Heritage) for works which are likely to affect species of plants listed on Schedule 5 of the Conservation of Habitats and Species Regulations 2010. The licence is to allow derogation from the legislation through the application of appropriate mitigation measures and monitoring.

### ***Invasive Species***

Part II of Schedule 9 of the WCA lists non-native invasive plant species for which it is a criminal offence in England and Wales to plant or cause to grow in the wild due to their impact on native wildlife. Species included (but not limited to):

- Japanese knotweed *Fallopia japonica*
- Giant hogweed *Heracleum mantegazzianum*
- Himalayan balsam *Impatiens glandulifera*

Effects on development works:

It is not an offence for plants listed in Part II of Schedule 9 of the WCA 1981 to be present on the development site, however, it is an offence to cause them to spread. Therefore, if any of the species are present on site and construction activities may result in further spread (e.g. earthworks, vehicle movements) then it will be necessary to design and implement appropriate mitigation prior to construction commencing.

### ***Injurious weeds***

Under the Weeds Act 1959 any landowner or occupier may be required to prevent the spread of certain 'injurious weeds' including (but not limited to):

- Spear thistle *Cirsium vulgare*
- Creeping thistle *Cirsium arvense*
- Curled dock *Rumex crispus*
- Broad-leaved dock *Rumex obtusifolius*
- Common ragwort *Senecio jacobaea*

Effects on development works:

It is a criminal offence to fail to comply with a notice requiring such action to be taken. The Ragwort Control Act 2003 establishes a ragwort control code of practice as common ragwort is poisonous to horses and other livestock. This code provides best practice guidelines and is not legally binding.

## **NATIONAL PLANNING POLICY (ENGLAND)**

### ***Environment Act 2021***

The Environment Act 2021 (EA 2021) received Royal Assent on 9 November 2021 and is expected to become fully mandated within the next couple of years. The Act principally creates a post Brexit framework to protect and enhance the natural environment. Through amendments to the Town and Country Planning Act 1990, the Act will require all planning permissions in England (subject to exemptions which is likely to include householder applications) to be granted subject to a new general pre-commencement condition that requires approval of a biodiversity net gain plan. This will ensure the delivery of a minimum of 10% measurable biodiversity net gain. The principal tool to calculate this will be the Defra Biodiversity 3.0 Metric. Works to enhance habitats can be carried out either onsite or offsite or through the purchase of 'biodiversity credits' from the Secretary of State. However, this flexibility may be removed (subject to regulations) if the onsite habitat is 'irreplaceable'. Both onsite and offsite enhancements must be maintained for at least 30 years after completion of a development (which period may be amended).

### ***National Planning Policy Framework 2021***

The National Planning Policy Framework promotes sustainable development. The Framework specifies the need for protection of designated sites and priority habitats and species. An emphasis is also made on the need for ecological infrastructure through protection, restoration and re-creation. The protection and recovery of priority species (considered likely to be those listed as species of principal importance under Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006) is also listed as a requirement of planning policy.

In determining a planning application, planning authorities should aim to conserve and enhance biodiversity by ensuring that: designated sites are protected from harm; there is appropriate mitigation or compensation where significant harm cannot be avoided; measurable gains in biodiversity in and around developments are incorporated; and planning permission is refused for development resulting in the loss or deterioration of irreplaceable habitats including aged or veteran trees and also ancient woodland.

### ***The Natural Environment and Rural Communities Act 2006 and the Biodiversity Duty***

Section 40 of the Natural Environment and Rural Communities (NERC) Act 2006, requires all public bodies to have regard to biodiversity conservation when carrying out their functions. This is commonly referred to as the 'biodiversity duty'.

Section 41 of the Act requires the Secretary of State to publish a list of habitats and species which are of 'principal importance for the conservation of biodiversity'. This list is intended to assist decision makers such as public bodies in implementing their duty under Section 40 of the Act. Under the Act these habitats and species are regarded as a material consideration in determining planning applications. A developer must show that their protection has been adequately addressed within a development proposal.

**EUROPEAN PROTECTED SPECIES POLICIES**

In December 2016 Natural England officially introduced the four licensing policies throughout England. The four policies seek to achieve better outcomes for European Protected Species (EPS) and reduce unnecessary costs, delays and uncertainty that can be inherent in the current standard EPS licensing system. The policies are summarised as follows:

- Policy 1; provides greater flexibility in exclusion and relocation activities, where there is investment in habitat provision;
- Policy 2; provides greater flexibility in the location of compensatory habitat;
- Policy 3; provides greater flexibility on exclusion measures where this will allow EPS to use temporary habitat; and,
- Policy 4; provides a reduced survey effort in circumstances where the impacts of development can be confidently predicted.

The four policies have been designed to have a net benefit for EPS by improving populations overall and not just protecting individuals within development sites. Most notably Natural England now recognises that the Habitats Regulations legal framework now applies to 'local populations' of EPS and not individuals/site populations.