

**Clarendon Centre, Oxford**  
Ecological Appraisal

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<b>Client</b>	Clarendon LP GP Ltd
<b>Project</b>	Clarendon Centre, Oxford - Ecological Appraisal
<b>Version</b>	FINAL
<b>Project number</b>	P19-933

	<b>Name</b>	<b>Position</b>	<b>Date</b>
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<b>Approved for issue to client</b>	Dr Tom Flynn	Principal Ecologist	06 October 2020
<b>Issued to client</b>	Gareth Clay	Senior Ecologist	06 October 2020
<b>Amended</b>	Gareth Clay	Senior Ecologist	15 October 2020
<b>Approved for re-issue</b>	Dr Tom Flynn	Principal Ecologist	15 October 2020
<b>Re-issued to client</b>	Gareth Clay	Senior Ecologist	15 October 2020
<b>Amended</b>	Gareth Clay	Senior Ecologist	16 November 2020
<b>Approved for re-issue</b>	Dr Tom Flynn	Principal Ecologist	16 November 2020
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# 1 Summary

- 1.1 BSG Ecology was commissioned on 21 August 2020 to undertake an Ecological Appraisal of the Clarendon Centre in Oxford (the 'Site'). This included an ecology desk study, a site visit to carry out an extended Phase 1 habitat survey, a daytime inspection of buildings (to determine their suitability to support roosting bats) and a follow-up emergence survey of specific locations for roosting bats.
- 1.2 The Site is an operational retail centre in central Oxford with a footprint of approximately 0.75 ha. It is bordered on all sides by other buildings or public streets.
- 1.3 The existing retail space is proposed to be extensively modified to form a mixed-use development including new retail space, office, research laboratory and student accommodation, as well as a new public square.
- 1.4 The Site entirely comprises buildings and hardstanding, with flat roofs and some mock pitched roof screening. As the Site and adjacent areas are of low ecological value, there is no potential for any significant habitat impacts from the development of the Site.
- 1.5 Areas of the Site are used by feral pigeon for nesting and roosting, although birds are excluded from many areas by means of netting. It is recommended that all areas of the Site that could be used for nesting be cleared of birds as soon as possible (assuming that there are no active nests, which are legally protected). Feral pigeon can nest throughout the year but the winter period is much less likely to see nesting activity. Existing netting needs repair and enhancement to be fully effective. Measures such as bird deterrent spikes should also be used where appropriate to do so
- 1.6 Three features with Low suitability for roosting bats were identified at the Site during the daytime inspection and were subject to a follow-up emergence survey. No bat activity at all was recorded during the survey. The emergence survey did show that there are very high levels of night-time illumination on the Site. The client has confirmed that the low suitability features will be subject to repair and maintenance works during winter 2020/2021 such that they cannot be used by bats in the future. As a result of these actions, impacts upon bats as a result of development are considered to be very unlikely and update survey of the Site for bat roost suitability is not required until September 2022 (should there still be parts of the Site unaffected by development works by that time).
- 1.7 The Site has no potential to support any other protected species, and thus no potential for impact on these.
- 1.8 The proposed redevelopment will not impact any designated ecological sites.
- 1.9 It is not considered appropriate to provide enhancements for bats on Site given the sub-optimal environment for these species.
- 1.10 The development offers opportunities to enhance the Site for birds, in particular, swift, where there are suitable elevations that are shaded and of sufficient height (at least 5 m above surrounding structures).
- 1.11 If the avoidance, mitigation and enhancement proposals detailed within this report are fully implemented, the proposed development will be in line with planning policy and legislation relating to protected species and has potential to achieve a net gain in biodiversity, in line with local and national planning policy.

## 2 Introduction

### Background to commission

- 2.1 BSG Ecology was commissioned on 21 August 2020 to undertake an Ecological Appraisal of the Clarendon Centre in Oxford (the 'Site').
- 2.2 This report sets out the methods and results of the Ecological Appraisal, assesses the ecological impacts of the proposed development and identifies appropriate ecological mitigation and enhancement measures.

### Site description

- 2.3 The Site is an operational retail centre in central Oxford with a footprint of approximately 0.75 ha. It is bordered on all sides by other buildings or public streets. This Site boundary is indicated in Figure 1.

### Description of project

- 2.4 The existing retail space is proposed to be extensively modified to form a mixed-use development including new retail space, office, research laboratory and student accommodation, as well as a new public square. A proportion of the existing structure will be either demolished or extensively restructured. Some sections will be retained as is (e.g. Clarendon House in the north of the Site) also with areas of new build construction where retention of the existing isn't viable. The aims of this appraisal are:
- To describe habitats present at the Site
  - To determine whether the Site supports protected or other notable species.
  - To describe potential ecological impacts of the proposed redevelopment.
  - To identify appropriate mitigation and enhancement measures.

### 3 Methods

#### Desk study

3.1 An ecology desk study was carried out to gather existing ecological information for the Site and its surroundings. This included a data request to Thames Valley Environmental Records Centre (TVERC) for the following:

- Information on non-statutory designated wildlife sites and habitats within 2 km of the Site boundary.
- Records of protected species, other species of conservation importance and invasive species from within 2 km of the Site boundary.

3.2 Ordnance Survey mapping and free online aerial photography were used to provide general ecological contextual information, such as habitat types and habitat connectivity in the local area.

#### Extended Phase 1 habitat survey

3.3 An extended Phase 1 habitat survey of the Site was carried out by Gareth Clay ACIEEM, Senior Ecologist at BSG Ecology on 24 August 2020. The survey was undertaken with reference to industry standard guidance including JNCC (2010) and BS42020 (BSI Group, 2013).

3.4 Target Notes (TN) were used to record and locate additional survey details (see also Figure 1).

3.5 The survey was 'extended' to include an assessment of the potential of the Site to support protected or otherwise notable species. This included consideration of the habitats present within and near the Site and relevant field signs.

3.6 An external assessment was made of buildings on the Site for their suitability to support roosting bats. Where possible, buildings were assessed internally as well as externally (if the external assessment suggested there might be voids that could be accessed and used by bats). The assessments were undertaken by Gareth Clay (bat licence number 2020-46915-SCI-SCI) with regard to industry standard guidance (Collins, 2016).

3.7 The external assessment used a high powered torch, endoscope and close focusing binoculars (where necessary) to look for:

- Features which could provide bats with access into roosting spaces or provide roosting spaces (such as gaps under roofing tiles, gaps in ridge tiles, gaps in soffit boxes, gaps under lead flashing and cracks or crevices in the stonework).
- Evidence of the presence of bats such as bat droppings on windows, windowsills, walls and the ground, or staining from bat's fur around possible roost access/egress points.

3.8 During internal inspections, all accessible areas were inspected using a high-powered torch for evidence of the presence of bats such as bat droppings or characteristic oil staining around potential roosting features, urine staining, and live or dead bats.

3.9 Particular locations and structures on Site were assigned a category for their suitability for roosting bats as summarised in Table 1.

*Table 1: Buildings with suitability for roosting bats (adapted from Collins (2016))*

Suitability	Description of roosting habitat
Negligible	No habitat features likely to be used by roosting bats.
Low	A building with one or more potential roost sites that could be used by individual bats opportunistically. Unlikely to be used on a regular basis or by larger numbers of bats (i.e. unlikely to be suitable for maternity or hibernation).

Moderate	A building with one or more potential roost sites that could be used by bats due to their size, shelter, protection, conditions and surrounding habitat but unlikely to support a roost of high conservation status.
High	A 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.

### Bat emergence survey

- 3.10 A bat emergence survey was undertaken on selected features of the roof of the Site (TN1, TN2, TN3). The emergence survey was based on industry standard guidance (Collins, 2016) as regards survey methods, timings and conditions. Three surveyors were present for the visit, recording with Anabat Express detectors as well using Batbox DUET detectors to assist the survey effort. The survey was led by licenced bat ecologist Gareth Clay (NE licence number 2020-46915-SCI-SCI). Details of the survey are shown in Table 2.

Table 2: Emergence survey details

Date	Personnel	Sunset	Survey timings	Weather
Dusk 09/09/20	Gareth Clay Glyn Brown Connor Butler	19:32	Start: 19:10 End: 21:02	Start: Wind Bf1, 0/8 cloud <sup>1</sup> , dry, 17°C Finish: Wind Bf1/2, 0/8 cloud, dry, 15°C

### Limitations to methods

- 3.11 The bat emergence survey was undertaken in September. Industry standard guidance recommends survey in May-August to give confidence in a negative result (i.e. absence of roosting bats). However, given the lack of vegetation on Site and the general context of the Site (a built-up and well-lit urban area with little adjacent vegetation except to the north), the lack of any bat activity recorded during the survey, the suitable weather conditions during the survey, and the very limited potential roosting features at the Site, the survey methods are considered a sufficient to determine the presence or likely absence of roosting bats at the Site.
- 3.12 It was not possible to endoscope some features on Site due to their height. This was not a limitation as a high powered torch and binoculars were used to examine these features.

### Personnel

- 3.13 The team for this project was as follows:
- Gareth Clay, ACIEEM and Senior Ecologist at BSG Ecology. Gareth's role in this project was to complete the desk study, field survey and author the report. Gareth regularly undertakes habitat and protected species surveys, ecological impact assessment and mitigation, and holds a Natural England bat survey licence.
  - Dr Tom Flynn MCIEEM, Principal Ecologist at BSG Ecology. Tom's role was as technical reviewer of this report. Tom has extensive experience of ecological survey, impact assessment and mitigation.
  - Connor Butler, Ecologist at BSG Ecology. Connor participated in the bat emergence survey and has previous experience of such surveys.
  - Glyn Brown, Independent Ecologist. Glyn participated in the bat emergence survey and has extensive experience of such surveys.

<sup>1</sup> Cloud cover is measured in oktas, ranging from 0 oktas (completely clear sky) through to 8 oktas (completely overcast).

## 4 Results and Interpretation

### Statutory and non-statutory designated sites

- 4.1 The Site is 0.8 km from the nearest statutory designated site: Magdalen Grove Site of Special Scientific Interest (SSSI). This is a geological SSSI with no ecological connections with the Site and which would not be impacted by development proposals. There are three additional SSSIs within a 2 km radius of the Site (notified for their ecological interest). None of these SSSIs could be impacted by the proposed development and they are therefore not considered further in this report.
- 4.2 There are no non-statutory wildlife sites within 2 km of the Site, and there is no potential for impacts on non-statutory sites from the proposed development.

### Habitats

- 4.3 The Site is dominated by flat roofs with no vegetation present (see Photographs 1, 2, 3 and 4 for typical roof-top views).
- 4.4 Air conditioning units on the roof area are screened from view by mock pitched roof sections (Photographs 5 and 6). These are netted to keep feral pigeon *Columba livia domestica* and other birds from roosting and nesting. See also *Birds* section below.
- 4.5 There is one area of gravelled roof (Photographs 1 and 3) approximately (0.08 ha). Plants were almost entirely absent from this area suggesting that it is sprayed annually with herbicide. However, some self-set silver birch *Betula pendula* (of which there were 5 individuals between 1-1.5m tall) and buddleia *Buddleja davidii* was also present (1 individual).

### Bats

- 4.6 There are 370 bat records from within the 2 km search area, reflecting the fact that there is a large resource of roosting opportunities in the Oxford urban environment. Within the more modern and well-lit commercial centre of Oxford (within 200 m of the Site), the environment is less well-suited to bats and there are only six records from this more central area, some dating back to 1992. The closest record to the Site is from 1993 and details an injured Daubenton's bat *Myotis daubentonii* roosting above a shop front on Cornmarket Street to the east of the Site. Daubenton's bats are only occasionally found in buildings (Bat Conservation Trust, 2010), usually old stone structures such as moated castles and waterworks, and as such, a roost of this species is unlikely to still be present in that location.
- 4.7 The daytime building inspection identified the following features (see Table 3) that were subject to closer inspection using torch, binoculars and endoscope. It was not possible to endoscope the tree or the features at TN3 as they were inaccessible.

Table 3: Results of daytime building inspection survey (roosting bats)

Location (see also Figure 1 and Photographs)	Potential Roost Features (PRFs) and access	Evidence of use by bats	Assessment comments	Suitability for roosting bats
TN1 Wood-clad elevator winch-room. (Photograph 7)	Gaps between fascia boards and cladding. Gaps under cladding.	None	Although potential roost features are present, the highly urbanised character of the Site together with high levels of night time illumination (see emergence survey), reduce its suitability for roosting bats.	<b>Low</b>
TN2 North facing brick elevation. (Photograph 8)	North facing brickwork gap approximately 20mm wide, which could lead to cavity wall if present and accessible.	None	Not suitable for maternity roost location as north facing. Dry modern wall and thus unlikely to have suitable humidity for hibernating bats. Bird netting has been deployed below the feature, making flight-lines for emergence and re-entry sub-optimal.	<b>Low</b>
TN3 South facing brick elevation. (Photograph 9)	Pointing gaps which could lead to cavity wall if present and accessible.	None	East facing crevices (pictured) are too shallow for roosting bats. South facing crevices could be more suitable but are limited by highly urbanised habitat, high levels of night time illumination (see emergence survey) and lack of shelter from wind and rain.	<b>Low</b>
TN5 Horse chestnut tree: off-site but the canopy overlaps the Site boundary. (Photograph 10)	Supports rot holes that have developed around old pruning cuts.	None	Holes are well lit and exposed to the weather.	<b>Negligible</b>
Various roof locations: mock pitched roofs screening air-con units. (Photographs 5,6)	Occasional tile gaps.	None	As the tiles are affixed to free-standing boarding, there is little heat retention to them. The tiles themselves are man-made (unknown material), smooth and likely sub-optimal for roosting bats.  Anti-bird netting complicates access and egress by bats.  The locational context is highly urbanised and well-lit at night.	<b>Negligible</b>

### **Emergence survey**

- 4.8 A summary of the dusk survey undertaken on 9 September 2020 is as follows:
- No bats were observed emerging from any features on the building (including the target areas located at TN1, TN2, and TN3).
  - No bat activity was recorded on the survey (no visual sightings, no bats heard using heterodyne detectors and no calls recorded using frequency division detectors).
  - The Site was noted as being well lit at night, especially at TN1 and TN3.
- 4.9 All species of bat and their roosts are protected by UK and European law, under the Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2017 (as amended). Further details on legislation and policy afforded to bats are included in Appendix 1.

### **Birds**

- 4.10 The only species observed on the day of the Site visit was feral pigeon *Columbia livia domestica*. A section of metal cladding has come off at location TN4 (Photograph 11), allowing birds to enter a 15-20cm high void around the edge of the gravelled area of flat roof. Debris present in this void strongly suggests that it is used for nesting.
- 4.11 Remains of adult pigeons were seen on Site at the time of the daytime inspection and are likely to have been predated by peregrine falcon *Falco peregrinus*. Although nesting peregrine have additional legal protection under Schedule 1 of the Wildlife & countryside Act (1981, as amended), there are no locations on or immediately adjacent to Site that would be suitable for nesting peregrine and therefore this species is not considered further in this report.
- 4.12 No evidence of nesting gulls was observed on the Site visit. In addition Site security did not report having seen any other species of bird nesting other than Robin *Erithacus rubecula* in an open corridor in the south-west of the Site.
- 4.13 The Site does provide suitable nesting habitat for pied wagtail *Motacilla alba*, although no adult birds were observed on the survey visit.
- 4.14 Nests whilst in use and eggs of all species of wild bird are protected under the Wildlife and Countryside Act 1981 (as amended) from damage and destruction.

### **Invasive species**

- 4.15 The data search listed several plants as Invasive Non-Native Species (INNS) in the search area. Only one of these (buddleia *Buddleja davidii*) was noted as occurring on site (as scattered individual plants growing on the roof). This species is not listed on Schedule 9 of the Wildlife and Countryside Act (1981, as amended) and there is no legal requirement to prevent its spread in the wild.

## 5 Impacts and Mitigation

### Designated sites

- 5.1 There is no potential for the proposed development to affect any statutory or non-statutory wildlife sites.

### Habitats

- 5.2 As habitats on Site are currently of negligible ecological value, there are considered to be no significant impacts on habitats as a result of the development proposals.

### Bats

- 5.3 Survey results indicate that bats are unlikely to be roosting on Site and thus would not be impacted by the proposed development. The client has confirmed that the low suitability features located at TN1, TN2 and TN3 will be subject to repair and maintenance works during winter 2020/2021 such that they cannot be used by bats in the future. Any other obvious features on Site (as identified by an experienced ecologist) that could develop into features suitable for bats will also be subject to repair and maintenance at this time. As a result of these actions, update survey of the Site for bat roost suitability is not required until September 2022 (should there still be parts of the Site unaffected by development works by that time).

### Birds

- 5.4 Development works have the potential to negatively impact nesting birds. Although this is likely to be limited to feral pigeon only (as already stated in Section 4), nests (whilst in use) and eggs of all species of wild bird, including feral pigeon, are protected.
- 5.5 It is therefore recommended that a professional bird control contractor is employed to install netting and bird deterrent spikes to make the building secure against nesting birds over the winter prior to the start of any demolition or construction works on the roof. Particular attention needs to be paid to the metal cladding openings at TN4.
- 5.6 Although netting has already been employed in several areas on Site, this will need repair and enhancement to be effective.

## 6 Ecological Enhancements

### Habitats

- 6.1 The re-development of the Site may provide opportunities to enhance its ecological value through the incorporation of biodiverse roofs. Although aspirational, the viability of these in this particular project has not yet been fully established.

### Bird boxes

- 6.2 The development offers opportunities to enhance the Site for birds, in particular, swift *Apus apus*, where there are suitable elevations that are shaded (ideally north facing) and of sufficient height (at least 5 m above surrounding structures). Suitable boxes that could be installed for this species would be the Schwegler Lightweight Swift Box Type 1A (integral design) or if externally mounted, then the specification would need to be discussed with the design team for aesthetic reasons.
- 6.3 Figure 1 shows the indicative area that will be used for installation of 12 swift boxes.

### Bats

- 6.4 The locational context of the Site is such that it is of low suitability as foraging habitat for bats and is also sub-optimal for roost locations due to the fact that bats would need to commute further to forage. In this situation, enhancements for bat species are therefore considered lower priority than those for birds.

## **7 Conclusion**

- 7.1 If the mitigation set out in the report is fully implemented, there is no potential for the re-development of the Site to cause any significant ecological impacts on designated sites, habitats or species, or to cause breaches of legislation relating to wildlife and nature conservation.
- 7.2 The re-development has potential to enhance the Site ecologically through the provision of green roof habitat and the installation of bird boxes, in line with the requirements of Section 170 of the National Planning Policy Framework and Policy G2 of the Oxford Local Plan.

## 8 References

Bat Conservation Trust (2010) Daubenton's bat *Myotis daubentonii*. BCT. Available at [https://cdn.bats.org.uk/pdf/About%20Bats/daubentons\\_11.02.13.pdf?mtime=20181101151258&focal=None](https://cdn.bats.org.uk/pdf/About%20Bats/daubentons_11.02.13.pdf?mtime=20181101151258&focal=None) and accessed 16 September 2020.

BSI Standards Limited (2013). *BS42020:2013 Biodiversity: Code of practice for planning and development*. BSI.

Collins, J. (ed.) (2016). *Bat Surveys for Professional Ecologists: Good Practice Guidelines (3rd edn)*. The Bat Conservation Trust, London.

JNCC (2010) *Phase 1 habitat survey: A technique for environmental audit*. JNCC

Multi-Agency Geographic Information for the Countryside website available at <https://magic.defra.gov.uk/MagicMap.aspx> and accessed on 07 May 2020

## 9 Figures

Figure 1: Phase 1 habitat plan



LEGEND

- Site boundary
- Building
- Hardstanding (street level)
- Gravel roof (very few plants)
- Indicative location where swift boxes will be installed (total = 12)
- 1 Target note



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JOB REF: P19-933

PROJECT TITLE  
CLARENDON CENTRE, OXFORD

DRAWING TITLE  
Figure 1: Phase 1 habitat plan

DATE: 03/12/2020      CHECKED: GC      SCALE: 1:600  
DRAWN: AN/KW      APPROVED: TF      VERSION: 1.4

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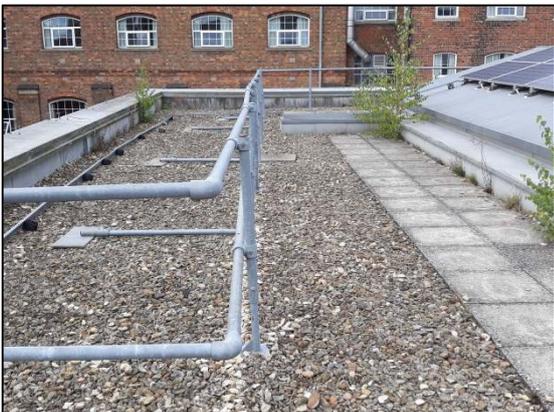
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## 10 Photographs

<p><b>Photograph 1:</b> View south of southern area of Clarendon Centre roofs.</p>	<p><b>Photograph 2:</b> View east of eastern roof areas.</p>
	
<p><b>Photograph 3:</b> View west showing detail of gravelled roof area.</p>	<p><b>Photograph 4:</b> View west of central area of roofs.</p>
	
<p><b>Photograph 5:</b> Mock tiled pitched roof section, built to screen air-conditioning units.</p>	<p><b>Photograph 6:</b> Rear view of mock tiled pitched roof section, showing plywood construction.</p>
	

<p><b>Photograph 7:</b> Wooden clad structure (TN1)</p>	<p><b>Photograph 8:</b> Detail of single brick-work slot (TN2)</p>
	
<p><b>Photograph 9:</b> View west of cracked pointing at TN3.</p>	<p><b>Photograph 10:</b> Horse chestnut tree to immediate west of Site (TN5)</p>
	
<p><b>Photograph 11:</b> Cladding at TN4 with gap accessed by feral pigeon (see right-hand side of image).</p>	
	

## Appendix 1: Legislation and Policy

### National Planning Policy Framework (England)

The Government revised the National Planning Policy Framework (NPPF) on 19 February 2019. Text excerpts from the NPPF are shown where they may be relevant to planning applications and biodiversity including protected sites, habitats and species.

The Government sets out the three objectives for sustainable development (economy, social and environmental) at paragraphs 8-10 to be delivered through the plan preparation and implementation level and 'are not criteria against which every decision can or should be judged.' At paragraph 8c) the planning system's environmental objective refers to 'protecting and enhancing our natural, built and historic environment' and to 'helping to improve biodiversity'

In conserving and enhancing the natural environment, the NPPF (Paragraph 170) states that 'planning policies and decisions should contribute to and enhance the natural and local environment' by:

- Protecting and enhancing...sites of biodiversity value... '(in a manner commensurate with their statutory status or identified quality in the development plan)'.
- Recognising the wider benefits from natural capital and ecosystem services including trees and woodland.
- Minimising impacts on and providing net gains in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.
- Preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability.

In respect of protected sites, at paragraph 171, the NPPF requires local planning authorities to distinguish, at the plan level, '...between the hierarchy of international, national and locally designated sites; allocate land with the least environmental or amenity value...take a strategic approach to maintaining and enhancing networks of habitats and green infrastructure; and plan for the enhancement of natural capital at a catchment or landscape scale across local authority boundaries.'

Paragraph 174 refers to how plans should aim to protect and enhance biodiversity. Plans should: 'identify, map and safeguard components of local wildlife-rich habitats and wider ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity [a footnote refers to ODPM Circular 06/2005 for further guidance in respect of statutory obligations for biodiversity in the planning system], wildlife corridors and stepping stones that connect them and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation;' and to 'promote the conservation, restoration and re-creation of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity.'

Paragraph 175 advises that, when determining planning applications, '...local planning authorities should apply the following principles:

- a. if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;
- b. development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments) should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that

- make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;
- c. development resulting in the loss or deterioration of irreplaceable habitats, (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists; and
  - d. development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.'

In paragraph 176, the following should be given the same protection as habitats sites<sup>2</sup>:

- i. potential Special Protection Areas and possible Special Areas of Conservation
- ii. listed or proposed Ramsar sites; and
- iii. sites identified, or required, as compensatory measures for adverse effects on habitats sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.'

In paragraph 177 the NPPF refers back to sustainable development in relation to appropriate assessment and states: 'the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site'.

In paragraph 178, the NPPF refers to planning policies and decisions taking account of ground conditions and risks arising from land instability and contamination at sites. In relation to risks associated with land remediation account is to be taken of 'potential impacts on the natural environment' that arise from land remediation.

In paragraph 180 the NPPF states that planning policies and decisions should ensure that development is appropriate to the location and take into account likely effects (including cumulative) on the natural environment and , in doing so, they 'should limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.'

### **Government Circular ODPM 06/2005 Biodiversity and Geological Conservation (England only)**

Paragraph 98 of Government Circular 06/2005 advises that "the presence of a protected species is a material consideration when a planning authority is considering a development proposal that, if carried out, would be likely to result in harm to the species or its habitat. Local authorities should consult Natural England before granting planning permission. They should consider attaching appropriate planning conditions or entering into planning obligations under which the developer would take steps to secure the long-term protection of the species. They should also advise developers that they must comply with any statutory species' protection provisions affecting the site concerned..."

Paragraph 99 of Government Circular 06/2005<sup>3</sup> advises that "it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning

<sup>2</sup> Habitats sites are defined in the glossary as 'Any site which would be included within the definition at regulation 8 of the Conservation of Habitats and Species Regulations 2017 (as amended) for the purpose of those regulations, including candidate Special Areas of Conservation, Sites of Community Importance, Special Areas of Conservation, Special Protection Areas and any relevant Marine Sites.'

<sup>3</sup> ODPM Circular 06/2005. *Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impacts within the Planning System* (2005). HMSO Norwich.

conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted”.

### **Standing Advice (GOV.UK - England only)**

The GOV.UK website provides information regarding protected species and sites in relation to development proposals: ‘Local planning authorities should take advice from Natural England or the Environment Agency about planning applications for developments that may affect protected species.’ GOV.UK advises that ‘some species have standing advice which you can use to help with planning decisions. For others you should contact Natural England or the Environment Agency for an individual response.’

The standing advice (originally from Natural England and now held and updated on GOV.UK<sup>4</sup>) provides advice to planners on deciding if there is a ‘reasonable likelihood’ of protected species being present. It also provides advice on survey and mitigation requirements.

When determining an application for development that is covered by standing advice, in accordance with guidance in Government Circular 06/2005, Local planning authorities are required to take the standing advice into account. In paragraph 82 of the aforementioned Circular, it is stated that: ‘The standing advice will be a material consideration in the determination of the planning application in the same way as any advice received from a statutory consultee...it is up to the planning authority to decide the weight to be attached to the standing advice, in the same way as it would decide the weight to be attached to a response from a statutory consultee.’

### **European protected species (Animals)**

The Conservation of Habitats and Species Regulations 2017 (as amended) consolidates various amendments that have been made to the original (1994) Regulations which transposed the EC Habitats Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora (Council Directive 92/43/EEC) into national law.

“European protected species” (EPS) of animal are those which are shown on Schedule 2 of the Conservation of Habitats and Species Regulations 2017 (as amended). They are subject to the provisions of Regulation 43 of those Regulations. All EPS are also protected under the Wildlife and Countryside Act 1981 (as amended). Taken together, these pieces of legislation make it an offence to:

- a. Intentionally or deliberately capture, injure or kill any wild animal included amongst these species
- b. Possess or control any live or dead specimens or any part of, or anything derived from a these species
- c. deliberately disturb wild animals of any such species
- d. deliberately take or destroy the eggs of such an animal, or
- e. intentionally, deliberately or recklessly damage or destroy a breeding site or resting place of such an animal, or obstruct access to such a place

For the purposes of paragraph (c), disturbance of animals includes in particular any disturbance which is likely—

- a. to impair their ability—
  - i. to survive, to breed or reproduce, or to rear or nurture their young, or
  - ii. in the case of animals of a hibernating or migratory species, to hibernate or migrate; or
- b. to affect significantly the local distribution or abundance of the species to which they belong.

<sup>4</sup> <https://www.gov.uk/protected-species-and-sites-how-to-review-planning-proposals#standing-advice-for-protected-species>

Although the law provides strict protection to these species, it also allows this protection to be set aside (derogated) through the issuing of licences. The licences in England are currently determined by Natural England (NE) for development works and by Natural Resources Wales in Wales. In accordance with the requirements of the Regulations (2017, as amended), a licence can only be issued where the following requirements are satisfied:

- a. The proposal is necessary 'to preserve public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment'
- b. 'There is no satisfactory alternative'
- c. The proposals 'will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.'

### **Birds**

All nesting birds are protected under Section 1 of the Wildlife and Countryside Act 1981 (as amended) which makes it an offence to intentionally kill, injure or take any wild bird or take, damage or destroy its nest whilst in use or being built, or take or destroy its eggs. In addition to this, for some rarer species (listed on Schedule 1 of the Act), it is an offence to disturb them whilst they are nest building or at or near a nest with eggs or young, or to disturb the dependent young of such a bird.