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24a Endcliffe Crescent, Sheffield

Bat Survey Report

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Contents

1 Introduction

Background to Commission

1.1 In May 2023, BSG Ecology was commissioned by the University of Sheffield to undertake a preliminary protected species survey at 24a Endcliffe Crescent, Sheffield, S10 3ED. In June 2023, BSG Ecology was subsequently commissioned in to undertake dusk emergence bat surveys, after features with potential for roosting bats were identified at the building.

1.2 24a Endcliffe Crescent (the Site) is a disused building, located at Ordnance Survey grid reference SK 3269 8638. The building is located behind residential properties, situated amongst dense vegetation and self-seeded trees.

1.3 There are proposals to submit a planning application to Sheffield City Council for the demolition of this building, owing to its poor state of repair. The Site will be returned to a landscaped and managed greenspace.

1.4 This report sets out the methods and results of the preliminary protected species survey undertaken in May 2023, and the dusk emergence bat surveys undertaken in July and August 2023, to highlight any ecological constraints with regard to bats and other protected species that will need to be considered as part of the proposed works at the Site.

2 Methods

Desk Study

2.1 The Multi-Agency Geographic Information for the Countryside (MAGIC) website was consulted for information on any recent European Protected Species (EPS) licences that have been granted within 2km of the Site (MAGIC, last accessed 04/09/2023).

2.2 Aerial photographs and maps (Bing Maps, last accessed 29/08/2023) of the Site and its surroundings were examined to further assist in understanding the local context of the Site; in particular, to identify connectivity with potential bat foraging habitats.

Preliminary Protected Species Survey

2.3 Ecologist Sidney Vickress QCIEEM, who holds a Natural England bat survey class licence (2022-10969-CL18-BAT), undertook a preliminary protected species survey of the survey on 23 May 2023.

2.4 A preliminary bat roost assessment was undertaken of the building using a handheld torch and close focusing binoculars. An external inspection of the buildings was undertaken for evidence of bats and to identify potential bat roost access points. An internal inspection could not be undertaken due to the unsafe nature of the building. The building was then assessed with reference to Bat Conservation Trust survey guidance (Collins, 2016; in particular Chapter 5) in terms of its suitability to support roosting bats.

2.5 In order to inform proposed vegetation clearance required for building access, an external inspection for active bird nests was undertaken during the protected species survey. The nesting bird inspection included a period of observation from 8:15 to 9:08, where bird activity at the building was recorded.

2.6 The Site was also evaluated for its potential to support other protected / notable species such as [redacted] hedgehog *Erinaceus europaeus*. Any evidence of invasive non-native plants, such as Japanese knotweed *Reynoutria japonica* and Himalayan balsam *Impatiens glandulifera* was also recorded during the survey.

Further Bat Survey

2.7 BSG Ecology undertook three dusk bat emergence surveys during July and August 2023. Surveys were led by Senior Ecologist Will Steele ACIEEM, who holds a Natural England bat survey class licence (2019-43393-CLS-CLS), with support from personnel as shown in Table 1. Surveys were undertaken with reference to guidelines from the Bat Conservation Trust (Collins, 2016).

2.8 During the dusk survey, two surveyors and one infra-red camera (Canon XA60) were positioned so that full visual coverage could be gained of each elevation of the building and, in particular, any potential bat roost access points, which had been previously identified.

2.9 Anabat Scout, Anabat SD1 and Batbox Duet bat detectors were used to aid bat identification in the field. Each surveyor recorded calls so that species could later be confirmed by studying sonograms with appropriate computer software.

Table 1: Details of Bat Survey Timings, Personnel and Weather Conditions

Date	Survey Type	Sunset Time	Survey Times	Weather during Survey (temperature, wind, cloud cover, precipitation)	Personnel
23/05/23	Preliminary protected species survey	n/a	n/a	2 Beaufort Wind Scale (BWS), 5 oktas, dry	Sophie Vickress (2022-10969-CL18-BAT)
05/07/23	Dusk emergence	21:35	21:20 – 23:05	14 - 15°C, 1 BWS, 6 oktas, dry	Will Steele (2019-43393-CLS-CLS) and Will Woof
27/07/23	Dusk emergence	21:10	20:55 – 22:40	17°C, 0 BWS, 0 - 2 oktas, dry	Will Steele (2019-43393-CLS-CLS) and Will Woof
10/08/23	Dusk emergence	20:45	20:30 – 22:15	23 - 22°C, 0 BWS, 1 oktas, dry	Will Steele (2019-43393-CLS-CLS) and Katarzyna Chamberlain

Limitations to Methods

2.10 Owing to the unsafe nature of the building and dense vegetation, an internal inspection of the structure was not undertaken. In addition, dense vegetation obstructed the surveyors view of the building exterior during the bat emergence surveys. To mitigate these limitations with regard to bats, three nocturnal surveys were undertaken using night vision aids (infra-red camcorders), and visual coverage of the building was considered to be sufficient, to establish the presence / likely absence of roosting bats at the Site. The lack of internal access and overgrown nature of the building is therefore not considered to be a significant limitation.

[redacted]

3 Results and Evaluation

Site Description

3.1 The Site includes a derelict building, described in the Preliminary Bat Roost Assessment section below. Land to the north and west of the building comprises a mix of scrub and self-seeded trees with ivy *Hedera helix* covered ground flora. To the south of the building there is an area of unmanaged grassland. Beyond the Site, buildings are present to the east and gardens to the west. The adjacent gardens have large mature trees, which overhang the Site and form a line of unbroken canopy cover running north to south.

3.2 The wider area is predominantly residential, including a range of houses and university buildings as well as modern flats with minor roads that support artificial lighting. Although the site is set within a suburban location, there is a good resource of suitable bat foraging habitat with gardens, parks and green spaces comprising a large portion of the surrounding area, including large lawns associated with university buildings and many mature trees.

Bats

Desk Study

3.3 The MAGIC website identified two EPS Bat Licences within 2 km of the Site; refer to Table 2 for further details.

Table 2: Granted European Protected Species Bat licences within 2 km of the Site

Licence Reference	Licence Period	Bat Species	Licensable works	Distance from the Site
EPSM2011-2807	2011-2013	Common pipistrelle *Pipistrellus pipistrellus*	Destruction of non-breeding site	665 m south-west
2019-40220-EPS-MIT	2019-2024	Common pipistrelle	Destruction of non-breeding site	1.3 km north-east

Preliminary Bat Roost Assessment ~ 23 May 2023

3.4 The building is brick built with pebble-dashed walls and a pitched slate roof which has partially collapsed. The building has been disused for some years and is currently overgrown with dense ivy, particularly on the south-east corner (Photograph 1) and northern aspect. In recent years, a tree has also fallen on the west side of the building, causing a large portion of the roof to collapse (Photograph 2 & Photograph 3).

3.5 In its current state of disrepair, the building provides numerous potential access points for bats to enter the building, and many small crevices within bats could roost. Suitable roost features include lifted or missing roof slates (Photograph 4), gaps in the brickwork and crevices behind damaged fascia boards (Photograph 5).

3.6 An internal inspection of the building was not undertaken. However, if a loft space is present, there may be further opportunities for roosting bats to roost.

3.7 No evidence of roosting bats (i.e. droppings or bats themselves) was recorded during the survey. Although, owing to the access restrictions, an exhaustive search was not undertaken.

3.8 Adjacent trees and gardens provide opportunities for foraging and commuting bats. Although intersected by roads and buildings, the tree cover provides sufficient habitat connectivity for bats to access the wider landscape, including woodland, grassland and ponds at Endcliffe Park ~350m to the south-west.

3.9 Overall, given the large number of potential roost locations and its close proximity to suitable bat habitats, the building was assessed as being of high bat roost suitability.

Dusk Emergence Bat Survey ~ 5 July 2023

3.10 No bats were recorded emerging from the building.

3.11 The first bat pass, a common pipistrelle, was recorded at 20:49 (14 minutes after sunset), although it was not seen. Three bat passes were seen, each of which were commuting over the Site or adjacent buildings. Throughout the survey, intermittent common pipistrelle passes and a single noctule *Nyctalus noctula* pass were also heard but not seen.

Dusk Emergence Bat Survey ~ 27 July 2023

3.12 No bats were recorded emerging from the building.

3.13 The first bat pass, a common pipistrelle, was recorded at 21:13 (three minutes after sunset). The bat was seen foraging in the canopy of mature trees adjacent to the Site. Regular common pipistrelle passes were recorded throughout the survey, with periods of foraging in the tree canopy by up to three bats. A single noctule pass was also heard but not seen.

Dusk Emergence Bat Survey ~ 10 August 2023

3.14 No bats were recorded emerging from the property.

3.15 The first bat pass, a noctule, was recorded at 20:49 (four minutes after sunset). This bat was heard commuting but not seen. Occasional noctule passes were recorded during the survey.

3.16 The first common pipistrelle pass was recorded 16 minutes after sunset. Regular commuting passes by one to two common pipistrelle were recorded throughout the survey, particularly along the driveway to the north and in the mature trees adjacent to the Site. Occasional foraging common pipistrelle were also recorded.

Bat Survey Summary

3.17 During the three bat emergence surveys, no bats were recorded emerging from the building. However, common pipistrelle and noctule bats were recorded shortly after sunset, it is therefore likely that they may be roosting in the vicinity of the Site. Noctule bats typically roost in cavities in mature trees, which are likely present in the local area. Common pipistrelle roost in trees and buildings and it is possible there are roosts in buildings close to the Site.

Nesting Birds

3.18 The building provides opportunities for nesting birds, including dense ivy, crevices and ledges suitable for nest building. In addition, trees and dense vegetation adjacent to the building provide opportunities for nesting birds.

3.19 During the nesting bird inspection; blackbird *Turdus merula*, bluetit *Cyanistes caeruleus*, goldfinch *Carduelis carduelis*, robin *Erithacus rubecula*, wood pigeon *Columba palumbus*, carrion crow *Corvus corone*, rock pigeon *Columba livia*, wren *Troglodytes troglodytes*, dunnock *Prunella modularis*, blackcap *Sylvia atricapilla* and nuthatch *Sitta europaea* were seen or heard within the vicinity of the Site. Of these bluetit, goldfinch, wood pigeon, robin, and blackbird were observed entering the building or adjacent habitats and may have been nesting in the building or its immediate vicinity.

3.20 In addition, two disused bird nests were identified within ivy on the south of the building.

Hedgehog

3.23 Habitats surrounding the building are densely vegetated could be used by hedgehog as a place of refuge, for nesting and for hibernation.

Invasive non-native plant species

3.24 No invasive non-native plants were recorded at the Site.

4 Potential Impacts and Recommendations

Bats

4.1 All UK bats are European Protected Species (EPS) that are fully protected under the Conservation of Habitats and Species Regulations 2017 (as amended) and the Wildlife and Countryside Act 1981 (as amended). Bats are protected against disturbance, killing or injuring and their roosts are protected against obstruction, damage or destruction. A bat roost may be any structure a bat uses for breeding, resting, shelter or protection. It is important to note that since bats tend to re-use the same roost sites, a bat roost is typically considered to be protected from damage or destruction whether or not the bats are present at the time. Appendix 1 provides further details of the relevant legislation.

4.2 The building is considered to have high roost suitability due to the number of possible roost locations and the close proximity of suitable bat foraging habitats. No bat roosts have been identified in association with the Site as a result of the preliminary bat roost assessment and the dusk emergence bat surveys undertaken in May, July and August 2023.

4.3 There was regular bat foraging adjacent to the building and it is considered likely that there are roosts near to the Site, as bats were recorded shortly after sunset. This included common pipistrelle bat which will readily roost within features present on the building.

4.4 Given the transient nature of bat roosts and the presence of many suitable roosting locations on the building, it is recommended that it is demolished following a Precautionary Working Method Statement. This would include demolition contractors removing the roof tiles and other suitable roost features carefully by hand prior to the demolition of the building. In the unlikely event that evidence of roosting bats (such as live bat(s) or droppings) is encountered, the demolition works should immediately cease, and a suitably experienced ecologist should be contacted for further advice.

Nesting Birds

4.1 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, 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.

4.2 At the Site, the building itself and adjacent dense vegetation, provides suitable bird nesting opportunities. Any vegetation clearance should be undertaken outside the nesting season (i.e. removed during the winter months).

4.3 Any vegetation clearance that needs to take place during the bird nesting season (generally considered to be between mid-February to late August inclusive, although this can vary) must be preceded by an inspection for nesting birds by a suitably qualified Ecologist. Should nesting birds be present, then clearance and construction activities within that area (and a suitably sized buffer of the nesting bird(s)) should stop until young have fledged. This may require a delay of six to eight weeks but the exact timescales are dependent on the species and status of the nest when found.

4.4 If works to the building are to be undertaken during the bird nesting season (mid-February to late August inclusive), then further inspection for nesting birds by a suitably qualified Ecologist will be required.

Hedgehog

4.5 Hedgehog is a Species of Principal Importance listed under Section 41 (S41) of the Natural Environment and Rural Communities (NERC) Act.

4.6 The dense vegetation adjacent to the building has the potential to provide refuge, nesting and hibernation habitat for this species. It is recommended that vegetation removal is undertaken with care using hand tools, outside of the hibernation period for hedgehog (typically November to February), whilst also avoiding the bird nesting season. If hedgehog is discovered then it should be moved carefully by hand to an alternative area of overgrown vegetation.

Mitigation and Enhancement

4.7 Paragraph 179 of the National Planning Policy Framework (NPPF) states that projects should aim to protect and enhance biodiversity.

4.8 Given that the building provides opportunities for nesting birds and roosting bats, the following ecological mitigation and enhancement measures are considered reasonable and proportionate:

Roosting bats

4.9 To compensate for a loss of features suitable for roosting bats, two bat boxes will be installed on buildings or mature trees within the ownership / control of the client, in suitable locations no more than 100m from Site, located 4-7 m high and away from artificial lighting.

4.10 Bat boxes will be suitable for common pipistrelle, such as, such as Beaumaris Woodstone Bat Boxes[1] or similar.

Nesting birds

4.11 To compensate for a loss of habitat for nesting birds, a total of five bird boxes will be installed in suitable locations on buildings or mature trees within the ownership / control of the client no more than 100m from Site.

4.12 Bird boxes will be suitable for sub-urban bird species, including bluetit, wren, robin and blackbird previously identified at the Site as well as Species of Principal Importance house sparrow *Passer domesticus*. Bird boxes will include:

Two open next boxes (Barcelon Open Nest Box[2] or similar);

Two general purpose boxes (such as Seville Nest Box 28mm[3] or similar); and,

One sparrow nest box (such as Build-in House Sparrow Nest Box[4] or similar).

Habitats

4.13 Following the demolition, the Site will be returned to a landscaped greenspace, with no plans for redevelopment. This will continue to provide opportunities for wildlife, including foraging bats, birds and hedgehog.

4.14 In order to provide maximum benefit to biodiversity, it is recommended that native shrub and tree planting is incorporated into the landscape design. Where grassland is to be seeded, a native species-rich seed mix should be used. As the Site will remain partially shaded by adjacent mature trees, a woodland seed mix such as the Emorsgate Woodland Mixture EW1[5] or similar may be appropriate.

[1] https://www.vivarapro.co.uk/product/vivara-pro-beaumaris-woodstone-bat-box-midi/
[2] https://www.vivarapro.co.uk/product/woodstone-barcelona-open-nest-box-green/
[3] https://www.vivarapro.co.uk/product/woodstone-seville-nest-box-28mm-grey/
[4] https://www.vivarapro.co.uk/product/woodstone-build-in-house-sparrow-nest-box-uk/
[5] https://wildseed.co.uk/product/mixtures/complete-mixtures/special-habitat-mixtures/woodland-mixture/

Conclusion

4.15 The risk to wildlife during the works will be managed through appropriate timing of works, precautionary working methodologies, as specified above.

4.16 Although the works will result in a temporary loss of opportunities for wildlife, these opportunities will be restored through the installation of bat boxes and bird nest boxes within the vicinity of the Site. In addition, where native species planting can be incorporated into the landscape design of the Site, this will offer a continued resource to a range of species, including invertebrates, birds, bats and hedgehog.

4.17 Overall, the above measure will ensure that the residual risk to protected species is minimised as much as practicable and that the Site and surrounding area will continue to provide opportunities for a range of species.

5 References

Bing Maps https://www.bing.com/maps (last accessed 28/08/2023)

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

Multi-Agency Geographic Information for the Countryside (MAGIC) http://www.magic.gov.uk/ (accessed 28/08/2023)

6 Photographs

Photograph 1: Dense ivy coverage, viewed from the south-east.

Photograph 2: The fallen tree and northern aspect of the building.

Photograph 3: Collapsed roof viewed from the west.

Photograph 4: Damaged roof slates with encroaching ivy.

Photograph 5: Damaged fascia boards.

Appendix 1: Summaries of Relevant Policy, Legislation and Other Instruments

6.1 This section briefly summarises the legislation, policy and related issues that are relevant to the main text of the report. The following text does not constitute legal or planning advice.

National Planning Policy Framework (England)

6.2 The Government issued the National Planning Policy Framework (NPPF) in July 2021. Text excerpts from the NPPF are shown where they may be relevant to planning applications and biodiversity including protected sites, habitats and species.

6.3 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' (paragraph 9). The planning system's environmental objective is 'to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity…'(paragraph 8c).

6.4 In conserving and enhancing the natural environment, the NPPF (Paragraph 174) 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 for 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.

6.5 In respect of protected sites, at paragraph 175, 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.' A footnote to paragraph 175 refers to the preferred use of agricultural land of poorer quality if significant development of agricultural land is to take place.

6.6 Paragraph 179 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.'

6.7 Paragraph 180 advises that, when determining planning applications, '…local planning authorities should apply the following principles:

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;

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;

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

development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.'

6.8 In paragraph 181, the following should be given the same protection as habitats sites:

potential Special Protection Areas and possible Special Areas of Conservation;

listed or proposed Ramsar sites; and

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.'

6.9 In paragraph 182 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'.

6.10 In paragraph 183, 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.

6.11 In paragraph 185 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' (paragraph 185c).

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

6.12 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..."

6.13 Paragraph 99 of Government Circular 06/20056 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 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)

6.14 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.'

6.15 The standing advice (originally from Natural England and now held and updated on GOV.UK7) 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.

6.16 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.'

The Environment Act 2021

6.17 The Environment Act includes the provision of mandatory biodiversity gain for developments in England; this will be mandated through an amendment to the Town and Country Planning Act 1990. The two-year transition period following Royal Assent (November 2021) means that mandatory biodiversity gain will become law in autumn 2023. This will require:

- The provision of a required percentage of biodiversity gain, currently set nationally to be at 10%
- The use of the national Biodiversity Metric to calculate the biodiversity gain
- The provision of a biodiversity gain plan to demonstrate how biodiversity gain will be delivered on and or off-site; statutory instruments and regulations are in preparation by Defra and Natural England to provide templates for reporting
- Biodiversity gain will be secured for a fixed period, currently nationally set at 30 years
- Demonstration of how the biodiversity gain will be secured; conservation covenants will be used to deliver this which are in preparation by Defra and Natural England
- A national register of land used for biodiversity gain will be established; this will involve setting up a new biodiversity credits market, the approach for which is in preparation by Defra and Natural England

6.18 NB. The policy basis for net gain is already set out in the NPPF. During the transition period, we would expect local planning authorities to increasingly require the measures set out within the Environment Act as part of their development decision making process.

[6] *ODPM Circular 06/2005. Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impacts within the Planning System* (2005). HMSO Norwich.

[7] https://www.gov.uk/guidance/protected-species-how-to-review-planning-applications#standing-advice-for-protected-species

Natural Environment and Rural Communities (NERC) Act 2006 – Habitats and species of principal importance (England)

6.19 The Natural Environment and Rural Communities (NERC) Act came into force on 1st October 2006. Section 41 (S41) of the Act require the Secretary of State to publish a list of habitats and species which are of principal importance for the conservation of biodiversity in England. The list has been drawn up in consultation with Natural England as required by the Act. In accordance with the Act the Secretary of State keeps this list under review and will publish a revised list if necessary, in consultation with Natural England.

6.20 The S41 list is used to guide decision-makers such as public bodies, including local authorities and utilities companies, in implementing their duty under Section 40 of the NERC Act 2006, to have regard to the conservation of biodiversity in England, when carrying out their normal functions, including development control and planning. This is commonly referred to as the 'Biodiversity Duty.'

6.21 Guidance for public authorities on implementing the Biodiversity Duty8 has been published by Defra. One of the key messages in this document is that 'conserving biodiversity includes restoring and enhancing species populations and habitats, as well as protecting them.' In England the administration of the planning system and licensing schemes are highlighted as having a 'profound influence on biodiversity conservation.' Local authorities are required to take measures to "promote the preservation, restoration and re-creation of priority habitats, ecological networks and the protection and recovery of priority species. The guidance states that 'the duty aims to raise the profile and visibility of biodiversity, clarify existing commitments with regard to biodiversity, and to make it a natural and integral part of policy and decision making.'

6.22 In 2007, the UK Biodiversity Action Plan (BAP) Partnership published an updated list of priority UK species and habitats covering terrestrial, freshwater and marine biodiversity to focus conservation action for rarer species and habitats in the UK. The UK Post-2010 Biodiversity Framework9, which covers the period from 2011 to 2020, now succeeds the UK BAP. The UK priority list contained 1150 species and 65 habitats requiring special protection and has been used as a reference to draw up the lists of species and habitats of principal importance in England.

6.23 In England, there are 56 habitats of principal importance and 943 species of principal importance on the S41 list. These are all the habitats and species found in England that were identified as requiring action in the UK BAP and which continue to be regarded as conservation priorities in the subsequent UK Post-2010 Biodiversity Framework.

European protected species (Animals)

6.24 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.

6.25 "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

[8] Defra, 2007. *Guidance for Public Authorities on Implementing The Biodiversity Duty*. (http://www.defra.gov.uk/publications/files/pb12585-pa-guid-english-070516.pdf)

[9] JNCC and Defra (on behalf of the Four Countries' Biodiversity Group). 2012. *UK Post-2010 Biodiversity Framework*. July 2012. (http://jncc.defra.gov.uk/page-6189)

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

6.26 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.

6.27 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.

Definition of breeding sites and resting places

6.28 Guidance for all European Protected Species of animal, including bats and great crested newt, regarding the definition of breeding and of breeding and resting places is provided by The European Council (EC) which has prepared specific guidance in respect of the interpretation of various Articles of the EC Habitats Directive.10 Section II.3.4.b) provides definitions and examples of both breeding and resting places at paragraphs 57 and 59 respectively. This guidance states that 'The provision in Article 12(1)(d) [of the EC Habitats Directive] should therefore be understood as aiming to safeguard the ecological functionality of breeding sites and resting places.' Further the guidance states: 'It thus follows from Article 12(1)(d) that such breeding sites and resting places also need to be protected when they are not being used, but where there is a reasonably high probability that the species concerned will return to these sites and places. If for example a certain cave is used every year by a number of bats for hibernation (because the species has the habit of returning to the same winter roost every year), the functionality of this cave as a hibernating site should be protected in summer as well so that the bats can re-use it in winter. On the other hand, if a certain cave is used only occasionally for breeding or resting purposes, it is very likely that the site does not qualify as a breeding site or resting place.'

Competent authorities

6.29 Under Regulation 7 of the Conservation of Habitats and Species Regulations 2017 (as amended) a "competent authority" includes "any Minister of the Crown…, government department, statutory undertaker, public body of any description or person holding a public office.

6.30 In accordance with Regulation 9, "a competent authority must exercise their functions which are relevant to nature conservation, including marine conservation, so as to secure compliance with the requirements of the [Habitats and Birds] Directives. This means for instance that when considering development proposals a competent authority should consider whether EPS or European

[10] Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC. (February 2007), EC.

Protected Sites are to be affected by those works and, if so, must show that they have given consideration as to whether derogation requirements can be met.

Birds

6.31 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.

6.32 The Conservation of Habitats and Species Regulations 2017 (as amended) places duties on competent authorities (including Local Authorities and National Park Authorities) in relation to wild bird habitat. These provisions relate back to Articles 1, 2 and 3 of the EC Directive on the conservation of wild birds (2009/147/EC, 'Birds Directive'11) (Regulation 10 (3)) requires that the objective is the 'preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in the United Kingdom, including by means of the upkeep, management and creation of such habitat, as appropriate, having regard to the requirements of Article 2 of the new Wild Birds Directive…' Regulation 10 (7) states: 'In considering which measures may be appropriate for the purpose of security or contributing to the objective in [Regulation 10 (3)] Paragraph 3, appropriate account must be taken of economic and recreational requirements'.

6.33 In relation to the duties placed on competent authorities under the 2017 Regulations, Regulation 10 (8) states: 'So far as lies within their powers, a competent authority in exercising any function [including in relation to town and country planning] in or in relation to the United Kingdom must use all reasonable endeavours to avoid any pollution or deterioration of habitats of wild birds (except habitats beyond the outer limits of the area to which the new Wild Birds Directive applies).'

Wild mammals in general

6.34 The Wild Mammals (Protection) Act 1996 (as amended) makes provision for the protection of wild mammals from certain cruel acts, making it an offence for any person to intentionally cause suffering to any wild mammal. In the context of development sites, for example, this may apply to rabbits in their burrows.

[11] 2009/147/EC Birds Directive (30 November 2009). European Parliament and the Council of the European Union.