



## Ecological Impact Assessment

Richards Music Centre, Highgate School, London, N6 4AY

Highgate School

| Status | Issue | Name                                      | Date       |
|--------|-------|-------------------------------------------|------------|
| Final  | 1     | Craig Williams BSc (Hons), MSc, DIC, MRSB | 05/10/2022 |

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## Industry Guidelines and Standards

This report has been written with due consideration to:

- Chartered Institute of Ecology and Environmental Management (2017). Guidelines for Preliminary Ecological Appraisal. 2nd edition. Chartered Institute of Ecology and Environmental Management, Winchester.
- Chartered Institute of Ecology and Environmental Management (2018). Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and Marine. Version 1.1. Chartered Institute of Ecology and Environmental Management, Winchester.
- Chartered Institute of Ecology and Environmental Management (2017). Guidelines on Ecological Report Writing. Chartered Institute of Ecology and Environmental Management, Winchester.
- Chartered Institute of Ecology and Environmental Management (2020). Guidelines for Accessing, Using and Sharing Biodiversity Data in the UK. 2nd Edition. Chartered Institute of Ecology and Environmental Management, Winchester.
- British Standard 42020 (2013). Biodiversity – Code of Practice for Planning and Development.
- British Standard 8683:2021 (2021). Process for Designing and Implementing Biodiversity Net Gain.

## 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, paragraph 174 of the National Planning Policy Framework for England.

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)

## Executive Summary

Arbtech Consulting Limited was instructed by Highgate School to undertake an Ecological Impact Assessment (EcIA) for the Richards Music Centre, Highgate School, London, N6 4AY (hereafter referred to as “the site”). The survey was required to inform a planning application for a school development (hereafter referred to as “the proposed development”).

**The following table summarises the findings of this EcIA and any subsequent recommendations to comply with legislation and planning policy. Further information, along with opportunities for biodiversity enhancement, are outlined in Table 4 of this report.**

| <b>Ref</b>                    | <b>Recommendations</b><br><i>Measures required to adhere to guidance, legislation and planning policies.</i>                                                                                                                                                                                                                             |
|-------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Designated sites              | No further surveys are required.                                                                                                                                                                                                                                                                                                         |
| Notable habitats and plants   | No further surveys required.<br>The new tree planting should consist of native species.                                                                                                                                                                                                                                                  |
| Invasive / Non-native species | No further surveys.                                                                                                                                                                                                                                                                                                                      |
| Invertebrates                 | No further surveys required.                                                                                                                                                                                                                                                                                                             |
| Bats                          | No further surveys.<br>Lighting should be controlled along the boundaries to avoid affecting any commuting bats.                                                                                                                                                                                                                         |
| Birds                         | Works on vegetation should be undertaken outside the period 1st March to 31st August. If this timeframe cannot be avoided, a close inspection of the 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. |
| Reptiles                      | No further surveys.                                                                                                                                                                                                                                                                                                                      |
| Amphibians                    | No further surveys.                                                                                                                                                                                                                                                                                                                      |

|                |                                             |
|----------------|---------------------------------------------|
| Badger         | No further surveys are required.            |
| Otter          | No further surveys.                         |
| Water Vole     | No further surveys.                         |
| Hazel dormouse | No further surveys.                         |
| Hedgehog       | Hedgehogs<br>No further action is required. |

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## **1.0 Introduction and Context**

### **1.1 Background**

Arbtech Consulting Limited was instructed by Highgate School to undertake an Ecological Impact Assessment (EclA) for the Richards Music Centre, Highgate School, London, N6 (hereafter referred to as “the site”). The survey was required to inform a planning application for a school development (hereafter referred to as “the proposed development”). A plan showing the proposed development is provided in Appendix 1.

This EclA has been informed by an extended habitat survey which was completed by Arbtech Consulting Ltd in May 2016 and updated with a material changes check walkover on 27<sup>th</sup> July 2022.

### **1.2 Site Context**

The site is located at National Grid Reference TQ 2802 8760 and has an area of approximately 0.248ha comprising a sports pavilion building, grass lawn, boundary trees and part of a sports field.

### **1.3 Planning Context**

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

- *The demolition of a two storey building originally constructed as a school sports pavilion, between the World Wars. The building is currently used as a temporary base for the Sports and Exercise (SpEx) department and limited pupil sports use (changing and storage). The extensions at the east end of the building currently accommodate the School IT department.*
- *The construction of a new three-storey educational building including a single storey basement. The building provides drama classrooms, a double height Studio Theatre, offices for SpEx and Drama staff, Cadet armoury, and sports changing rooms with direct access to the synthetic all-weather pitch.*

## **2.0 Methodology**

### **2.1 Desk Study**

The desk study included a 2km radius review of statutory designated sites and notable habitats as well as a 2km radius review of granted European Protected Species Licence (EPSL) and notable species records held on the magic.gov.uk database. An assessment of the surrounding landscape structure was also completed using aerial images from Google Earth and OS maps and geology and soils data was obtained from the magic.gov.uk database.

Existing biological records including notable species and non-statutory designated sites within a 2km radius were obtained from Greenspace Information for Greater London during the original survey.

### **2.2 Field Survey**

The most recent survey was undertaken by Principal Ecologist Craig Williams BSc (Hons), MSc, DIC, MRSB on 27<sup>th</sup> July 2022. A previous survey was carried out on 9<sup>th</sup> May 2016.

An extended habitat survey was undertaken, following the methodology set out in UK Habitat Classification User Manual (UK Habitat Classification Working Group, 2018). All land parcels are described and mapped and, where appropriate, target notes provide supplementary information on habitat conditions, features too small to map to scale, species composition, structure and management. Botanical species lists were compiled with reference to the DAFOR scale (D = Dominant; A = Abundant, F = Frequent, O = Occasional, R = Rare).

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.

### **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.

This limitation has been taken into account during the evaluation of the site and requirement for further surveys and mitigation.

### **3.0 Results and Evaluation**

#### **3.1 Desk Study Results**

A summary of desk study results is provided below.

##### **Designated Sites**

The closest statutory site is Parkland Walk Local Nature Reserve, ~790m north-east.

The closest non-statutory site is Hampstead Heath (M072, Metropolitan value), ~200m south-west.

##### **Landscape and Geology**

The site is set within an urban area of north London, on soilscape 6 (freely draining slightly acid loamy soils).

##### **Notable Habitats**

Parcels of deciduous woodland, a habitat of principal importance under Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006, are present within 1km of the site, the closest being ~90m south.

### 3.2 Field Survey Results

The results of the field survey are illustrated in Appendix 3. The weather conditions recorded at the time of the survey are shown in Table 1.

*Table 1: Weather conditions during the survey*

|                  |      |
|------------------|------|
| Date: 27/08/2022 |      |
| Temperature      | 19°C |
| Humidity         | 61%  |
| Cloud Cover      | 60%  |
| Wind             | 9mph |
| Rain             | None |

### Habitats and Flora

*UKHab codes provided in brackets at first mention.*

Developed land, sealed surface [u1b]

#### Buildings

There is one permanent structure on the survey site, designated as B1. This is the sports pavilion.

B1 is a brick built, single storey pavilion. It has a main original section, and a newer extension to the west. The original sections have gables roofs of clay tiles, and the extension has a half-hipped slate roof. All the tiles across the building are of a good condition without gaps. A clock cupola on the roof of the original section is intact, and the lead flashing around its base is unpeeling. Flashing around the rest of the building is also intact. Most of the building features parapet walls, and the centre section has an ornamental gable wall. These are all intact without holes or gaps, as is the exterior brickwork in general. Brick cornices are present around most of the building. ON the eastern end, there are some timber soffit boxes, although these are intact without gaps or cracks. Some flat roofed areas attached the eastern end feature intact roofing liners.

The loftspaces are constructed from timber beams and rafters, which are all cobwebbed along the ridge beam indicating a lack of aerial activity. There are three in the original section, and two in the extension. All feature some form of intact lining under the external tiles, a bitumen felt in the case of the clay tiled roofs, or a waterproof membrane in the extension, also boarded. No access into these loftspace from the outside is thought to exist.

The building is unsuitable for roosting bats; it did not support any external roosting features, or access into any lofts. No bat evidence was found internally or externally.

Hard standing

Around the building is hard standing paving and concrete.

Vegetated garden [u1d]

Much of the survey site is covered with amenity grass lawn. Perennial rye grass (*Lolium perenne*) is dominant. Daisy (*Bellis perenne*) and white clover (*Trifolium repens*) are common.

Scattered trees [11]

There are scattered trees around the site, on amenity grass and nearby. Although some are quite tall, none are veteran or possess suitable roosting features for bats. Species include common lime (*Tilia europaea*), London plane (*Platanus x hispanica*), Sycamore (*Acer pseudoplatanus*), Yew (*Taxus baccata*), Hawthorn (*Crataegus monogyna*), Common Oak (*Quercus robur*), and Birch (*Betula* spp.)

Fence [69]

Metal rail and timber close board fences are present around most of the site's boundary



Photo 1: Looking south-eastern at the northern elevation of B1



Photo 2: Looking south-west at the northern elevation of B1.



Photo 3: Trees in the east of the site.



Photo 4: Looking north-west at part of the rear, southern elevation of B1.

## 4.0 Conclusions, Impacts and Recommendations

### 4.1 Informative Guidelines

A summary of the relevant legislation and planning policies is provided in Appendix 4.

### 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.

Where this report supports a planning application, the ecological interest of the study area (i.e. the area covered by the desk study and field survey) and the proposed development has also been evaluated in terms of the planning policies relating to biodiversity.

### 4.2 Evaluation

Taking the desk study and field survey results into account, Table 4 presents an evaluation of the ecological value of the site and also details any ecological constraints identified in relation to the proposed development which will comprise a residential development.

Table 4: Evaluation of the site and any ecological constraints

| <b>Ref</b>                  | <b>Summary of Survey Findings</b>                                                                                                                                           | <b>Foreseen Impacts</b>                  | <b>Recommendations</b><br><i>Measures required to adhere to guidance, legislation and planning policies.</i> | <b>Biodiversity Enhancements</b><br><i>The Local Planning Authority has a duty to ask for enhancements under the NPPF (2021) and Central Lincolnshire Local Plan</i>                                            |
|-----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|--------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Designated sites            | The site is not subject to any statutory or non-statutory designations, and none are adjacent or close by.<br><br>There are no European designated sites in the local area. | No impacts foreseen on designated sites. | No further surveys are required.                                                                             | N/A                                                                                                                                                                                                             |
| Notable habitats and plants | There are no priority or notable habitats on site or located close by.                                                                                                      | No impacts foreseen.                     | No further surveys required.<br>The new tree planting should consist of native species.                      | Flat roofed areas may be suitable for extensive green roofs may be planned at an early stage. A suitably designed and installed biodiverse quality green roof will provide a new habitat for wildlife including |

|                               |                                                                                                                                                                                                                                                                                  |                                                                                          |                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                               |                                                                                                                                                                                                                                                                                  |                                                                                          |                                                                                                                                                                                                                                                                                                                                          | <p>invertebrates and birds. The Bug life charity advice sheet on green roofs shall also be consulted in its construction alongside a structural engineer to calculate loadings etc</p> <p>Any new trees or shrubs planted should be of native species of local provenance.</p>                                                                                                                                  |
| Invasive / Non-native species | No invasive and non-native species recorded on site.                                                                                                                                                                                                                             | N/A                                                                                      | No further surveys.                                                                                                                                                                                                                                                                                                                      | N/A                                                                                                                                                                                                                                                                                                                                                                                                             |
| Invertebrates                 | The hard standing habitats on site have negligible value.                                                                                                                                                                                                                        | None foreseen.                                                                           | No further surveys required.                                                                                                                                                                                                                                                                                                             | Green roofs installed on the proposed building would bring the most benefit for invertebrates.                                                                                                                                                                                                                                                                                                                  |
| Bats                          | <p>The building on site has negligible bat habitat value based on a lack of suitable features.</p> <p>No major commuting routes are foreseen.</p>                                                                                                                                | None foreseen.                                                                           | <p>No further surveys.</p> <p>Lighting should be controlled along the boundaries to avoid affecting any commuting bats.</p>                                                                                                                                                                                                              | Bat boxes could be installed on or within the walls of the new house, located 5m+ in height, with clear flight paths, out of direct lighting and on the southern or western elevations receive sunlight for warmth.                                                                                                                                                                                             |
| Birds                         | <p>Birds may nest on or within the sites buildings or trees in the active season although none were found.</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 could destroy nests if undertaken within the breeding season. | Works on vegetation should be undertaken outside the period 1st March to 31st August. If this timeframe cannot be avoided, a close inspection of the 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. | Woodcrete bird boxes should be installed on the new building and retained trees on site, e.g., swift boxes which are used by a range of species), including 25mm hole and 32mm hole variants. Swift boxes near the roof would provide habitat for a range of species. These should be erected 3m+ high, out of direct sunlight to prevent overheating, out of artificial lighting, and with clear flight paths. |
| Reptiles                      | No habitat value on site or nearby. Species unlikely to be present within the local urban area.                                                                                                                                                                                  | None foreseen.                                                                           | No further surveys.                                                                                                                                                                                                                                                                                                                      | N/A                                                                                                                                                                                                                                                                                                                                                                                                             |
| Amphibians                    | No habitat value on site or nearby. Species unlikely to be present within the local urban area.                                                                                                                                                                                  | None foreseen.                                                                           | No further surveys.                                                                                                                                                                                                                                                                                                                      | N/A                                                                                                                                                                                                                                                                                                                                                                                                             |

|                |                                                                                                      |                                                                    |                                             |                  |
|----------------|------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|---------------------------------------------|------------------|
| Badger         | Badgers<br>No habitat value on site or anticipated nearby.                                           | No impacts on any badger setts or individual animals are foreseen. | No further surveys are required.            | N/A              |
| Otter          | Otter<br>No habitat Value. Species unlikely to be present within the local urban area.               | None foreseen.                                                     | No further surveys.                         | N/A              |
| Water Vole     | Water Vole<br>No habitat Value. Species unlikely to be present within the local urban area.          | None foreseen.                                                     | No further surveys.                         | N/A              |
| Hazel dormouse | Dormouse<br>No suitable habitat on site. Species unlikely to be present within the local urban area. | None foreseen.                                                     | No further surveys.                         | N/A              |
| Hedgehog       | Hedgehogs<br>No habitat value within the main site, although the adjacent railway line may be used.  | Hedgehogs<br>No impacts foreseen.                                  | Hedgehogs<br>No further action is required. | Hedgehogs<br>N/A |

### 4.3 Timings

The currently known construction schedule is mid 2023 – mid 2024.

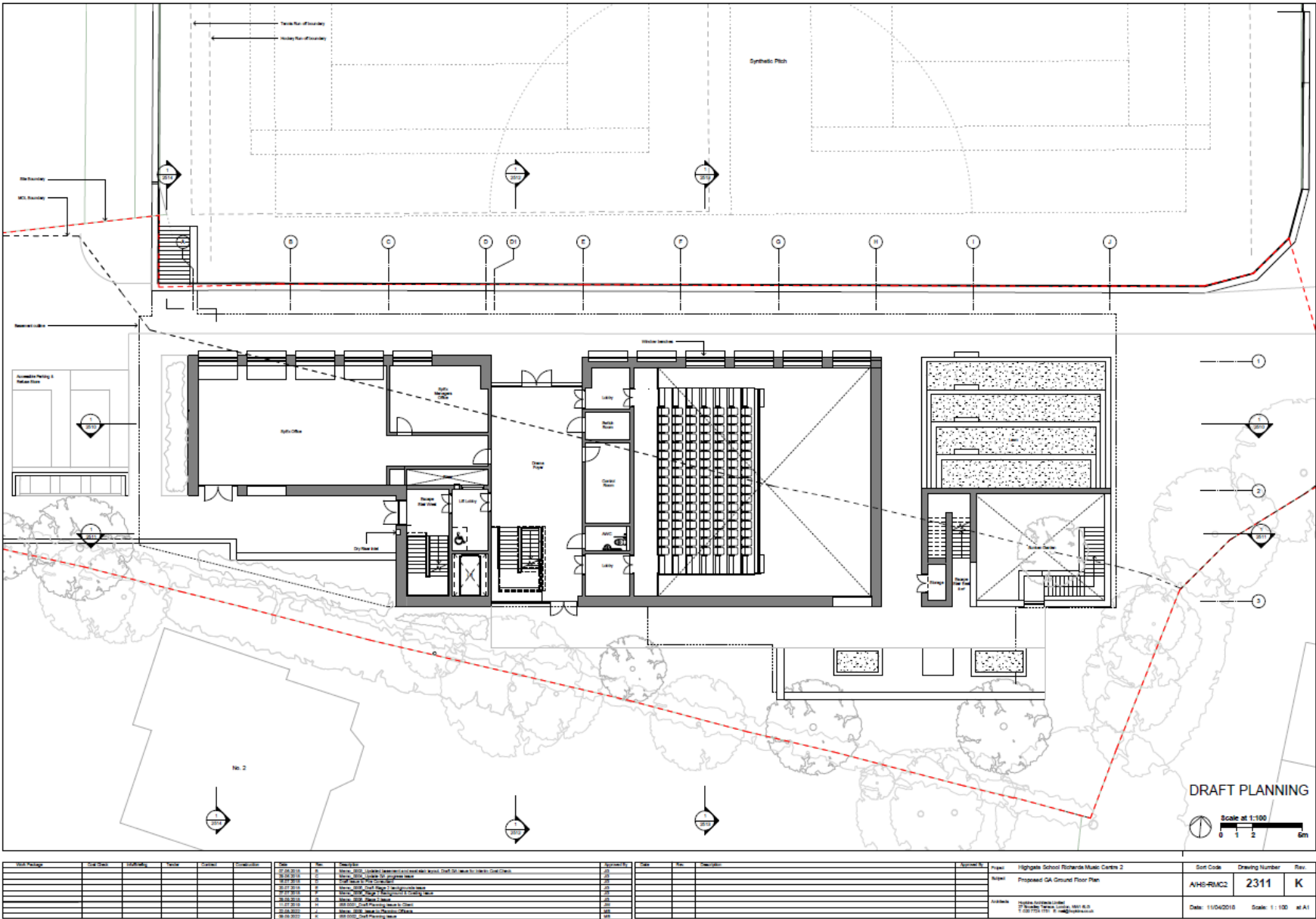
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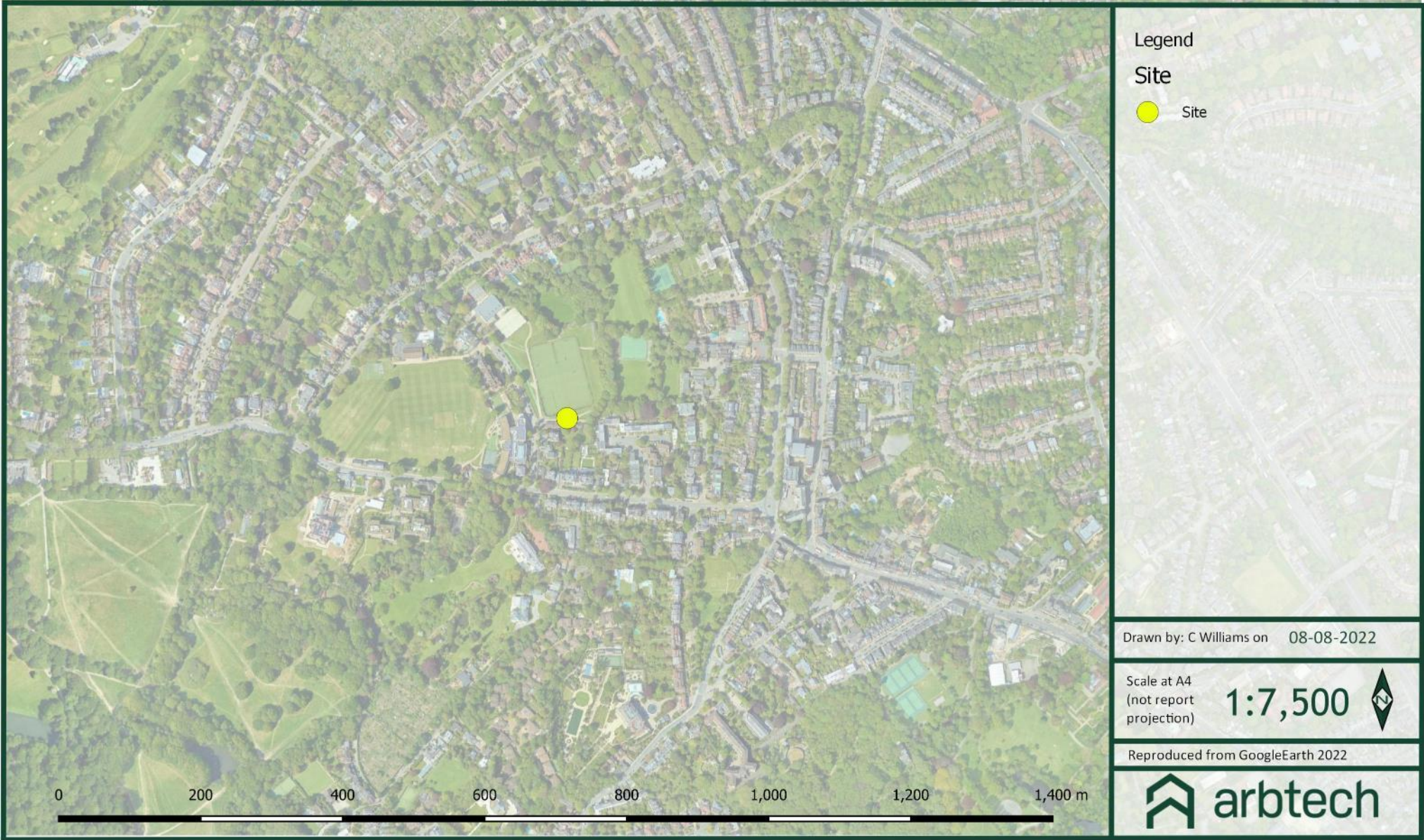
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Appendix 1: Proposed Development Plan



Appendix 2: Site Location Plan



Appendix 3: Habitat Survey Plan



## Appendix 4: 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 planted listed on Schedule 5 of the Conservation or 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.