



Preliminary Ecological Appraisal and Preliminary Roost Assessment

45 Gloucester Street, Brighton and Hove, Brighton, BN1 4EW

Finntilly Properties LLP

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Industry Guidelines and Standards

This report has been written with due consideration to:

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

Proportionality

The work involved in preparing and implementing all ecological surveys, impact assessments and measures for avoidance, mitigation, compensation and enhancement should be proportionate to the predicted degree of risk to biodiversity and to the nature and scale of the proposed development. Consequently, the decision-maker should only request supporting information and conservation measures that are relevant, necessary and material to the application in question. Similarly, the decision-maker and their consultees should ensure that any comments and advice made over an application are also proportionate.

The desk studies and field surveys undertaken to provide a Preliminary Ecological Appraisal (PEA) might in some cases be all that is necessary.

(BS 42020, 2013)

Executive Summary

Arbtech Consulting Limited was instructed by Finntilly Properties LLP to undertake a Preliminary Ecological Appraisal (PEA) and Preliminary Roost Assessment (PRA) at 45 Gloucester Street, Brighton and Hove, Brighton, BN1 4EW (hereafter referred to as “the site”). The survey was required to inform a planning application for the erection of six new residential flats at the rear of the existing Victorian warehouse building, which will be renovated (hereafter referred to as “the proposed development”).

The following is work you will need to commission to comply with planning policy and legislation. Further information, along with opportunities for biodiversity enhancement, are outlined in Table 7 of this report.

Feature	Survey Results Summary	Impact Assessment	Recommendations
Roosting bats (B1)	<p>The building has low value for roosting bats.</p> <p>A small number of potential roosting features are present, such as gaps underneath corrugated metal and in damage soffit. The roosting features are suitable for crevice-dwelling species.</p> <p>Given the nearby presence of woodland which provides suitable foraging habitat, bats are likely to be present in the vicinity and so utilise the suitable roosting features within this building.</p>	<p>There are a number of different design options being considered for the proposed development. These will have impacts on the existing roofs, which could result in the destruction or damage to any bat roosts present, which could lead to injury or death of bats.</p>	<p>One bat emergence or re-entry survey is required during the active bat season (optimal May to August, suboptimal September) to confirm presence or likely-absence of a bat roost in the building.</p> <p>Infra-red cameras should be used as an aid.</p> <p>Three surveyors are required to provide full coverage of the building.</p> <p>If the absence of a bat roost cannot be determined during the first visit, then further surveys will be required. If bat roosts are confirmed in the building two additional surveys may be required to characterise the roost and to inform an EPSL application to Natural England. Surveys should be a minimum of two weeks apart. The EPSL application requires that surveys have been undertaken within the most recent active bat season and planning permission must have been granted and all relevant wildlife-related conditions have been discharged prior to submission.</p>

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1.0 Introduction and Context

1.1 Background

Arbtech Consulting Limited was instructed by Finntilly Properties LLP to undertake a Preliminary Ecological Appraisal (PEA) and Preliminary Roost Assessment (PRA) at 45 Gloucester Street, Brighton and Hove, Brighton, BN1 4EW (hereafter referred to as “the site”). The survey was required to inform a planning application for”). The survey was required to inform a planning application for the erection of six new residential flats at the rear of the existing Victorian warehouse building, which will be renovated (hereafter referred to as “the proposed development”). A plan showing the proposed development is provided in Appendix 1.

The aim of the PEA was to obtain data on existing ecological conditions, and to conduct a preliminary assessment of the likely significance of ecological impacts on the proposed development. The aim of the PRA was to determine the presence or evaluate the likelihood of the presence of roosting bats, and to gain an understanding of how bats could use the site for roosting, foraging or commuting. No previous ecology reports have been produced for this site by Arbtech Consulting Ltd or, to the author’s knowledge, by any other consultancy.

1.2 Site Location and Landscape Context

The site is located in Brighton and Hove, at National Grid Reference TQ31370471 and has an area of approximately 0.02 ha comprising a building, hard standing and a loose stone courtyard with potted shrubs. Brighton train station is ~530m north-west of the site. The wider landscape comprises residential houses and roads, with the English Channel ~1100m south. A site location plan is provided in Appendix 2.

1.3 Scope of the Report

The PEA element of this report describes the baseline ecological conditions at the site, evaluates habitats within the survey area in the context of the wider environment and describes the suitability of those habitats for notable or protected species. It identifies possible ecological constraints as a result of the proposed development and summarises the requirements for further surveys and mitigation measures to inform subsequent mitigation proposals, achieve planning or other statutory consent and to comply with wildlife legislation.

The PRA element of this report provides a description of all features suitable for roosting, foraging and commuting bats and evaluates those features in the context of the site and wider environment. It further documents any physical evidence collected or recorded during the site survey that establishes the presence of roosting bats. It provides information on possible constraints to the proposed development as a result of bats and summarises the requirements for any further surveys to inform subsequent mitigation proposals, achieve planning or other statutory consent and to comply with wildlife legislation. To achieve this, the following steps have been taken:

- A desk study has been carried out.
- A field survey has been undertaken to record baseline information on the site and surrounding area including habitat types and their suitability for notable or protected species, including roosting bats.
- Invasive plant and animal species (such as those listed on Schedule 9 of the Wildlife & Countryside Act) have been identified.
- Potential impacts on features of value, as a result of the proposed development, have been identified.
- Recommendations for further surveys and mitigation have been made.
- Opportunities for the enhancement of the site for biodiversity have been set out.

2.0 Methodology

2.1 Desk Study

The desk study included a review of the magic.gov.uk database for statutory designated sites within a 2km radius of the site. Landscape value and the presence of notable habitats as well as granted European Protected Species Licence (EPSL) and notable species records held on magic.gov.uk database has also been considered where these are within influencing distance of the site.

2.2 Field Survey

The survey was undertaken by Chantae Wells (Accredited for level 1 activities under licence 2018-33540-CLS-CLS) on 20/11/23.

Preliminary Ecological Appraisal

An extended habitat survey was undertaken, following the methodology set out in The UK Habitat Classification Habitat Definitions Version 2.0 (The UK Habitat Classification Working Group, July 2023). All land parcels are described and mapped and, where appropriate, target notes provide supplementary information on habitat conditions, features too small to map to scale, species composition, structure and management. Botanical species lists were compiled with reference to the DAFOR scale (D = Dominant; A = Abundant, F = Frequent, O = Occasional, R = Rare).

For ease of reading, scientific names are omitted from this report for widespread, ubiquitous and well-known species. Scientific names are only included where deemed necessary in conveying correct information to the reader, for example where common names differ regionally or in specialised, notable, unusual or challenging taxa, or if there is any ambiguity in identification (e.g. where a species can only be identified to genus level).

During the survey, habitats were assessed for their suitability to support protected species, and field signs indicating their presence recorded. The assessment takes into consideration the findings of the desk study, the habitat conditions on site and in the context of the surrounding landscape, and the ecology of the protected species.

Preliminary Roost Assessment

The PRA focussed on two built structures which will be affected by the proposed development as well as providing an overview of the wider site and the surrounding landscape for bat roosting, foraging and commuting habitat.

For any surveyed buildings:

A non-intrusive visual appraisal was undertaken from the ground, using binoculars to inspect the external features of the building for features which bats could use for roosting, including access or egress points and for signs of bat use including droppings, scratch marks, insect remains and urine smear marks. An internal inspection of the building was also made, including the

living areas and any accessible roof spaces, using a torch and ladders. The surveyor paid particular attention to the floor and flat surfaces, window shutters and frames, lintels above doors and windows, and carried out a detailed search of numerous features within the roof space.

Suitability Assessment

Built structures were categorised according to the likelihood of bats being present and the types of roost that the identified features could support. This is summarised in Table 1 below. Roost suitability is classified as high, moderate, low and negligible and dictates any further surveys required before works can proceed.

Table 1: Features of a building that are correlated with use by bats

Classification	Feature of building and its context
High	Buildings or structures with features of particular significance for larger numbers of roosting bats e.g. mines, caves, tunnels, icehouses and cellars. Habitat on site and surrounding landscape of high quality for foraging bats e.g. broadleaved woodland, tree-lined watercourses and grazed parkland. Site is connected with the wider landscape by strong linear features that would be used by commuting bats e.g. river and or stream valleys and hedgerows. Site is proximate to known or likely roosts (based on historical data). Buildings with high suitability could support roosts of high conservation value such as maternity or hibernation roosts.
Moderate	Buildings or structures with one or more features suitable for more regular roosting due to their size, shelter, protection, conditions and surrounding habitat but unlikely to support a roost of high conservation value such as maternity or hibernation roosts. Continuous habitat connected to the wider landscape which could be used by bats for commuting such as lines of trees, linked gardens. Foraging habitat in the surrounding area such as trees, scrub, grassland or water.
Low	Buildings or structures with one or more features suitable for use sporadically by individual or small numbers of bats. Potential roost features may be suboptimal for reasons such as shallow depth, poor thermal qualities or upwards orientation with exposure to inclement weather or predators. Habitat suitable for foraging in close proximity, but largely isolated in the landscape. Or an isolated site not connected by prominent linear features.
Negligible	Unsuitable for use by bats.

2.3 Limitations

It should be noted that whilst every effort has been made to describe the baseline conditions within the survey area, and evaluate these features, this report does not provide a complete characterisation of the site. This assessment provides a preliminary view of the likelihood of protected species being present. This is based on suitability of the habitats on the site and in the wider landscape and the ecology and biology of species as currently understood.

A biological records data search has not been undertaken. However, given the location of the site, the nature of the habitats present and the assessed suitability of the site for protected or notable species, it is not anticipated that the purchase of biological records data will add any significant weight or alter the conclusions and recommendations outlined in this report.

The survey was taken outside of the optimum period for Preliminary Ecological Appraisals (March-October), however the site was comprised of artificial surface and buildings, therefore no plants were missed. These limitations have been taken into account during the evaluation of the site and requirement for further surveys and mitigation.

3.0 Results and Evaluation

3.1 Designated Sites

Details of any statutory designated sites within a 2km radius of the site, including their reasons for notification, are provided in Table 2 below. The presence of non-statutory designated sites within 2km of the site cannot be ascertained without biological records data.

Table 2: Statutory designated sites within 2km radius of the site

Designated site name	Distance from site	Reasons for notification from Natural England
Whitehawk Race Hill Local Nature Reserve	~1500m east	Whitehawk Hill is an ancient habitat designated a Local Nature Reserve (LNR) with areas of species-rich chalk grassland supporting colonies of Adonis and Chalkhill Blue butterflies.

3.2 Field Survey Results

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

Table 3: Weather conditions during the survey

Date:	20/11/2023
Temperature	11°C
Humidity	88%
Cloud Cover	100%
Wind	9mph
Rain	Light rain

Habitats and Flora

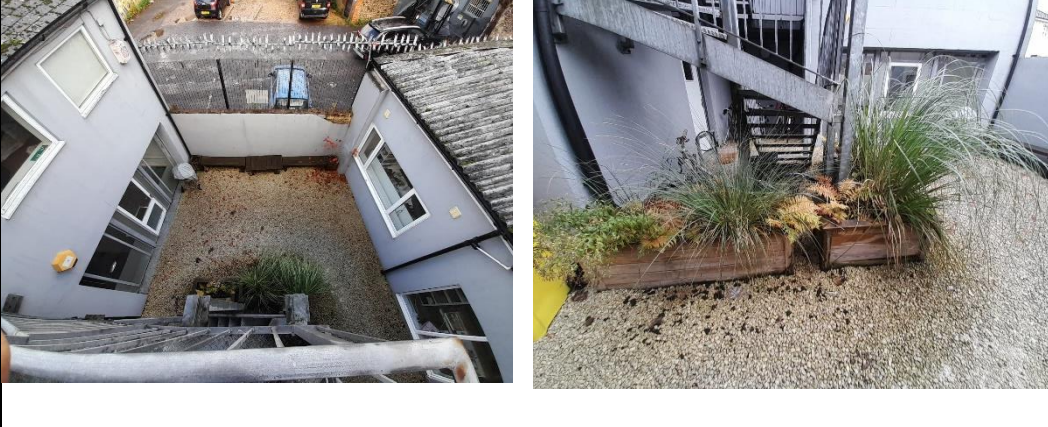

The following habitats are present within and adjacent to the site:

- U1b5 buildings
- U1c Artificial unvegetated, unsealed surface
- U1b Developed land sealed surface

A description and photographs of each habitat are provided in Table 4.

No protected or non-native invasive plant species (as listed under Schedules 8 or 9 of the Wildlife and Countryside Act 1981) were identified on the site.

Table 4: Description and photographs of habitats within and adjacent to the site


Habitat type	Habitat description	Photograph
<p>U1b5 buildings</p>	<p>The majority of the site comprises a building. See table 5 for more information.</p>	<p>See Table 5</p>
<p>U1c Artificial unvegetated, unsealed surface</p>	<p>The courtyard is comprised of loose stone gravel with two potted ornamental shrubs. This area is used to store bikes and bins.</p>	
<p>U1b Developed land sealed surface</p>	<p>The pavement in front of the building is comprised of hard standing.</p>	

Fauna

Bats

The results of the PRA are provided in Table 5. No direct evidence of roosting bats was identified during the survey, however a small number of potential roosting features were identified.

Table 5: Assessment of the suitability of the site for bats

Feature	Description	Photographs
Historical records	There is one granted EPSL within 2km of the survey area. This allowed the destruction of a resting place for common pipistrelle from June 2010 to September 2011. This record is approximately 1990m east of the site.	N/A
Bat foraging and commuting habitat	There was no suitable foraging or commuting habitat for bats within the site. The closest suitable bat habitat is an area of grassland with trees approximately 615m north of the site.	
B1 - overview	This is a three-storey hipped building with a single storey extension with flat roof of corrugated metal on the east side and a two-storey extension with pitched roof on the west side.	
B1 – exterior	The pitched building exterior is in good condition, with no suitable bat roosting features. The uPVC windows and doors are tight fitted. The south of the site contains an archway to access the courtyard.	

The single-storey extension with metal roof contains small gaps due to the shape of the corrugated metal (as shown by red arrow in row three, right photo). These gaps are suitable for individual crevice-dwelling bat species.




The roof tiles on the two-storey extension are in good condition, with no visible gaps.



The timber soffit is damaged (as shown by red arrow in bottom, left photo) along the west part of the main, three storey building. This is suitable for low numbers of crevice-dwelling bat species.



<p>B1 – interior</p>	<p>There were two loft spaces within the site.</p> <p>Loft space 1 (top photo) was located within the roof space of the two-storey extension on the west. The void was approximately 6.6m length x 1.6m width x 0.7m height and 15.5°C temperature.</p> <p>Loft space 2 (bottom photos) was located within the east side of the main three-storey building. The void was approximately 3.4m length x 2m width x 1.7m height and 16.5°C temperature. This loft space was used for storage.</p> <p>Both loft voids had good condition bitumen felt lining with no visible tears and timber rafters. Both loft spaces were unsuitable for void-dwelling bats due to lack of clear flight areas. Furthermore, no access to the exterior was ascertained.</p> <p>No evidence of bats and no suitable roosting features were observed within the interior of the building.</p>	
<p>B1 – suitability assessment</p>	<p>This building has been assessed as low value to bats due to small numbers of suitable roosting features that could support low numbers of crevice-dwelling bat species.</p>	

Other Species

An assessment of the suitability of the site for protected or notable species is provided in Table 6.

Table 6: Assessment of the suitability of the site for protected or notable species

Species	Assessment of suitability	Biological records data
Amphibians	<p>A review of aerial imagery and MAGIC maps indicates the presence of no ponds within 500m of the site.</p> <p>Therefore, it is not likely that great crested newts are using the site. Common amphibians such as frogs and toads may be present within the scrub.</p>	<p>No EPSLs records were identified within 2km of the site.</p> <p>No biological records data obtained</p>
Reptiles	<p>There was no suitable habitat for reptiles within the site, nor within close proximity to the site. The site is surrounded by residential roads, buildings and car parks.</p> <p>The presence of reptiles can be discounted from the site.</p>	<p>No EPSLs records were identified within 2km of the site.</p> <p>No biological records data obtained</p>
Badgers	<p>There was no suitable habitat for badgers within the site. Furthermore, badgers would not be able to access the site due to the brick walls and metal gate. In the wider landscape, there is no suitable habitat for badgers.</p> <p>The presence of badgers can be discounted from the site.</p>	<p>No biological records data obtained</p>
Hazel Dormouse	<p>There is no suitable habitat for hazel dormice within the site, nor within close proximity to the site.</p> <p>The presence of hazel dormice can be discounted.</p>	<p>No EPSLs records were identified within 2km of the site.</p> <p>No biological records data obtained.</p>
Hedgehog	<p>There is no suitable habitat for hedgehogs within the site. Furthermore, hedgehogs would be unable to enter the site due to the brick walls and metal gate.</p> <p>The presence of hedgehog can be discounted.</p>	<p>No biological records data obtained.</p>
Otter and Water Vole	<p>There are no suitable watercourses or riparian habitat on, or connected to, the site that could support otter or water vole. These species can be discounted.</p>	<p>No EPSLs records were identified within 2km of the site.</p> <p>No biological records data obtained.</p>
Birds	<p>There is no suitable habitat for nesting birds within the site. Furthermore, no suitable habitat for nesting birds was observed within close proximity to the site. Therefore, the presence of birds is acceptably low.</p>	<p>No biological records data obtained.</p>

Invertebrates	The ornamental shrubs may provide limited habitat for common, generalist invertebrates.	No biological records data obtained.

4.0 Conclusions, Impacts and Recommendations

4.1 Informative Guidelines

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

Likelihood of the Presence of Protected Species

Where physical evidence of the presence of protected species is indeterminate during the survey, the habitats on site are evaluated as to their likelihood to provide sheltering, roosting, foraging, basking or nesting habitat.

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

4.2 Evaluation

Taking the desk study and field survey results into account, Table 7 presents an evaluation of the ecological value of the site and also details any ecological constraints identified in relation to the proposed development which will comprise the erection of six new residential flats at the rear of the existing Victorian warehouse building, which will be renovated

Table 7: Evaluation of the site and any ecological constraints

Feature	Survey Results Summary	Impact Assessment	Recommendations	Biodiversity Enhancement Opportunities ¹
Designated sites	<p>There is one statutory designated site within 2km of the site, and is located further than 1km from the site.</p> <p>Non-statutory sites cannot be determined without biological records data. There is nearby woodland west of the site which</p>	<p>No direct impacts to any designated sites will occur as a result of the proposed development due to the size of the development and the distance from statutory designated sites.</p> <p>Given the low value habitats within the site and the surrounding landscape comprising of residential roads and buildings with a lack of grassland, it is not anticipated that there will</p>	None.	None.

¹ The Local Planning Authority has a duty to ask for enhancements under the NPPF (2021).

	may host non statutory designations.	be any impacts to non-statutory designated sites.		
Habitats and flora	There are no notable habitats within the site or within close proximity to the site.	No impacts to any notable habitats are anticipated due to the small scale and distance of the proposed development from such habitats.	None.	<ul style="list-style-type: none"> • Planting of native, woody hedgerow • Planting of native wildflower turf • Green roof on building
Amphibians	There is no suitable commuting or foraging habitat for amphibians present on site. Therefore, the presence of amphibians, including great crested newts, is acceptably low.	The proposed development is not likely to have any impact on amphibians.	If any common amphibians (such as frogs, toads and smooth newts) are found in the working area these should be encouraged to disperse of their own accord. If they are at immediate risk and unable to escape of their own volition, they should be moved by hand to a sheltered, vegetated area away from disturbance.	None.
Reptiles	There is no suitable reptile habitat present within the site. The presence of reptiles is acceptably low.	The proposed development is not likely to have any impact on reptiles.	If any common reptiles (such as common lizards and slow worms) are found in the working area these should be encouraged to disperse of their own accord. If they are at immediate risk and unable to escape of their own volition, they should be moved by hand to a sheltered, vegetated area away from disturbance. In the unlikely event that an adder is identified on site, they must not be touched.	None.
Roosting bats (B1)	The building has low value for roosting bats. A small number of potential roosting features are present, such as gaps underneath corrugated metal and in damage soffit. The roosting features are suitable for crevice-dwelling species. Given the nearby presence of woodland which provides suitable foraging habitat, bats are likely to be present in the vicinity and so	There are a number of different design options being considered for the proposed development. These will have impacts on the existing roofs, which could result in the destruction or damage to any bat roosts present, which could lead to injury or death of bats.	One bat emergence or re-entry survey is required during the active bat season (optimal May to August, suboptimal September) to confirm presence or likely-absence of a bat roost in the building. Infra-red cameras should be used as an aid. Three surveyors are required to provide full coverage of the building. If the absence of a bat roost cannot be determined during the first visit, then further surveys will be required. If bat roosts are	To be confirmed upon completion of the surveys.

	utilise the suitable roosting features within this building.		confirmed in the building two additional surveys may be required to characterise the roost and to inform an EPSL application to Natural England. Surveys should be a minimum of two weeks apart. The EPSL application requires that surveys have been undertaken within the most recent active bat season and planning permission must have been granted and all relevant wildlife-related conditions have been discharged prior to submission.	
Foraging and commuting bats	There is no suitable foraging or commuting habitat for bats within the site.	The proposed development is not anticipated to have any impact on foraging and commuting bats.	None.	None.
Badger	There is no suitable habitat for badgers within the site. Therefore, the presence of badgers is acceptably low.	The proposed development is not anticipated to have any impact on badgers.	None.	None.
Hazel dormouse	There is no suitable habitat for hazel dormice within the site. The presence of hazel dormice is acceptably low.	The proposed development is not anticipated to have any impact on hazel dormice.	In the unlikely event that a dormouse or evidence of dormouse is identified, works must cease and advice must be sought from a suitably qualified ecologist.	
Hedgehog	There is no suitable habitat for hedgehogs within the site. The presence of hedgehogs is acceptably low.	The proposed development is not anticipated to have any impact on hedgehogs.	None.	The following habitat creation and enhancement opportunities could be incorporated into the proposed development which would be beneficial for hedgehogs: <ul style="list-style-type: none"> • Creation of wildflower garden • Addition of hedgehog house (suitable example is NHBS Hedgehog house with feeding shelter or Hedgehog Dome or similar alternative).

Otter and Water Vole	Otter and water vole are considered to be absent from the site.	No impacts are anticipated on otters as a result of the proposed development.	None.	None.
Birds	There is no suitable habitat for birds within the site. The presence of nesting birds is acceptably low.	The proposed development is not likely to have any impact on nesting birds.	None.	The installation of four build-in bird boxes for swifts at the site will provide additional nesting habitat for birds. Example: Pro UK Rendered Build-In Swift Box, or Woodstone Build-in Swift Nest Box Deep or similar alternative brand)
Invertebrates	The ornamental shrub may support an assemblage of common, generalist invertebrates.	No impacts are anticipated on notable species or populations of invertebrates as a result of the proposed development.	None.	None.

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Appendix 1: Proposed Development Plan

03.00 Feasibility Design

03.01 Feasibility Design Option 01 (Flat)

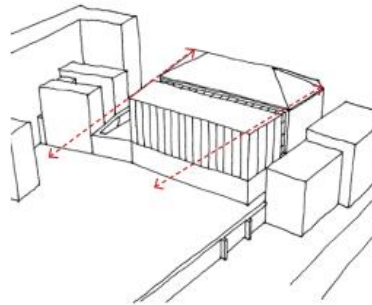
We have developed a series of feasibility proposals for the renovation and reuse of the existing building. Option 01 focuses on a model that positions a rear extension level with the eaves of the existing building mass. This design and mass feels in keeping with the existing proportions and scales. The proposed upper floors sit on a plinth designed to house three residential units, two of the units have amenity courtyard gardens.

03.02 Feasibility Design Option 02 (Lift)

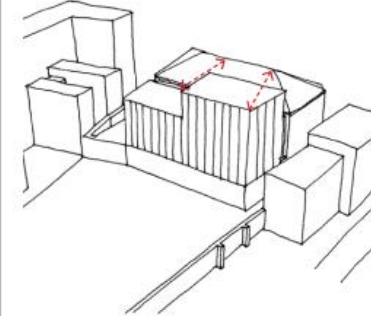
The second design option lifts the building mass of Option 01 (by half the footprint) to align the lifted flat roof in line with ridge height of the existing building. The rights of light of this proposal does not over shadow the neighboring building. This scheme would provide 13 residential units on the site, however the mass, scale and height feels over bearing on the existing.

03.03 Feasibility Design Option 03 (Stepped)

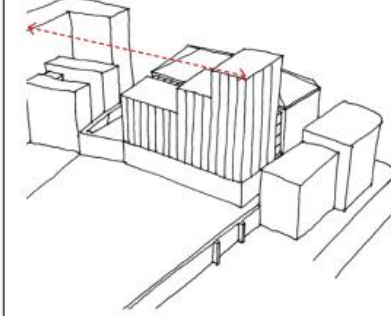
This design option looked to increase the massing of the proposed option two with an extra studio apartment five storey up. The design and mass of the building fails as it is over bearing on the neighboring building, it also feels out of sync with the existing building and would be prominent rather than subservient to the existing.



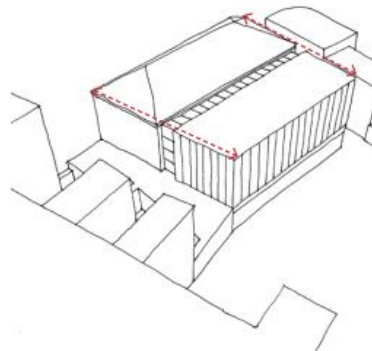
Design Option 01 - Facing South (Flat)



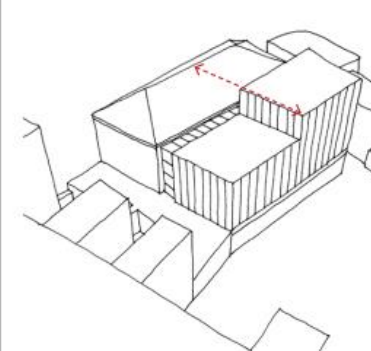
Design Option 02 - Facing South (Lift)



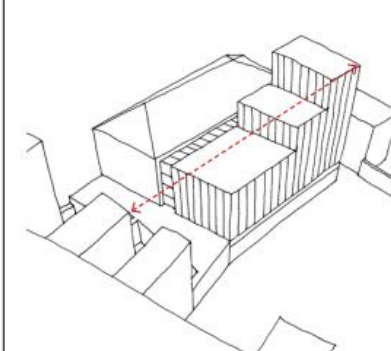
Design Option 03 - Facing South (Stepped)



Design Option 01 - Facing South East (Flat)



Design Option 02 - Facing South East (Lift)



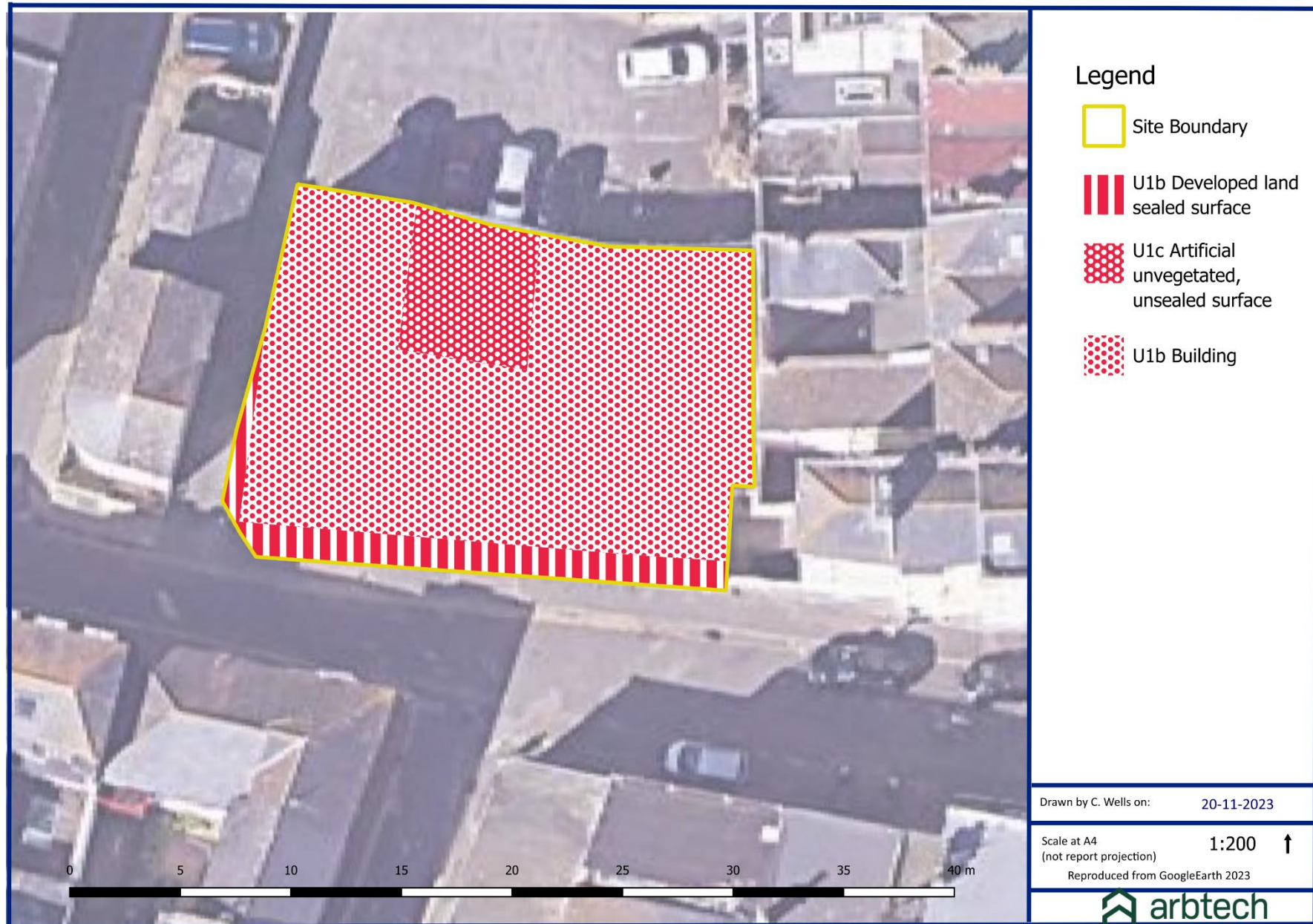
Design Option 03 - Facing South East (Stepped)

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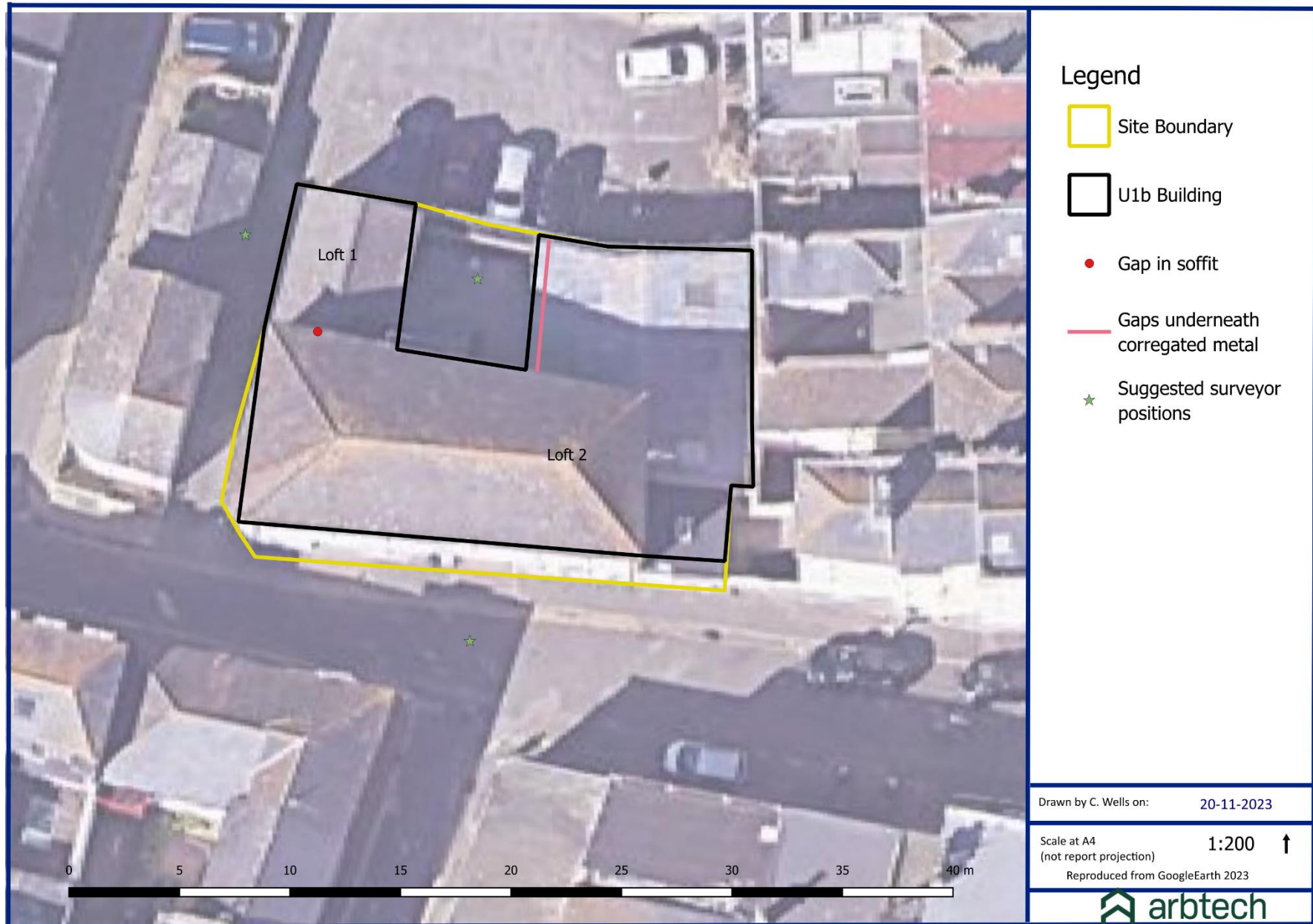
Appendix 2: Site Location Plan



Appendix 3a: Habitat Survey Plan



Appendix 3b: PRA and Proposed BERS Plan



Appendix 4: Legislation and Planning Policy

LEGAL PROTECTION

National and European Legislation Afforded to Habitats

International Statutory Designations

Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) are sites of European importance and are designated under the EC Habitats Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora (the Habitats Directive) and the EC Birds Directive 2009/147/EC on the conservation of wild birds (the Wild Birds Directive) respectively. Both form part of the wider Natura 2000 network across Europe.

Under the Habitats Directive Article 3 requires the establishment of a network of important conservation sites (SACs) across Europe. Over 1000 animal and plant species, as well as 200 habitat types, listed in the directive's annexes are protected in various ways:

Annex II species (about 900): core areas of their habitat are designated as Sites of Community importance (SCIs) and included in the Natura 2000 network. These sites must be managed in accordance with the ecological needs of the species.

Annex IV species (over 400, including many Annex II species): a strict protection regime must be applied across their entire natural range, both within and outside Natura 2000 sites.

Annex V species (over 90): their exploitation and taking in the wild is compatible with maintaining them in a favourable conservation status.

SPAs are classified under Article 2 of the Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds both for rare bird species (as listed on Annex I) and for important migratory species.

The Conservation of Habitats and Species Regulations 2017 (as amended) form the legal basis for the implementation of the Habitats and Birds Directives in terrestrial areas and territorial waters out to 12 nautical miles in England and Wales (including the inshore marine area) and to a limited extent in Scotland and Northern Ireland.

Ramsar sites are designated under the Convention on Wetlands of International Importance, agreed in Ramsar, Iran, in 1971. The Convention covers all aspects of wetland conservation and recognises the importance of wetland ecosystems in relation to global biodiversity conservation. The Convention refers to wetlands as “*areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres*”.

However, they may also include riparian and coastal zones. Ramsar sites are statutorily protected under the Wildlife & Countryside Act 1981 (as amended 01.04.1996) with further protection provided by the Countryside and Rights of Way (CROW) Act 2000. Policy statements have been issued by the Government in England and Wales highlighting the special status of Ramsar sites.

The Government in England and Wales has issued policy statements which ensure that Ramsar sites are afforded the same protection as areas designated under the EC Birds and Habitats Directives as part of the Natura 2000 network (e.g. SACs & SPAs). Further provisions for the protection and management of SSSIs have been introduced by the Nature Conservation (Scotland) Act 2004.

National Statutory Designations

Sites of Special Scientific Interest (SSSI) are designated by nature conservation agencies in order to conserve key flora, fauna, geological or physio-geographical features within the UK. The original designations were under the National Parks and Access to the Countryside Act 1949 but SSSIs were then re-designated under the Wildlife & Countryside Act 1981 (as amended). As well as reinforcing other national designations (including National Nature Reserves), the system also provides statutory protection for terrestrial and coastal sites which are important within the European Natura 2000 network and globally.

Local Statutory Designations

Local authorities in consultation with the relevant nature conservation agency can declare Local Nature Reserves (LNRs) under the National Parks and Access to the Countryside Act 1949. LNRs are designated for flora, fauna or geological interest and are managed locally to retain these features and provide research, education and recreational opportunities.

Non- Statutory Designations

All non-statutorily designated sites are referred to as Local Wildlife Sites (LWS) and can be designated by the local authority for supporting local conservation interest. Combined with statutory designation, these sites are considered within Local Development Frameworks under the Town and Country Planning system and are a material consideration during the determination of planning applications. The protection afforded to these sites varies depending on the local authority involved.

Regionally Important Geological Sites (RIGs) are the most important geological and geomorphological areas outside of statutory designations. These sites are also a material consideration during the determination of planning applications.

The Hedgerow Regulations 1997

The Hedgerow Regulations 1997 are designed to protect 'important' countryside hedgerows. Importance is defined by whether the hedgerow (a) has existed for 30 years or more; or (b) satisfies at least one of the criteria listed in Part II of Schedule 1 of the Regulations.

Under the Regulations, it is against the law to remove or destroy hedgerows on or adjacent to common land, village greens, SSSIs (including all terrestrial SACs, NNRs and SPAs), LNRs, land used for agriculture or forestry and land used for the keeping or breeding of horses, ponies or donkeys without the permission of the local authority. Hedgerows 'within or marking the boundary of the curtilage of a dwelling-house' are excluded.

National and European Legislation Afforded to Species

The Conservation of Habitats and Species Regulations 2017 (as amended)

The Conservation of Habitats and Species Regulations 2017 (as amended) aims to promote the maintenance of biodiversity by requiring the Secretary of State to take measures to maintain or restore wild species listed within the Regulations at a favourable conservation status.

The Regulations make it an offence (subject to exceptions) to deliberately capture, kill, disturb, or trade in the animals listed in Schedule 2, or pick, collect, cut, uproot, destroy, or trade in the plants listed in Schedule 4. However, these actions can be made lawful through the granting of licenses by the appropriate authorities. Licenses may be granted for a number of purposes (such as science and education, conservation, preserving public health and safety), but only after the appropriate authority is satisfied that there are no satisfactory alternatives and that such actions will have no detrimental effect on wild population of the species concerned.

The Wildlife and Countryside Act (WCA) 1981 (as amended)

The Wildlife and Countryside Act (WCA) 1981 (as amended) implements the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention 1979, implemented 1982) and implements the species protection requirements of EC Birds Directive 2009/147/EC on the conservation of wild birds in Great Britain (the birds Directive). The WCA 1981 has been subject to a number of amendments, the most important of which are through the Countryside and Rights of Way (CRoW) Act (2000).

Other legislative Acts affording protection to wildlife and their habitats include:

- Deer Act 1991
- Natural Environment & Rural Communities (NERC) Act 2006
- Protection of Badgers Act 1992
- Wild Mammals (Protection) Act 1996

Badgers

Badgers *Meles meles* are protected under The Protection of Badgers Act 1992 which makes it an offence to:

- Wilfully kill, injure, take, or attempt to kill, injure or take a badger
- Cruelly ill-treat a badger, including use of tongs and digging
- Possess or control a dead badger or any part thereof
- Intentionally or recklessly damage, destroy or obstruct access to a badger sett or any part thereof
- Intentionally or recklessly disturb a badger when it is occupying a badger sett
- Intentionally or recklessly cause a dog to enter a badger sett
- Sell or offers for sale, possesses or has under his control, a live badger

EFFECT OF LEGISLATION AND POLICY ON DEVELOPMENT WORKS

A development licence will be required from the relevant countryside agency (i.e. Natural England) for any development works likely to affect an active badger sett, or to disturb badgers whilst they occupy a sett. Guidance has been issued by the countryside agencies to define what would constitute a licensable activity. It is no possible to obtain a licence to translocate badgers.

Birds

With certain exceptions, all birds, their nests and eggs are protected under Sections 1-8 of the WCA. Among other things, this makes it an offence to:

- Intentionally kill, injure or take any wild bird
- Intentionally take, damage or destroy the nest of any wild bird while it is in use or being built
- Intentionally take or destroy an egg of any wild bird
- Sell, offer or expose for sale, have in his possession or transport for the purpose of sale any wild bird (dead or alive) or bird egg or part thereof.

Certain species of bird, for example the barn owl, bittern and kingfisher receive additional protection under Schedule 1 of the WCA and are commonly referred to as “Schedule 1” birds.

This affords them protection against:

- Intentional or reckless disturbance while it is building a nest or is in, on or near a nest containing eggs or young
- Intentional or reckless disturbance of dependent young of such a bird

EFFECT OF LEGISLATION AND POLICY ON DEVELOPMENT WORKS

Works should be planned to avoid the possibility of killing or injuring any wild bird or damaging or destroying their nests. The most effective way to reduce the likelihood of nest destruction in particular is to undertake work outside the main bird nesting season which typically runs from March to August. Where this is not feasible, it will be necessary to have any areas of suitable habitat thoroughly checked for nests prior to vegetation clearance.

Schedule 1 birds are additionally protected against disturbance during the nesting season. Thus, it will be necessary to ensure that no potentially disturbing works are undertaken in the vicinity of the nest. The most effective way to avoid disturbance is to postpone works until the young have fledged. If this is not feasible, it may be possible to maintain an appropriate buffer zone or standoff around the nest.

Amphibians and Reptiles

The sand lizard *Lacerta agilis*, smooth snake *Coronella austriaca*, natterjack toad *Epidalea calamita*, pool frog *Pelophylax lessonae* and great crested newt *Triturus cristatus* receive full protection under Habitats Regulations through their inclusion on Schedule 2. Regulation 41 prohibits:

- Deliberate killing, injuring or capturing of Schedule 2 species
- Deliberate disturbance of species in such a way as:
 - To impair their ability to survive, breed, or reproduce, or to rear or nurture young;
 - To impair their ability to hibernate or migrate
 - To affect significantly the local distribution or abundance of the species
- Damage or destruction of a breeding site or resting place

With the exception of the pool frog, these species are also listed on Schedule 5 of the WCA and they are additionally protected from:

- Intentional or reckless disturbance (at any level)
- Intentional or reckless obstruction of access to any place of shelter or protection
- Selling, offering or exposing for sale, possession or transporting for purpose of sale.

Other native species of reptiles are protected solely under Schedule 5, Section 9(1) & (5) of the WCA, i.e. the adder *Vipera berus*, grass snake *Natrix natrix*, common lizard *Zootoca vivipara* and slow-worm *Anguis fragilis*. It is prohibited to:

- Intentionally or recklessly kill or injure these species.

EFFECT OF LEGISLATION AND POLICY ON DEVELOPMENT WORKS

A European Protected Species Licence (EPSL) issued by the relevant countryside agency (i.e. Natural England) will be required for works likely to affect the breeding sites or resting places amphibian and reptile species protected under Habitats Regulations. A licence will also be required for operations liable to result in a level of disturbance which might impair their ability to undertake those activities mentioned above (e.g. survive, breed, rear young and hibernate). The licences are to allow derogation from the relevant legislation, but also to enable appropriate mitigation measures to be put in place and their efficacy to be monitored.

Although not licensable, appropriate mitigation measures may also be required to prevent the intentional killing or injury of adder, grass snake, common lizard and slow worm, thus avoiding contravention of the WCA.

Water Voles

The water vole *Arvicola terrestris* is fully protected under Schedule 5 of the WCA. This makes it an offence to:

- Intentionally kill, injure or take (capture) water voles
- Intentionally or recklessly damage, destroy or obstruct access to any structure or place used for shelter or protection
- Intentionally or recklessly disturb water voles while they are occupying a structure or place used for shelter or protection

EFFECT OF LEGISLATION AND POLICY ON DEVELOPMENT WORKS

If development works are likely to affect habitats known to support water voles, the relevant countryside agency (i.e. Natural England) must be consulted. It must be shown that means by which the proposal can be re-designed to avoid contravening the legislation have been fully explored e.g. the use of alternative sites, appropriate timing of works to avoid times of the year in which water voles are most vulnerable, and measures to ensure minimal habitat loss. Conservation licences for the capture and translocation of water voles may be issued by the relevant countryside agency for the purpose of development activities if it can be shown that the activity has been properly planned and executed and thereby contributes to the conservation of the population. The licence will then only be granted to a suitably experienced person if it can be shown that adequate surveys have been undertaken to inform appropriate mitigation measures. Identification and preparation of a suitable receptor site will be necessary prior to the commencement of works.

Otters

Otters *Lutra lutra* are fully protected under the Conservation Regulations through their inclusion on Schedule 2. Regulation 41 prohibits:

- Deliberate killing, injuring or capturing of Schedule 2 species
- Deliberate disturbance of species in such a way as:
 - To impair their ability to survive, breed, or reproduce, or to rear or nurture young;
 - To impair their ability to hibernate or migrate
 - To affect significantly the local distribution or abundance of the species
- Damage or destruction of a breeding site or resting place

Otters are also currently protected under the WCA through their inclusion on Schedule 5. Under this Act, they are additionally protected from:

- Intentional or reckless disturbance (at any level)
- Intentional or reckless obstruction of access to any place of shelter or protection

EFFECT OF LEGISLATION AND POLICY ON DEVELOPMENT WORKS

A European Protected Species Licence (EPSL) issued by the relevant countryside agency (i.e. Natural England) will be required for works likely to affect otter breeding or resting places (often referred to as holts, couches or dens) or for operations likely to result in a level of disturbance which might impair their ability to undertake those activities mentioned above (e.g. survive, breed, and rear young). The licence is to allow derogation from the relevant legislation but also to enable appropriate mitigation measures to be put in place and their efficacy to be monitored

Bats

All species are fully protected by Habitats Regulations 2010 as they are listed on Schedule 2. Regulation 41 prohibits:

- Deliberate killing, injuring or capturing of Schedule 2 species (e.g. All bats)
- Deliberate disturbance of bat species in such a way as:
 - To impair their ability to survive, breed, or reproduce, or to rear or nurture young;
 - To impair their ability to hibernate or migrate
 - To affect significantly the local distribution or abundance of the species
- Damage or destruction of a breeding site or resting place

Bats are afforded the following additional protection through the WCA as they are included on Schedule 5:

- Intentional or reckless disturbance (at any level)
- Intentional or reckless obstruction of access to any place of shelter or protection

EFFECT OF LEGISLATION AND POLICY ON DEVELOPMENT WORKS

A European Protected Species Licence (EPSL) issued by the relevant countryside agency (i.e. Natural England) will be required for works are likely to affect a bat roost or an operation which are likely to result in an illegal level of disturbance to the species will require an EPSL. The licence is to allow derogation from the legislation through the application of appropriate mitigation measures and monitoring.

Hazel Dormice

Hazel dormice *Muscardinus avellanarius* are fully protected under Habitats Regulations through their inclusion on Schedule 2. Regulation 41 prohibits:

- Deliberate killing, injuring or capturing of Schedule 2 species
- Deliberate disturbance of species in such a way as:
 - To impair their ability to survive, breed, or reproduce, or to rear or nurture young;
 - To impair their ability to hibernate or migrate

- To affect significantly the local distribution or abundance of the species
- Damage or destruction of a breeding site or resting place

Dormice are also protected under the WCA through their inclusion on Schedule 5. Under this Act, they are additionally protected from:

- Intentional or reckless disturbance (at any level)
- Intentional or reckless obstruction of access to any place of shelter or protection

EFFECT OF LEGISLATION AND POLICY ON DEVELOPMENT WORKS

Works which are liable to affect a dormice habitat or an operation which are likely to result in an illegal level of disturbance to the species will require a European Protected Species Licence (EPSL) issued by the relevant countryside agency (i.e. Natural England). The licence is to allow derogation from the legislation through the application of appropriate mitigation measures and monitoring.

White Clawed Crayfish

There is a considerable amount of legislation in place in an attempt to protect the White-clawed crayfish *Austropotamobius pallipes*. This species is listed under the European Union's (EU) Habitat and Species Directive and is listed under Schedule 5 of the Wildlife and Countryside Act (1981). This makes it an offence to:

- Protected against intentional or reckless taking
- Protected against selling, offering or advertising for sale, possessing or transporting for the purpose of sale

EFFECT OF LEGISLATION AND POLICY ON DEVELOPMENT WORKS

The relevant countryside agency (i.e. Natural England) will need to be consulted about development which could impact on a watercourse or wetland known to support white clawed crayfish. Conservation licences for the capture and translocation of crayfish can be issued if it can be shown that the activity has been properly planned and executed and thereby contributes to the conservation of the population. The licence will only be granted to a suitably experienced person if it can be shown that adequate surveys have been undertaken to inform appropriate mitigation measures. Identification and preparation of a suitable receptor site will be necessary prior to the commencement of the works.

Wild Mammals (Protection Act) 1996

All wild mammals are protected against intentional acts of cruelty under the above legislation. This makes it an offence to mutilate, kick, beat, nail or otherwise impale, stab, burn, stone, crush, drown, drag or asphyxiate any wild mammal with intent to inflict unnecessary suffering.

To avoid possible contravention, due care and attention should be taken when carrying out works (for example operations near burrows or nests) with the potential to affect any wild mammal in this way, regardless of whether they are legally protected through other conservation legislation or not.

Legislation Afforded to Plants

With certain exceptions, all wild plants are protected under the WCA. This makes it an offence for an 'unauthorised' person to intentionally (or recklessly in Scotland) uproot wild plants. An authorised person can be the owner of the land on which the action is taken, or anybody authorised by them.

Certain rare species of plant, for example some species of orchid, are also fully protected under Schedule 8 of the Wildlife and Countryside Act 1981 (as amended). This prohibits any person from:

- Intentionally picking, uprooting or destruction of any wild Schedule 8 species
- Selling, offering or exposing for sale, or possessing or transporting for the purpose of sale, any wild live or dead Schedule 8 plant species or part thereof
- In addition to the UK legislation outlined above, several plant species are fully protected under Schedule 5 of The Conservation of Habitats and Species Regulations 2010. These are species of European importance. Regulation 45 makes it an offence to:
 - Deliberately pick, collect, cut, uproot or destroy a wild Schedule 5 species
 - Be in possession of, or control, transport, sell or exchange, or offer for sale or exchange any wild live or dead Schedule 5 species or anything derived from such a plant.

EFFECT OF LEGISLATION AND POLICY ON DEVELOPMENT WORKS

A European Protected Species Licence (EPSL) will be required from the relevant countryside agency (i.e. Natural England) for works which are likely to affect species of planted listed on Schedule 5 of the Conservation or Habitats and Species Regulations 2010. The licence is to allow derogation from the legislation through the application of appropriate mitigation measures and monitoring.

Invasive Species

Part II of Schedule 9 of the WCA lists non-native invasive plant species for which it is a criminal offence in England to plant or cause to grow in the wild due to their impact on native wildlife.

Species included (but not limited to):

- Japanese knotweed *Fallopia japonica*
- Giant hogweed *Heracleum mantegazzianum*
- Himalayan balsam *Impatiens glandulifera*

EFFECT OF LEGISLATION AND POLICY ON DEVELOPMENT WORKS

It is not an offence for plants listed in Part II of Schedule 9 of the WCA 1981 to be present on the development site, however, it is an offence to cause them to spread. Therefore, if any of the species are present on site and construction activities may result in further spread (e.g. earthworks, vehicle movements) then it will be necessary to design and implement appropriate mitigation prior to construction commencing.

Injurious weeds

Under the Weeds Act 1959 any landowner or occupier may be required prevent the spread of certain 'injurious weeds' including (but not limited to):

- Spear thistle *Cirsium vulgare*
- Creeping thistle *Cirsium arvense*
- Curled dock *Rumex crispus*
- Broad-leaved dock *Rumex obtusifolius*
- Common ragwort *Senecio jacobaea*

EFFECT OF LEGISLATION AND POLICY ON DEVELOPMENT WORKS

It is a criminal offence to fail to comply with a notice requiring such action to be taken. The Ragwort Control Act 2003 establishes a ragwort control code of practice as common ragwort is poisonous to horses and other livestock. This code provides best practice guidelines and is not legally binding.

NATIONAL PLANNING POLICY***Environment Act 2021***

The Environment Act 2021 (EA 2021) received Royal Assent on 9 November 2021 and is expected to become fully mandated within the next couple of years. The Act principally creates a post Brexit framework to protect and enhance the natural environment. Through amendments to the Town and Country Planning Act 1990, the Act will require all planning permissions in England (subject to exemptions which is likely to include householder applications) to be granted subject to a new general pre-commencement condition that requires approval of a biodiversity net gain plan. This will ensure the delivery of a minimum of 10% measurable biodiversity net gain. The principal tool to calculate this will be the Defra Biodiversity 3.0 Metric. Works to enhance habitats can be carried out either onsite or offsite or through the purchase of 'biodiversity credits' from the Secretary of State. However, this flexibility may be removed (subject to regulations) if the onsite habitat is 'irreplaceable'. Both onsite and offsite enhancements must be maintained for at least 30 years after completion of a development (which period may be amended).

National Planning Policy Framework 2021

The National Planning Policy Framework promotes sustainable development. The Framework specifies the need for protection of designated sites and priority habitats and species. An emphasis is also made on the need for ecological infrastructure through protection, restoration and re-creation. The protection and recovery of priority species (considered likely to be those listed as species of principal importance under Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006) is also listed as a requirement of planning policy.

In determining a planning application, planning authorities should aim to conserve and enhance biodiversity by ensuring that: designated sites are protected from harm; there is appropriate mitigation or compensation where significant harm cannot be avoided; measurable gains in biodiversity in and around developments are incorporated; and planning permission is refused for development resulting in the loss or deterioration of irreplaceable habitats including aged or veteran trees and also ancient woodland.

The Natural Environment and Rural Communities Act 2006 and the Biodiversity Duty

Section 40 of the Natural Environment and Rural Communities (NERC) Act 2006, requires all public bodies to have regard to biodiversity conservation when carrying out their functions. This is commonly referred to as the 'biodiversity duty'.

Section 41 of the Act requires the Secretary of State to publish a list of habitats and species which are of 'principal importance for the conservation of biodiversity'. This list is intended to assist decision makers such as public bodies in implementing their duty under Section 40 of the Act. Under the Act these habitats and species are regarded as a material consideration in determining planning applications. A developer must show that their protection has been adequately addressed within a development proposal.

EUROPEAN PROTECTED SPECIES POLICIES

In December 2016 Natural England officially introduced the four licensing policies throughout England. The four policies seek to achieve better outcomes for European Protected Species (EPS) and reduce unnecessary costs, delays and uncertainty that can be inherent in the current standard EPS licensing system. The policies are summarised as follows:

- Policy 1; provides greater flexibility in exclusion and relocation activities, where there is investment in habitat provision;
- Policy 2; provides greater flexibility in the location of compensatory habitat;
- Policy 3; provides greater flexibility on exclusion measures where this will allow EPS to use temporary habitat; and,
- Policy 4; provides a reduced survey effort in circumstances where the impacts of development can be confidently predicted.

The four policies have been designed to have a net benefit for EPS by improving populations overall and not just protecting individuals within development sites. Most notably Natural England now recognises that the Habitats Regulations legal framework now applies to 'local populations' of EPS and not individuals/site populations.