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PRELIMINARY ROOST ASSESSMENT

40 Shepherds House lane, Earley, Reading RG6 1AD

Report by

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On the instructions of Abdul Samee Dhillon

Wednesday, 8 May 2024

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1 Introduction and report background

1.1 Instruction

- 1.1.1 MMEEnvironmental Ltd. has been instructed by Abdul Samee Dhillon to produce a Preliminary Roost Assessment (PRA) of the site at 40 Shepherds House lane, Earley, Reading RG6 1AD.
- 1.1.2 PRA section of this report provides a description of all features suitable for roosting, foraging and commuting bats and evaluates those features in the context of the site and wider environment. It further documents any physical evidence collected or recorded during the site survey that establishes the presence of roosting bats. It provides information on possible constraints to the proposed development by bats and summarises the requirements for any further surveys to inform subsequent mitigation proposals, achieve planning or other statutory consent and to comply with wildlife legislation.

1.2 Report Background and Methodology

- 1.2.1 A desk study was undertaken to aid the field survey data and to identify other potential ecological constraints such as sites designated for nature conservation value. MAGIC - The Multi-Agency Geographical Information for the Countryside website (www.magic.gov.uk) was used to search for statutory and non-statutory designated sites and habitats of principal importance. Aerial images on Google Earth Pro were also utilised to put the site into context and to consider the landscape connectivity between the site and other nearby habitats.
- 1.2.2 The PRA focussed on all trees and buildings within the site boundary, which could be affected by the proposed development as well as providing an overview of the wider site and the surrounding landscape for bat roosting, foraging and commuting habitat. Bat roost was graded for its suitability of use (Table 1).

Table 1 Bat roost classification chart

Classification	Feature of tree and its context
Moderate to high	A tree or structure with one or more potential roost sites that are obviously suitable for use by larger numbers of bats on a more regular basis and potentially for longer periods of time due to their size, shelter, protection, conditions and surrounding habitat. Trees or structures with high suitability could support roosts of high conservation value such as maternity or hibernation roosts.
Low	A tree or structure of sufficient size and age to contain potential roosting features but with none seen from the ground or features seen with only very limited roosting potential to be used sporadically by individual or small numbers of bats. Potential roost features may be suboptimal for reasons such as shallow depth, poor thermal qualities or upwards orientation with exposure to inclement weather or predators.

Negligible	Unsuitable for use by bats.
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1 Confirmed bat roost

Best practice survey guidelines (Collins, 2016) recommend additional surveys for confirmed roosts. Three further surveys are required to characterise the bat roost present including species, roost type and access points to inform an EPSL application to Natural England. Surveys must be completed during the active bat season (May – September). At least two of the surveys should be completed during the optimal survey period mid-May to August, and at least one of the surveys should be a dawn re-entry survey.

2 Low, moderate or high likelihood of a bat roost present

Best practice survey guidelines (Collins, 2016) recommend additional surveys for features assessed as having low to high suitability for roosting bats. One, two or three further surveys are required to confirm presence or likely absence of a bat roost, based on a low, medium or high roost likelihood evaluation. Surveys must be completed during the active bat season (May – September). If more than one survey is recommended, at least one of them should be completed during the optimal survey period mid-May to August, and at least one of the surveys should be a dawn re-entry survey. If two or one further survey is recommended these surveys must be completed during the optimal survey period (mid-May to August). For low and moderate roost likelihood evaluation the survey effort recommended at this stage is iterative and if bats roosts are confirmed in the building, a further survey will be required to provide sufficient information to inform an EPSL application to Natural England.

3. Negligible likelihood of a bat roost present

Buildings assessed as comprising negligible suitability for roosting bats do not normally require further surveys. However, if bats are found during any stage of the development, work should stop immediately, and a suitably qualified ecologist should be contacted for further advice.

1.3 Limitation

- 1.3.1 Every effort has been made to describe the baseline conditions within the survey area, and evaluate these features, however this report does not provide a complete characterisation of the site. This assessment provides a preliminary view of the likelihood of bats 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.
- 1.3.2 The site was visited over the period of one day, as such seasonal variations cannot be observed and only a selection of all species that potentially occur within the site have been noted. Therefore, the survey provides a general assessment of potential nature conservation value.

2 The Ecological Site Conditions

2.1 The Desk Study

Statutory Designated Sites

- 2.1.1 There are no internationally designated sites such as Special Areas of Conservation (SAC), Special Protection Areas (SPA) or Wetlands of International Importance (Ramsar site) currently identified within the search area covered by this report.
- 2.1.2 There are no National Nature Reserves (NNR) currently identified within the search area covered by this report.

Non-Statutory Designated Sites

- 2.1.3 Local Wildlife Sites, also known as Sites of Nature Conservation Importance (SNClS) in Surrey, are identified based on the habitats they support and the plant and animal species they house. These sites hold significant wildlife value at the county or regional level. A panel of ecologists forming the Surrey Local Sites Partnership (SLSP, formerly the Surrey Nature Conservation Liaison Group or SNCLG) selects these sites. The SLSP includes representatives from Surrey County Council, district and borough councils, Natural England, the Environment Agency, Surrey Wildlife Trust, County Recorders, and representatives from specialist species recording and conservation groups in Surrey.
- 2.1.4 No non-statutory sites of importance for nature conservation (e.g. County Wildlife Sites) were identified within 2 km of the site.

Table 2 Non-statutory sites within 2km from the site

Name	Hectares
ALI'S POND	0.43
HIGHWOOD	15.23

- 2.1.5 Ancient woodland, according to Natural England, is described as a site that has maintained continuous woodland cover since at least the year 1600 AD. This type of woodland is invaluable, rich in wildlife, and often includes significant archaeological features. Surrey, located in one of the most densely wooded regions in lowland Britain, hosts approximately 37,700 hectares of woodland. Among these woodlands, 11,935 hectares, which account for 7.1% of the country's total area, are classified as ancient woodlands.
- 2.1.6 Ancient woodland can be broadly categorized into two types: Ancient Semi-natural Woodland (ASNW) and Plantations on Ancient Woodland Sites (PAWS), both falling under the umbrella of ancient woodlands. ASNW comprises stands primarily composed of native trees and shrubs that have naturally grown on the site, possibly managed through practices like coppicing or pollarding in the past. PAWS, on the other hand, are areas within ancient woodlands where the original native tree cover has been cleared and replaced with planted species, often non-native to the site, such as conifers like Norway Spruce or Corsican Pine, as well as broadleaves like Sycamore or Sweet Chestnut.
- 2.1.7 The classification of ancient woodland status relies on historical data from sources like Ordnance Survey maps, information about the woodland's name, shape, terrain, internal boundaries, and location concerning other features like parish boundaries. Ground surveys that include data on plant life and historical features, along with the interpretation of aerial photography, are also used when available. The initial inventory was created by the Nature Conservancy Council, later known as English Nature, on a county-by-county basis in the 1980s and 1990s, covering all sites larger than two hectares. Thanks to advancements in digital mapping and access to additional resources, it's now more accessible and precise to map woodlands under two hectares. Since 2005, there has been an ongoing effort to completely update and revise the Ancient Woodland Inventory across the South East.
- 2.1.8 9 Ancient Woodland sites and No Habitats of Principal Importance are found within 2 km from the site.

Table 3 Ancient woodland sites within 2km from the site

Wood Name	Theme Name	Theme ID	Area (Ha)
	Ancient & Semi-Natural Woodland	1504533	0.422502
Great Bramleys Park)	Ancient & Semi-Natural Woodland	1505319	0.704527
Great Bramleys Park)	Ancient & Semi-Natural Woodland	1505075	0.321171

Colcrafts Coppice)	Ancient & Semi-Natural Woodland	1505076	0.096347
High Wood	Ancient & Semi-Natural Woodland	1505077	5.444516
High Wood	Ancient Replanted Woodland	1505078	0.702725
	Ancient & Semi-Natural Woodland	1505079	0.301004
Southland Wood	Ancient & Semi-Natural Woodland	1505080	2.872699
High Wood	Ancient & Semi-Natural Woodland	1505081	0.638467

2.2 Landscape

- 2.2.1 The site is residential property with front and rear garden. The property comprises a detached garage. The site is in densely urbanised neighbourhood with some connectivity to the wider landscape by train track to the north. Hedgeline with trees to east is connected to the property by hedges and trees in neighbouring gardens.(Figure 1).



Figure 1 site in situ of wider landscape. Note red line boundary.

2.3 Historical records

- 2.3.1 A search of the magic.gov.uk database for granted EPSLs within a 5km radius of the site has been completed. Displaced bats from licensed sites <2km away from the survey site will find alternative habitat either within the mitigation measures implemented as part of the licence or will relocate to other known roosts sites near the licensed site.
- 2.3.2 17 records of bats have been returned within 2km of the site. However, the closest one was 1.7km (Figure 2).

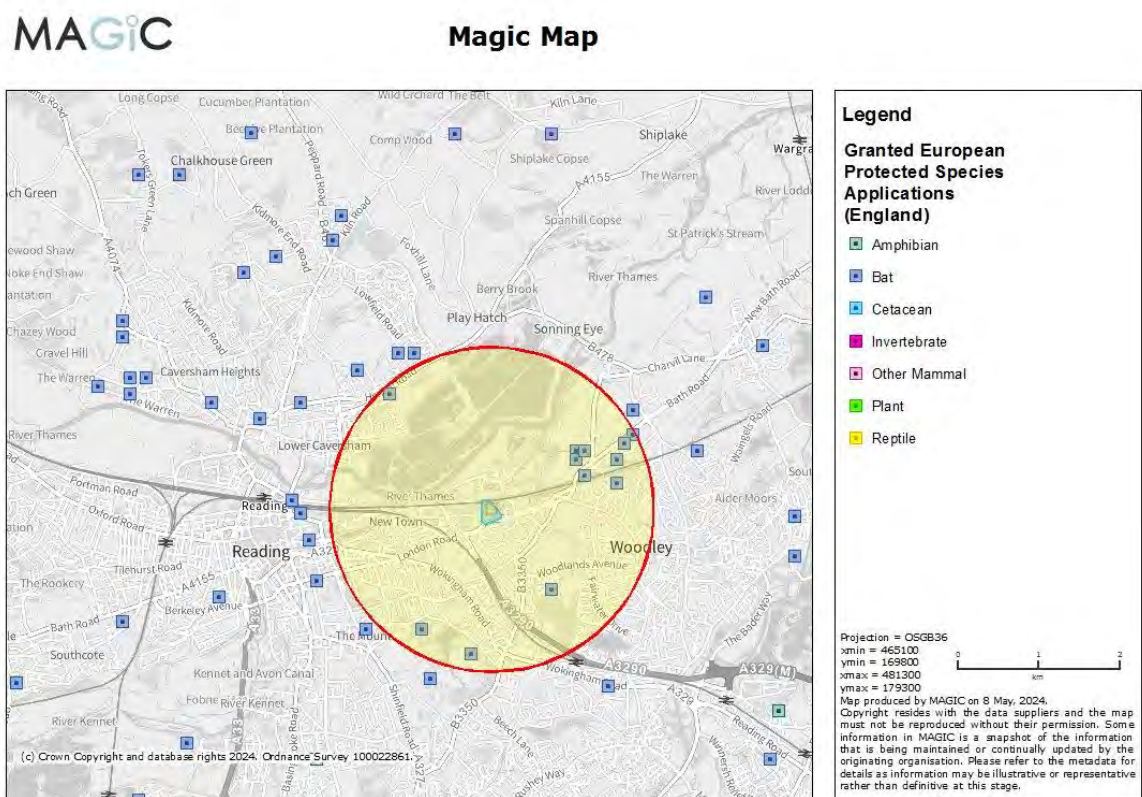


Figure 2 EPSL record within 2km from the site (DEFRA, MAGIC map)

2.4 Site survey

- 2.4.1 The survey focused on the residential property and detached garage as it is proposed to be demolished and redeveloped and to wider landscape if opportunities for bat roosting are present.
- 2.4.2 The weather conditions during the survey were 13 degrees centigrade, Humidity 72%, Partially sunny; wind northeast (10 Km/h), cloud cover approx. 80%.
- 2.4.3 The surrounding area has limited linear features, such as residential gardens with trees and hedgerows, allowing some interconnectivity between the site and the wider area.
- 2.4.4 Details to individual buildings and bats roost signs are summarised below.

Building 1 (Semi- Detached Residential Property)

Exterior

Building is a Semi-Detached House. The building is a brick-built building and a gabled clay rooftiles.

The roof tiles are in good condition with no raised tiles. It has felt internally which is torn which bats could roost in.

The brickwork appears in good condition with no gaps or cracks in which crevice-dwelling bats could roost.

On the side of the property between the roof and walls is a gap running the length of the wall which could be used to access the roof space.



Interior

Loft of the house is used as a storage with plenty opportunities for roosting bats such as torn felt, loose brick and below beams space. Following an inspection no signs of bats were found.

OVERALL ROOSTING POTENTIAL

Moderate

Building 2 (Garage)

Exterior

Building is a garage being used for storage. The building is a brick-built building with a roof potentially made from asbestos panels.

The roof is in fair condition with no gaps which can serve as entry points for bats.

The brickwork appears in good condition with no gaps or cracks in which crevice-dwelling bats could roost.

There are gaps between the bricks and the roof section which bat could enter the interior of the building.



Interior		
Loft of the barn is used as a storage with plenty opportunities for roosting bats between the sheets of asbestos		
Ground floor is used as temporary storage and garage. There are few opportunities for roosting bats, though no signs either in loft nor in ground floor were identified.		
OVERALL ROOSTING POTENTIAL		
Moderate		

3 Conclusions, Impact and Recommendations

- 3.1.1 Bats are protected under the Wildlife and Countryside Act and the Conservation of Habitats and Species Regulations 2017 (amended by the Conservation of Habitats and Species Regulations (amendment) (EU Exit) Regulations 2019).
- 3.1.2 As present building does provide good roosting opportunities for bats with multiple features serving either as entry points to the building or to accommodate the bats. Both buildings have roost suitability appraised to the moderate importance. 17 EPSL records within the 2km search radius have been returned. However, no signs of bats were noted at the time of survey.
- 3.1.3 The nature of the proposed development will likely impact roosting features as such Two bat emergence or re-entry surveys are required during the active bat season (May – September) to confirm presence or likely-absence of a bat roost in the building. The survey can be either a dusk emergence or dawn re-entry survey. 3 surveyors are required to provide full coverage of the buildings. The survey is likely to be required before planning permission can be granted. If bat roosts are confirmed in the building, one additional survey will be required to inform an EPSL application to Natural England. The EPSL application requires that all surveys have been undertaken within the most recent active bat season and planning permission must have been granted and all relevant wildlife-related conditions have been discharged prior to submission.
- 3.1.4 The inclusion of two bat boxes on final build will provide additional roosting habitat for bats e.g. 2F Schwegler Bat Box (trees) Vivara Pro Woodstone Bat Box (buildings) Or a similar alternative brand. Bat boxes should be positioned 3-5m above ground level facing in a south or south-westerly direction with a clear flight path to and from the entrance, away from artificial light.

Appendix 1 – References

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Appendix 2: Legislation and planning policy

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 no 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.

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8 Meldrum Close, Oxted, RH8 9BY

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.

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 planted 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 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.

4 Appendix 4: Background Ecological Data Search