

Extended Phase 1 Habitat Survey Report Willows Caravan Park, Walton on the Naze, Essex

January 2021

For: Earlmoor Properties Ltd



ecologylink

61 Middlewatch
Swavesey
Cambridge
CB24 4RW



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By their very nature, ecological surveys can only assess a site or particular species at a set point in time, thus providing a snapshot of the environment and not a definitive evaluation. Every effort has been taken to provide an accurate assessment of the habitats or species surveyed. However, presence and population sizes of species can change over time and therefore the accuracy of this report will be affected by time and seasonality.

This document has been prepared by Ecology Link Ltd for the sole use of the client.



1. Introduction

- 1.1 Ecology Link Ltd. was commissioned by Earlmoor Properties Ltd, to undertake an ecological assessment of a plot of farmland, north of Walton on the Naze, Essex. The purpose of the survey was to assess the conservation value of the site, including the likely presence of rare or protected species. Any features, habitats or species constituting potential constraints to the development were identified, with recommendations for appropriate further surveys and mitigation.
- 1.2 The client is seeking an ecological assessment of the site as part of a planning application for the extension of the adjacent Willows Caravan Site.

Site Location and Description

- 1.3 The site was located within an area of arable farmland, north of the present caravan park (NGR TM 2590 2328). Residential properties continued east of the park along the southern boundary, with fields to the north, east and west.
- 1.4 The field was under a mustard cover crop at the time of survey, bounded by hedgerows. Detailed habitat descriptions are given in Section 3, which is supported by the Phase 1 Habitat Map (Appendix 1) and Photographic Record (Appendix 2).

Adjacent Habitats

- 1.5 The wider environment extended into the Naze peninsular, a mosaic of farmland and semi-natural habitats. Walton Channel, part of Hamford Water, was to the west of the site.

2. Scope of Works

Desk Study

- 2.1 A desk-based data search was not deemed necessary, due to the existing nature of the site, being under arable cultivation. Previous biological data for the Naze has provided high numbers of species records. However, not specific to the habitats recorded at this site. A new data search specifically for this field was not deemed likely to provide any new pertinent data, due to being under private ownership and under-recorded.

Extended Phase 1 Habitat Survey

- 2.2 An extended Phase 1 habitat survey was conducted on the 19th January 2021 by Jon Panter, whom is an experienced ecologist and full member of the Chartered Institute of Ecology and Environmental Management (CIEEM).
- 2.3 The weather conditions were cold and dry. A risk assessment was completed and all appropriate PPE worn. The client granted access to the site.
- 2.4 An evaluation was made of the habitats within the site and where possible, of the immediate surrounding environs. Methodology followed the standard survey criteria as set out in the JNCC Survey Handbook (2010) and a Phase 1 map was produced to show the distribution of habitats and plant communities across the site. Target Notes (TN) were used if required, to give greater detail for specific features. The information gathered provided a record of the existing wildlife habitats present, in accordance with the habitat codes within the JNCC guidelines. The potential for the site to support protected species was also assessed, some of which may be protected by UK or European legislation (Appendix 3).

Buildings and Structures Survey

- 2.5 Any buildings or other structures (if present) on site were surveyed. This comprised both an external visual inspection and internal search (where safety allowed) to look for signs of, or

potential for, protected species (most likely to include bird and bat species). Indicators of use could include live animals, carcasses, droppings, feeding remains and nesting material. A ladder, high-powered torch, angled mirror and endoscope were available for use as required.

Survey Constraints

- 2.6 The survey was not undertaken during the optimal survey season (April to September). However, given the nature of the site, it is felt that an accurate record of the habitats and species present was still recorded. It may be that additional plant species were present, which were not visible at the time of survey. It is important to note that species diversity and dominant plant assemblages may increase or change throughout the season.

3. Results

Phase 1 Survey – Habitats

Arable

- 3.1 The majority of the site was under arable cultivation at the time of survey, being a mustard cover crop (Photo 1). It is likely that this will be ploughed, and a commercial crop sown for the 2021 growing season.

Ditch

- 3.2 Ditches were recorded along the extent of the hedgerows, forming physical boundaries to the field and drainage channel. These did hold water at the time of survey, but are likely to be ephemeral in nature, being dry the majority of the year.
- 3.3 D2, was within a hedgerow (H2) and held no marginal or aquatic vegetation (Photo 2). D1 and D3 had isolated areas of common reed (*Phragmites australis*), where the ditches were not shaded by the adjacent hedgerows (Photo 3). The majority of plant species were ruderal (below).

Hedgerow

- 3.4 All hedgerows were dominated by hawthorn (*Crataegus monogyna*), with a number of mature specimens. These had been managed by flail cutting, with no standard trees.
- 3.5 Hedge 1 ran adjacent to the caravan park, being relatively high and intact. A short section of hedge had been removed in the north east corner, which is where the proposed access road will enter the new site (Photo 3). Further east, the hedge became defunct and had been low cut, presumably by residents to enable views across the fields and estuary.
- 3.6 Hedges H2 and H3, were managed to approximately two metres in height and were defunct in places (Photo 4).

Tall Ruderal

- 3.7 There were small margins of ruderal vegetation along the edges of the fields (not shown on Phase 1 map), which provided buffers to the hedges and ditches (Photo 5). Species were typical of field boundaries including nettle (*Urtica dioica*), false oat-grass (*Arrhenatherum elatius*), bramble (*Rubus fruticosus* agg.) and cleavers (*Galium aparine*).

Phase 1 Survey – Protected Species

Badgers

- 3.8 The site and a 30m buffer (where accessible), were surveyed for badger evidence such as setts, latrines, pathways, footprints, snuffle holes and badger hairs. Any setts recorded were classified according to published criteria (Harris, et al., 1989).

- 3.9 Evidence of badge activity was record along Hedgerow H2, in the form of prints (Photo 6) and foraging signs. Various runs through the hedgerow were noted, which could also be attributed to deer. A possible single sett entrance hole (Photo 7), was recorded on the eastern side of H2 (TM 26099 23393). There is some potential that this is badger, although no evidence of active use was recorded.
- 3.10 The level of badger activity is suggestive of a sett north of the site, within the farmland on the Naze.

Barn Owls

- 3.11 All breeding wild birds are protected by under Part 1 of the Wildlife and Countryside Act (WCA) (1981, as amended). In addition to the offences of taking, damaging or destroying a nest or eggs; barn owls receive special additional protection under Schedule 1 of the WCA. Barn owls (and other Schedule 1 species) are protected from any form of intentional or reckless disturbance when they are nesting or rearing dependent young. Any such activity constitutes an offence.
- 3.12 There were no roosting or breeding opportunities for barn owls (*Tyto alba*) within the site. The arable habitat did not provide hunting opportunities for this species, within field margins being limited.
- 3.13 Barn owls may utilise the wider arable landscapes associated margins and ditch banks for hunting.
- 3.14 This species needs no further consideration or survey.

Bats

- 3.15 Potential for the site to support roosting, foraging and commuting bats was assessed in line with the Bat Conservation Trust (BCT) Bat Surveys for Professional Ecologists Good Practice Guidelines (Collins, 2016).
- 3.16 Buildings or structures (if present) were assessed for suitability to support roosting bats according to the classifications provided (Table 3.2). Any potential roost sites and roost access points were highlighted. Evidence of bats was also searched for and equipment available to investigate the buildings included; binoculars, a ladder, an endoscope and a high-power torch. The surveyor looked for bats, droppings, staining, scratch marks and feeding remains in any potentially suitable locations.

Table 3.2 Classifying the bat roosting suitability of buildings (Collins, 2016)

Negligible roosting suitability	Negligible habitat features present that are likely to be used by roosting bats.
Low roosting suitability	A structure with one or more features that could be opportunistically used by individual bats. Unlikely to support maternity or hibernation roosts.
Moderate roosting suitability	A structure with one or more potential roost sites that could be used by bats due to their size, shelter, protection, conditions and surrounding habitat (unlikely to support roosts of high conservation status).
High roosting suitability	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.
Confirmed roost	Evidence of bat occupation found.

- 3.17 Trees were also surveyed for potential bat roost features, and where present and accessible, evidence of bats. Each tree was assigned a level of suitability for roosting bats (Table 3.3).
- 3.18 The site was also assessed for its suitability for foraging bats and for commuting or dispersing bats (i.e. how well the habitats on the site link to other offsite habitats and in particular the presence of sheltered linear habitats on the site).

Table 3.3 Classifying the bat roosting suitability of trees (Collins, 2016)

Negligible roosting suitability	Trees with few, if any, features suitable for roosting.
Low roosting suitability	A tree of sufficient size and age to contain potential roost features (PRFs), but with none seen from the ground or features seen with only very limited roosting potential.
Moderate roosting suitability	A tree with one or more potential roost sites that could be used by bats due to their size, shelter, protection, conditions and surrounding habitat. These trees are unlikely to support a roost of high conservation status.
High roosting suitability	A tree with one or more potential roost sites that are obviously suitable for use by larger numbers of bats on a regular basis and potentially for longer periods of time due to their size, shelter, protection, conditions and surrounding habitat.

- 3.19 The site had no buildings or trees with potential roosting features (PRFs).
- 3.20 The site provided poor foraging opportunities, especially compared to habitats within the wider locality. The hedgerows provided linear features which may afford commuting or dispersal flight routes from adjacent habitats and buildings. The site is not deemed to be of key importance within the locality (in terms of size or quality).
- 3.21 This species needs no further consideration or survey.

Birds

- 3.22 The site held no buildings or structures to support any species of nesting bird. The hedgerows did have nesting potential, with a number of old passerine bird nests recorded. The proposal will not impact on any of the existing hedgerows. Species noted during the survey included goldfinch, greenfinch, great tit and gulls.
- 3.23 Skylarks were very active across the field, displaying territory marking behaviour. It is likely that the field will be ploughed and sown prior to breeding.

Dormice

- 3.24 There was no suitable habitat to support dormice (*Muscardinus avellanarius*) within the site boundary.
- 3.25 Dormice favour ancient and mature woodland with good structural diversity and understorey. Hedgerows can be important as dispersal routes, but only if well connected to optimal habitat. They require a diverse food source throughout their active season (May to Oct). Being very territorial, dormice usually remain within 80m of their nests. The hedgerow is to be retained under current proposals.
- 3.26 This species needs no further consideration or survey.

Great Crested Newts

- 3.27 The site was assessed for suitability to support amphibians, including great crested newts (GCN) (European Protected Species – EPS), common toad (species of conservation importance) and common frog. The assessment was undertaken in accordance with Gent & Gibson (2003) and Langton et al (2001).
- 3.28 There were no suitable breeding habitats or hibernation features for amphibians within the site boundary. However, the ditch and hedgerow boundaries did provide foraging, commuting and limited sheltering opportunities. A number of ponds were recorded to the northeast of the site (approximately 200m and 250m), adjacent to Old Hall Lane. There is potential for amphibians, if present in the locality, to be present on site within the marginal boundary habitats. The current proposals are unlikely to impact on GCN, with the hedgerows and ditches not being impacted either directly or indirectly.

Hedgehogs

- 3.29 Hedgehogs (*Erinaceus europaeus*) are listed under the Habitats and Species of Principal Importance in England. The Natural Environment and Rural Communities (NERC) Act came into force in 2006. Section 41 (S41) 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 in England. These are habitats and species that had been identified as requiring action in the UK Biodiversity Action Plan (UK BAP) and which continue to be regarded as conservation priorities.
- 3.30 There was no evidence of hedgehogs on the site.
- 3.31 This species requires no further survey.

Invertebrates

- 3.32 The habitats were not considered of importance to notable invertebrates in the locality. Apart from through field observation, the site was not evaluated for the likely presence of important invertebrates, as surveys require specialist methods and equipment. Surveys are seasonally restricted, with samples collected over a number of months and removed from site for expert identification.
- 3.33 The proposals will not affect any of the surrounding habitats which likely support a range of common invertebrate species.
- 3.34 This group needs no further consideration or survey.

Otters

- 3.35 No habitats with potential to support otters (*Lutra lutra*) was recorded on site. The habitats within and immediately adjacent to the site do not provide suitable resources for this species.
- 3.36 This species requires no further consideration or survey.

Reptiles

- 3.37 The site was assessed for suitability to support reptiles with reference to the (Gent & Gibson, 2003) and Froglife Advice Sheet 10.
- 3.38 The habitats recorded provided limited suitability for this group. However, the ditch and hedgerow boundaries did provide foraging and commuting opportunities linked to wider habitats. There is potential for this animal, if present, to utilise the boundaries of the site, although the current proposals are unlikely to impact these areas.

Water Voles

- 3.39 There were no suitable waterbodies on site for water voles (*Arvicola amphibius*). The ditches held limited potential for water voles, being too heavily shaded and overgrown with scrub, providing very limited food resources and cover from potential predators.

3.40 This species requires no further consideration or survey.

White-clawed Crayfish

3.41 There was no suitable habitat within site to support white-clawed crayfish (*Austropotamobius pallipes*)

3.42 This species requires no further consideration or survey.

Other Species

3.43 Evidence of deer were recorded along all boundaries of the site, through slots. These are likely to be roe deer (Pers. Comm. – caravan site manager).

Invasive Species

3.44 No invasive plant or animal species were recorded on site at the time of survey.

Buildings and Structures

3.45 No buildings or structures were recorded on site.

4. Evaluation and Recommendations

4.1 The following potential ecological constraints were identified within the site boundary. Each protected species requiring further investigation or survey has been listed, including the relevant legislation and rationale. *Caveat – only species deemed likely to be present either within or immediately adjacent to the site have been considered further.*

Habitats

4.2 No habitats were recorded which require any specific protection.

Protected Species

4.3 The level of protection for different species varies, often being reviewed and amended. We have stated in the text below, which laws protect which species. A summary of their specific protection has also been provided (Appendix 3).

Badgers

4.4 Badgers are protected under the Protection of Badgers Act 1992. This legislation makes it an offence to kill or injure a badger, damage or destroy a sett, or disturb a badger whilst it occupies a sett.

4.5 It is clear that there is a high level of badger activity across much of the site, particularly along the boundaries. The current proposal will not impact on any setts or prevent badger movement throughout the site. However, care must be taken during the construction phase. All contractors must be informed of the presence of badgers on site and be made fully aware their responsibilities. This should be achieved by a tool-box-talk and method statement, detailing precautionary measures to be implemented, such as covering any trenches and inclusion of escape ramps.

4.6 A pre-construction walkover survey should be considered to confirm that badgers have not dug any new holes on or immediately adjacent to the site. This can be incorporated into the tool-box-talk.

Birds

- 4.7 All birds, their nests and eggs are protected under the Wildlife and Countryside Act 1981, as amended. It is illegal to take, damage or destroy the nests of wild birds whilst being built or in use.
- 4.8 It is recommended that all vegetation clearance, be undertaken outside of the breeding bird season (nesting March to August, inclusive). If this is not feasible, then a survey of all vegetation to be disturbed should be performed within a 48hr period prior to works, to identify any nests present. Should any active nests be found, then all work in these areas will have to wait until all young have fully fledged.
- 4.9 The potential for ground nesting birds is high with the confirmed presence of skylarks. At present the field will be maintained under arable cultivation until any change of use. It is highly likely that skylarks will attempt nesting within the crop (particularly favouring cereals), starting as early as March they can have up four broods per year. Development timings must ensure no disturbance to birds within the nesting season between March and August inclusive.

Great Crested Newts

- 4.10 All life stages of the great crested newt and their habitats are protected under the Wildlife and Countryside Act 1981, as amended. They are also protected by the Conservation of Habitats and Species Regulations 2017 as a European Protected Species (see Appendix 3 for further details).
- 4.11 Although there was no breeding habitat on site, newts (if present), may be relying on the limited terrestrial habitat within the site margins for foraging, dispersal and transient shelter.
- 4.12 No further survey work to establish the presence or likely absence of GCN has been recommended, due to the lack of perceived impact of the proposed development. There will be no loss of breeding habitat and no proposed impact on the hedgerows and ditch banks around the perimeter of the site.
- 4.13 Amphibians may occasionally stray across the site whilst commuting to more optimal habitats for breeding or foraging, using the wider site on a transient basis. In the unlikely event of GCN or other common amphibians being present within the zone of impact, it is recommended that the following precautionary approach be applied to ensure reasonable avoidance and prevent killing or injuring individuals:
- Maintain the existing ruderal habitat at the current short height, until completion of the construction. This will keep habitat unfavourable for amphibians (and reptiles). It should be kept at a maximum sward height of 100mm.
 - Complete all ground excavation works (e.g. foundations, path installation) outside of the hibernation period (hibernating November to February inclusive). Hibernation may commence earlier in the autumn or run later into the spring depending on colder seasonal variations.
 - Maintain the site free from potential hibernacula or shelter habitat (refuge features), such as brick rubble, aggregate piles, log piles or building materials. Any stored building materials should be placed on wooden pallets or chocks, so they are not in direct contact with the ground.
 - Do not leave any trial pits, holes or trenches open overnight, preferably back-filling to the work in hand each day. If unavoidable, cover the excavations safely and ensure they include a ramp (either soil slope or plank at no greater than 45-degree angle) to allow escape of any animals which may fall in (e.g. amphibians, reptiles, small mammals incl. hedgehogs).
 - Always check any exposed excavations prior to work commencing the following morning.

Reptiles

- 4.14 All British reptile species are afforded protection under Schedule 5 of the Wildlife and Countryside Act 1981, as amended. This makes it an offence to kill or injure reptile species including grass snake, adder, common lizard and slow-worm.
- 4.15 It is recommended that the advice stated above with regard for GCN also be applied to reptiles.

Biodiversity Enhancement

- 4.16 Biodiversity Net Gain has been described as a measurable target for development projects where impacts on biodiversity are outweighed by a clear mitigation hierarchy approach to first avoid and then minimise impacts, including through restoration or compensation. Adhering to these Net Gain principles (i.e. pursuing all principles together) will help in under-pinning good practice for achieving and sustaining Net Gain (CIEEM, 2016).
- 4.17 No specific design have been finalised at presented, this will form the basis of a Biodiversity Enhancement Plan providing guidance for the creation of habitats and protection of species (protected or common) which are likely to inhabit the site or can be encouraged in a more transient basis. This will ensure biodiversity net gain, as required by NPPF 2019

5. Conclusions

- 5.1 The potential ecological constraints discussed in the recommendations, which require further assessment has been provided (Table 5.1), including key survey periods. It is important to make a note of these restricted survey seasons when planning your development schedule.

Table 5.1: Outline of Further Surveys and Timings

Species Group	Action / Survey Requirement	Optimal Timing (inclusive)
Badgers	Pre-construction walkover survey	TBA
Breeding birds	All vegetation clearance outside of breeding season	September to February

6. Appendices

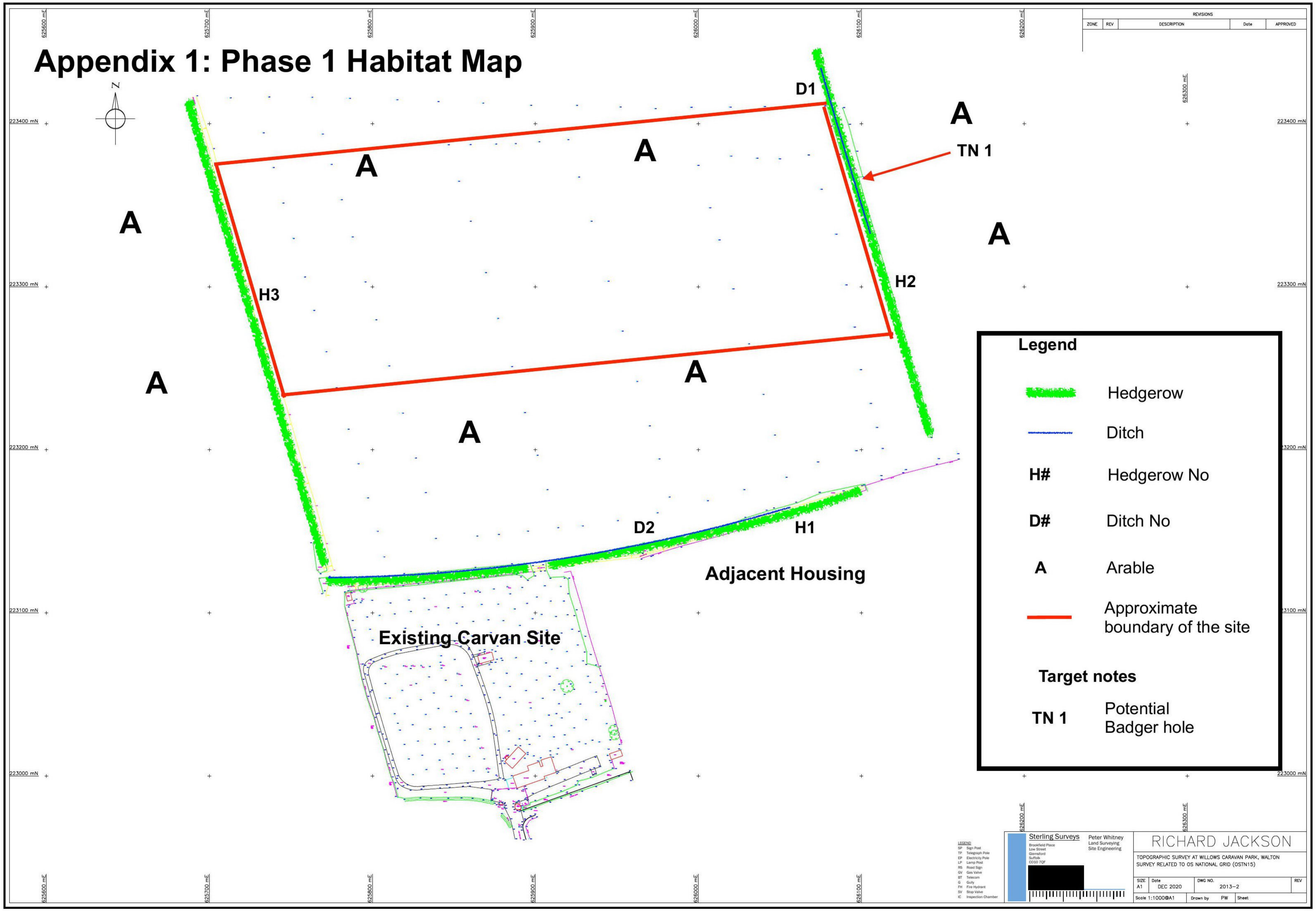
Appendix 1 – Phase 1 Habitat Map & Target Notes

Appendix 2 – Photographic Record

Appendix 3 – Legislation

Appendix 1: Phase 1 Habitat Map

REVISIONS			
ZONE	REV	DESCRIPTION	APPROVED



Legend

- Hedgerow
- Ditch
- H#** Hedgerow No
- D#** Ditch No
- A** Arable
- Approximate boundary of the site

Target notes

- TN 1** Potential Badger hole

LEGEND

SP	Sign Post
TP	Telegraph Pole
EP	Electricity Pole
LP	Lamp Post
RS	Road Sign
GV	Gas Valve
BT	Telecom
G	Gully
FH	Fire Hydrant
SV	Stop Valve
IC	Inspection Chamber

Sterling Surveys
 Peter Whitney
 Land Surveying
 Site Engineering

RICHARD JACKSON

TOPOGRAPHIC SURVEY AT WILLOWS CARAVAN PARK, WALTON
 SURVEY RELATED TO OS NATIONAL GRID (OSTN15)

SIZE	Date	DWG NO.	REV
A1	DEC 2020	2013-2	

Scale 1:1000@A1 Drawn by PW Sheet

Appendix 2: Photographic Record



Photo 1: General view across the proposed site, showing arable management and eastern hedge boundary (H2) in background.



Photo 2: Ditch 2 within hedgerow 2. Showing lack of aquatic vegetation and animal movement through hedgerow.



Photo 3: Ditch 1 showing isolated areas common reed (foreground).

A short section had been removed as proposed access to the site.



Photo 4: Hedgerow 2, looking south towards houses.



Photo 5: Field margins dominated by ruderal plant communities.



Photo 6: Badger prints running along hedgerow 2.



Photo 7: Potential badger hole on eastern side of hedgerow 2.

Appendix 3 – Legislation

This document contains a brief summary of key legislation relating to the protection of wildlife and habitats. Ecology Link Ltd. does not offer legal opinion or provide legal advice. The client is responsible for reviewing the full legislative documents from up-to-date original sources and should seek independent legal advice where appropriate.

European Protected Species

The Bern Convention (The Convention on the Conservation of European Wildlife and Natural Habitats) was adopted in 1979 and came into force in 1982. To implement this agreement, the European Community adopted the EC Habitats Directive in 1992. This directive has been transposed into UK legislation by the Wildlife and Countryside Act 1981 (as amended); and the Conservation of Habitats and Species Regulations 2017. The Countryside and Rights of Way (CRoW) Act 2000 strengthened the existing wildlife legislation in the UK. The UK has also signed the Bonn Convention (The Convention on the Conservation of Migratory Species of Wild Animals) and is therefore party to various agreements.

Bats

All species of British bats are fully protected under Schedules 5 and 6 of the Wildlife and Countryside Act 1981 (as amended) and are also protected under Schedule 2 of the Conservation of Habitats and Species Regulations 2017. They are listed under Appendix III of the Bern Convention and Annex IV of the EC Habitats Directive. Bats and their habitats are also listed under Appendix II of the Bonn Convention and therefore the UK has an obligation to protect their habitat, including links to important feeding areas.

Taken together, these pieces of legislation make it an offence to:

- Intentionally kill, injure or capture bats.
- Deliberately or recklessly disturb bats (whether in roost or not).
- Damage, destroy or obstruct access to bat roosts.

A roost is defined as “any structure which a bat uses for shelter or protection”. As bats tend to re-use the same roosts, legal opinion is that a roost is protected whether or not bats are present at the time of survey.

Dormice

Hazel dormice are classified as Lower Risk-Near Threatened by the International Union for the Conservation of Nature (IUCN) Red List, and as Vulnerable in the UK. They are listed under Appendix III of the Bern Convention and Annex IV of the EC Habitats Directive. In the UK they are fully protected under Schedules 5 and 6 of the Wildlife and Countryside Act 1981 (as amended) and are also protected under Schedule 2 of the Conservation of Habitats and Species Regulations 2017.

Taken together, these pieces of legislation make it an offence to:

- deliberately capture, injure or kill dormice.
- damage or destroy a dormouse resting place or breeding site.
- deliberately or recklessly disturb a hazel dormouse while it's in a structure or place of shelter or protection.
- block access to structures or places of shelter or protection.
- possess, sell, control or transport live or dead hazel dormice, or parts of hazel dormice.

Great Crested Newts

Great crested newts are protected under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) and Schedule 2 of the Conservation of Habitats and Species Regulations 2017. At the European level they are protected under Annex IV of the EC Habitats Directive. All life stages of great crested newts are protected, including eggs, larvae, juveniles and adults.

Otters

Classified as Vulnerable under the IUCN Red List, they are also listed under Appendix II of the Bern Convention and Annex II of the EC Habitats Directive. They are also protected in the UK by Schedule 5 of the Wildlife and Countryside Act 1981 (as amended). In order to minimise disturbance, it is usually recommended that a barrier should be erected to prevent works within 20m of an otter resting place. If the holt is known to be used for breeding, the radius should be extended to 30m.

Legislation Relating to European Protected Species

In relation to a development a person commits an offence if they:

- Deliberately capture, injure or kill a European Protected Species.
- Deliberately or recklessly disturb a European Protected Species in such a way as to be likely to significantly affect;
 - i. the ability of any significant group of animals to survive, breed, rear or nurture their young
 - ii. the local distribution or abundance of that species.
- Damage or destroy a breeding site or resting place (even if unintentionally or when the animal is not present).
- Intentionally or recklessly obstruct access to a structure or place used for shelter or protection.

All aspects of this legislation apply regardless of the life stage.

A European Protected Species Licence is required to carry out any activity that would otherwise involve committing an offence.

The species above are those most frequently encountered. For a full list of current EPS in the UK please refer to the Conservation of Habitats and Species Regulations 2017, available at www.legislation.gov.uk. Lists of animals and plants can be found in Schedules 2 and 5, respectively.

Other Protected Species

Nesting Birds

All wild birds are protected under Part 1 of the Wildlife and Countryside Act 1981 (as amended). Therefore, in the UK it is an offence to:

- Take, damage or destroy the nest of any wild bird whilst it is being built or in use.
- Kill, injure or take any wild bird.
- Take or destroy the eggs of any wild bird.

To avoid committing an offence, no works should be conducted on a habitat that is being used by nesting birds. Nesting is deemed to be over when the young have fully fledged. Certain species which are listed on Schedule 1 of the WCA receive special protection. In these cases any form of intentional or reckless disturbance when they are nesting or rearing dependant young constitutes an offence.

Reptiles

Common lizard, slow-worm, adder and grass snake are all protected under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended), as updated by the Countryside & Rights of Way (CROW) Act 2000. They are covered against intentional injuring, killing or selling. To avoid prosecution, wherever works will impact upon these species there must be evidence to show that every reasonable effort was made to avoid breaking the law – including proof of adequate surveys and mitigation plans. Mitigation measures should, ideally, be agreed with Natural England.

Only the sand lizard and smooth snake are fully protected under the Wildlife and Countryside Act (Section 9) and the Conservation of Habitats and Species Regulations (Regulation 9). These protect them against:

- Killing, injuring or capturing.
- Keeping, transporting or selling.
- Damaging or destroying a breeding or resting site.
- Intentionally obstructing access to a place used for shelter.

This means that both the animals and their habitats are protected. These species mainly occur in specific nature reserves, mostly in the south and south-west of England.

Badgers

Badgers are fully protected in the UK by the Protection of Badgers Act 1992 and by Schedule 6 of the Wildlife and Countryside Act 1981 (as amended). This makes it an offence to:

- Willfully kill, injure, take, possess or cruelly treat a badger.
- Intentionally or recklessly damage, destroy or obstruct access to a badger sett.
- Disturb a badger while it is occupying a sett.

Disturbance could include digging or scrub clearance within 30m of a sett and therefore advice should be sought before conducting such activities. Badgers are mainly protected due to persecution in the past and are not rare.

Water Vole

Water voles are fully protected under the Wildlife and Countryside Act 1981 (as amended). Water voles are protected against intentional killing, capture or injury and intentional or reckless disturbance, obstruction, damage or destruction of their burrows. Displacement works (translocation) can now only be undertaken under ecologist direction (Class Licence holder) or with a specific Natural England licence.

White-clawed Crayfish

The white-clawed crayfish is protected under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended). In addition, Schedule 9 makes it an offence to release, or allow to escape into the wild, all non-native crayfish. It is listed under Appendix III of the Bern Convention, Under Annexes II and V of the EC Habitats Directive, and is classed as Globally Threatened by the IUCN. It is also a Priority Species under the UK Biodiversity Action Plan (BAP).

Invertebrates

Many invertebrates are listed as UK Biodiversity Action Plan (BAP) Priority Species and as Species of Principal Importance (Section 41) of the Natural Environment and Rural Communities Act 2006 (NERC-S41) (see below). Although such species do not receive protection under criminal law, their presence is a material planning consideration and consequently:

- Planning policies and decisions should “promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species...” (taken from NPPF, 2019)

- Local Planning Authorities will use the list to identify the species and habitats that require specific consideration in dealing with planning and development control, recognising that under the NPPF the aim of planning decisions should be to avoid or minimise impacts to biodiversity.

Invasive Species

The Wildlife and Countryside Act 1981 (as amended) is the principal legislation dealing with non-native species. The WCA has been amended in relation to England and Wales by various pieces of legislation, including: the WCA Variation of Schedule 9 Order 2010; the Natural Environment and Rural Communities Act 2006; and the Countryside and Rights of Way Act 2000. Section 14(1) of the WCA makes it illegal to release or allow to escape into the wild any animal which is not ordinarily resident in Great Britain, is not a regular visitor to Great Britain in a wild state, or is listed in Schedule 9 of the Act. It is also illegal to plant or otherwise cause to grow in the wild any plant listed in Schedule 9 of the Act.

Wild Mammals (rabbits, foxes, deer, etc.)

Mammal species that are not of primary conservation importance do receive a degree of protection within the Wild Mammals (Protection) Act 1996. This includes offences which have implications for site clearance (particularly in the case of burrowing species like rabbits and foxes), such as crushing or asphyxiation of any wild mammal with intent to cause unnecessary suffering. To avoid offences under this legislation, it is recommended that where these species are present a method statement is produced, aimed at careful excavation of (or exclusion from) burrows.

The Wildlife and Countryside Act 1981 (as amended)

Protected birds, animals and plants are listed in Schedules 1, 5, 6, and 8 of the Wildlife and Countryside Act.

Schedule 1

The Act makes it an offence to intentionally kill, injure or take any wild bird, their eggs or their nests. Special penalties are available for offences related to birds listed on Schedule 1, for which there are additional offences of disturbing these birds at their nests, or their dependant young. The Secretary of State may also designate Areas of Special Protection (subject to exceptions) to provide further protection to birds. The Act also prohibits certain methods of killing, injuring or taking birds; restricts the sale and possession of captive bred birds; and sets standards for keeping birds in captivity.

Schedule 5

The Act makes it an offence to intentionally kill, injure, take or possess, or trade in any wild animal listed in Schedule 5. It also prohibits interference with places used for shelter or protection, or the intentional disturbance of animals occupying such places. The Act also prohibits certain methods of killing, injuring or taking wild animals.

Schedule 6

The Act makes it an offence to kill or take animals by certain methods. Such methods include: self-locking snares, bows, crossbows, explosives (other than firearm ammunition) or live decoys. Species listed are also protected from the use of: traps, snares or nets; electrical devices for killing or stunning; poisonous, poisoned or stupefying substances, or any other gas or smoke; automatic or semi-automatic weapons; devices for illuminating a target or sighting devices for night shooting; artificial lights, mirrors or other dazzling devices; sound recordings; and mechanically propelled vehicles in immediate pursuit.

Schedule 8

The Act makes it an offence to pick, uproot, trade in or possess (for the purposes of trade) any wild plant listed in Schedule 8, and prohibits the unauthorised intentional uprooting of such plants.

The Conservation of Habitats and Species Regulations 2017

The Conservation of Habitats and Species Regulations 2017 (abbreviated to the Habitats Regulations) consolidate all of the various amendments made to the Conservation (Natural Habitats, &c.) Regulations 1994. The 1994 Regulations transposed the EC Habitats Directive into national law in England and Wales. In Scotland the Habitats Directive is transposed through a combination of the Habitats Regulations 2010 (relating to reserved matters) and the 1994 Regulations. The Regulations provide for the protection of European Protected Species; and the designation, protection and adaptation of planning and other controls for the protection of European Sites. Under the Regulations, competent authorities (e.g. Ministers, government departments, public bodies or persons holding public office) have a general duty, in the exercise of any of their functions, to regard the EC Habitats Directive.

Schedule 2: European protected species of animals; Schedule 3: Animals which may not be taken or killed in certain ways; Schedule 4: European protected species of plants.

The UK Biodiversity Action Plan List of Priority Species and Habitats

Starting in 2005, the old UK BAP priorities were reviewed and, after adoption by the Governments of all four UK administrations, a new list called the UK List of Priority Species and Habitats was published in 2007. The species and habitats on this list help guide the conservation actions being made in the UK, as part of the UK contribution to the Convention on Biological Diversity.

The Hedgerows Regulations 1997

The Hedgerows Regulations were made under Section 97 of the Environment Act 1995 and came into effect in 1997. They introduced new arrangements for local planning authorities in England and Wales to protect important hedgerows in the countryside. Under the Regulations it is against the law to remove or destroy certain hedgerows without permission from the local planning authority. The Regulations specify the criteria to be used by the local planning authority in determining which hedgerows are important. The criteria relate to the value of hedgerows from an archaeological, historical, landscape, wildlife or amenity perspective. Local planning authority permission is normally required before removing hedges that are at least 20m in length, more than 30 years old, or contain certain plant species. If a hedgerow is at least 30 years old and qualifies under any one of the criteria, then it is important.

The National Planning Policy Framework

The National Planning Policy Framework (NPPF) came into force on the 27 March 2012, being updated in February 2019. Relevant policies include the following:

Policy 170: Planning policies and decisions should contribute to and enhance the natural and local environment by:

- protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils
- recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services
- minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures

Policy 175: When determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:

- If significant harm 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.
- Development proposals where the primary objective is to conserve or enhance biodiversity should be permitted.

- Opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.
- 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.

Policy 180: Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

- {...} limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.

Company Directors

Jonathan Panter



Helen Parish

Ecology Link Ltd. | Registered Office: 61 Middlewatch, Swavesey, Cambridge CB24 4RW
[Redacted] | Registered in England No. 07015978 | VAT registration No. 982 3666 82
[Redacted]

