



Preliminary Ecological Appraisal

41 Church Road, Bexleyheath, Kent DA7 4DD

Prima Asset Investment Ltd

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Guidelines

This assessment has been designed to meet:

- Chartered Institute of Ecology and Environmental Management 'Guidelines for Preliminary Ecological Appraisal Second Edition, December 2017'; and
- British Standard 42020 (2013) 'Biodiversity – Code of Practice for Planning and Development'.

Proportionality

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

This approach is enshrined in Government planning guidance, for example, the National Planning Policy Framework for England 2019 paragraphs 174 and 175. 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)

In consequence of the scale and intensity of the proposed development, the low impact on ecological receptors identified through both the site survey and search of local biological records, and the passive interface with the mitigation hierarchy, this plan-led report is considered adequate and proportionate. It communicates all relevant information necessary to determine a planning application or support the recommendations for further surveys.

Executive Summary

Arbtech Consulting Ltd was commissioned by Prima Asset Investment Ltd to undertake a Preliminary Ecological Appraisal (PEA) on 41 Church Road, Bexleyheath, Kent DA7 4DD. to inform a planning application. The survey visit was completed on 23rd August 2023. The aim of the survey was to complete a UKHab Habitat Survey of the survey area (all land that will be impacted by the development proposals) and analyse this against a desk study.

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

- The demolition of the existing commercial buildings and the construction of 7no. residential dwellings, comprising 2no. two bedroom three person units, 3no. three bedroom five person units and 2no. four bedroom six person units. Units 1-2 will be two storey properties, whilst units 3-7 will range from 2 ½ to 3 storeys in height.

Recommendations - This is work you will need to commission (if any) to obtain planning permission or comply with legislation for other consent.

Ecological Factor	Recommendations
Designated sites	No further surveys are required.
Notable habitats and plants	No further surveys.
Invasive / Non-native species	No further surveys required but remain vigilant.
Invertebrates	No further surveys required.
Bats	No further bat surveys are required, but mitigation and enhancements are recommended. Habitat enhancements for bats are recommended.
Birds	Any works to the buildings or trees should be undertaken outside the period 1st March to 31st August. If this timeframe cannot be avoided, a close inspection of the building/trees and scrub to be removed should be undertaken immediately prior to clearance. All active nests will need to be retained until the young have fledged.
Reptiles	No further surveys.
Amphibians	No further surveys.
Other Terrestrial Mammals	Badgers No further surveys.
	Water Vole No further surveys.
	Otter

	No further surveys.
	<p>Dormouse</p> <p>No further surveys.</p>
	<p>Hedgehogs</p> <p>N/A</p>

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1.0 Introduction and Context

Arbtech Consulting Ltd was commissioned by Prima Asset Investment Ltd to undertake a Preliminary Ecological Appraisal (PEA) on 41 Church Road, Bexleyheath, Kent DA7 4DD. to inform a planning application. The survey visit was completed on 23rd August 2023. The aim of the survey was to complete a UKHab Habitat Survey of the survey area (all land that will be impacted by the proposals) and analyse this against a desk study.

- No previous ecological surveys are known for the site by Arbtech or others.

1.2 Site Context

The survey site is centred on National Grid Reference TQ 4869 7547 and has an area of approximately 0.12168ha. The survey site consists of commercial buildings and hard standing set in the urban area of Bexleyheath, south-east London. A cemetery is adjacent to the east of the site, linking to playing fields with the rest of the locality houses and gardens.

1.3 Scope of the Report

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.

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.
- 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.

A survey plan is presented in Appendix 1, proposed plans in Appendix 2 (where available), and a summary of relevant legislation is presented in Appendix 3.

1.4 Project Description

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

- The demolition of the existing commercial buildings and the construction of 7no. residential dwellings, comprising 2no. two bedroom three person units, 3no. three bedroom five person units and 2no. four bedroom six person units. Units 1-2 will be two storey properties, whilst units 3-7 will range from 2 ½ to 3 storeys in height.

2.0 Methodology

2.1 Desk Study

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

Additionally, to conform to best practice guidelines biological records data (BRD) within a 1km radius of the site will need to be obtained from the local biological records centre (Greenspace Information for Greater London, GIGL). This will be analysed and summarised in the conclusions and recommendations part of the report where relevant upon arrival.

The data search is confidential information that is not suitable for public release and has been analysed and summarised for presentation in this report. They can be provided on request by the LPA.

2.2 Field Survey

The survey was undertaken by Craig Williams BSc, MSc, DIC, MRSB (Natural England Protected Species Licence Numbers: [Bats] (2018-33540-CLS-CLS) [Great Crested Newts] (2015-16682-CLS-CLS) [Barn Owls] (CL29/00097) on 23rd August 2023.

Preliminary Ecological Appraisal:

The methodology for the Phase 1 habitat survey is based on the best practice publication UKHabs (2018). All land parcels are described and mapped according to the appropriate habitat classification (see site map in Appendix 1). Where appropriate, target notes provide supplementary information on habitat conditions, features too small to map to scale, species composition, structure and management.

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. The likelihood of the presence of protected species is ranked; the habitats on site are evaluated against their likelihood to provide suitable habitat for protected species.

2.3 Limitations

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

- There were no limitations to the survey regarding biotic or abiotic factors (e.g., wasps, asbestos) visibility, safety, or adverse weather.
- No access was available into the roof void of the larger building on site (sealed false ceiling), and this is discussed further in the conclusions and recommendations section of the report.

3.0 Results and Evaluation

3.1 Desk Study Results

The desk study methodology as outlined in Section 2.1 has been carried out, and any relevant findings regarding sites, habitats or species will be incorporated into the conclusions and recommendations section of this report (Section 4.2) for ease of reading.

3.2 Field Survey Results

The survey site consists of commercial buildings and hard standing set in the urban area of Bexleyheath, south-east London. A cemetery is adjacent to the east of the site, linking to playing fields with the rest of the locality houses and gardens.

Table 1: Weather conditions during the survey

Date:	23/08/2023
Temperature	21°C
Humidity	60%
Cloud Cover	10%
Wind	4mph
Rain	None

3.3 Site Descriptions and Photos

UKHab codes in brackets when they first appear in text.

Building [u1b5]

B1 is a brick built, two storey, L shaped commercial building with a shallowly gabled roof of corrugated sheets, and a flat roof connecting section in the centre.

Concrete cornicing around the eaves is intact without holes or gaps. Overhangs at the gable ends has small crevices but no bat evidence was found underneath or crevices, when viewed with binoculars. The building is partially rendered, and the brickwork is mainly intact, aside from minor small holes and weeps. Window and door frames are tight fitting. No bat evidence is found on the exterior walls.

Inside, the building has a false ceiling which could not be entered for inspection.

B2 is a single storey, brick and concrete block built commercial building. It has a flat roof of corrugated sheets, with small gaps around exterior fascia boards although these could be inspected and found not to have any evidence around and were mostly cobwebbed. The interior is used for storage and there are no voids.

A small crevice is found under a plastic fascia board along part of the southern elevation, but no evidence was found upon inspection.

Developed, sealed surface. [u1b]

The site is formed of hard standing, with a driveway leading from the road past the buildings into a small car park area in the south-east of the site, and another small area in the north of the site. A brick wall runs along the east of the site adjacent to the cemetery.



Photo 1: Looking east into the site with B1 on the left and B2 on the right.



Photo 2: Looking east at the western elevation of B1 and the northern elevation of B2.



Photo 3: Looking north at the southern elevation of B1, with B2 on the left.



Photo 4: Looking east at the northern and western elevations of B1.



Photo 5: Looking south-west at the northern and eastern elevations of B1.



Photo 6: Looking south-west at the northern and eastern end of B2, the smaller single storey commercial building.

4.0 Conclusions, Impacts and Recommendations

4.1 Informative Guidelines

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. The likelihood of occupancy of protected species is ranked according to the criteria listed in Table 1.

Where this report supports a planning application, the ecological interest of the study area (including the survey area) and the proposed development has also been evaluated in terms of the planning policies relating to biodiversity. It is clearly stated where a preliminary value can be given and where further information is required.

Appropriate justification for this assessment is provided in Section 2.3 and Table 1 of this report.

4.2 Evaluation

Taking the desk study and site survey results into account, the following conclusions for ecological factors has been reached.

Table 2: Evaluation of site

Ecological Factor	Survey assessment conclusions (with justification)	Foreseen impacts	Recommendations	Enhancements
				The Local Planning Authority has a duty to ask for enhancements under the NPPF
Designated sites	The site itself is not subject to any statutory or non-statutory designation, and there are none known close by.	There are no foreseen impacts on local statutory/non-statutory sites.	No further surveys are required.	N/A.
Notable habitats and plants	No protected or notable habitats or plants were found on or adjacent to the development area.	None foreseen.	No further surveys.	Any new trees or shrubs planted should be of native species of local provenance.
Invasive / Non-native species	No problematic or invasive species are found on site or were observed nearby.	None foreseen.	No further surveys required but remain vigilant.	N/A
Invertebrates	The site does not offer suitable habitat for rarer or notable invertebrate assemblages.	None foreseen.	No further surveys required.	The creation of new log piles and compost heaps would be

				beneficial to invertebrates, as would dedicated habitat boxes such as insect hotels.
Bats	<p>The site's buildings have a negligible likelihood of supporting roosting bats based on the evidence gathered in the desk study and field survey.</p> <p>Bats are also unlikely to commute across or around the site in significant numbers due to the urban locality of the site.</p>	<p>Bats are very unlikely to be roosting within the buildings or commuting across the site, and as such, there are not anticipated to be any impacts on bats by the works.</p>	<p>No further bat surveys are required, but mitigation and enhancements are recommended.</p> <p>Habitat enhancements for bats are recommended.</p>	<p>Habitat Boxes:</p> <p>Install bat boxes within or on the walls of the new building.</p> <p>These will face in a south/south-westerly direction approximately 3 – 5m above ground level and have clear flight paths to and from the entrances.</p> <p>No new lighting will illuminate any of the bat boxes or trees.</p>
Birds	<p>Birds could use the buildings on site for nesting in the spring or summer.</p>	<p>Active nests could be destroyed during any building or vegetation removal.</p>	<p>Any works to the buildings or trees should be undertaken outside the period 1st March to 31st August.</p> <p>If this timeframe cannot be avoided, a close inspection of the building/trees and scrub to be removed should be undertaken immediately prior to clearance. All active nests will need to be retained until the young have fledged.</p>	<p>Habitat Boxes:</p> <p>Install a variety of bird boxes on the new building on site. These should be between 3-5m high, with clear flight paths and out of direct sunlight so they do not overheat.</p>

Reptiles	The small and urban site offers negligible habitat for widespread reptiles. There is no ground cover.	No impacts foreseen.	No further surveys.	N/A
Amphibians	The site offers no terrestrial or aquatic habitat for great crested newts or other protected amphibians, and none are located nearby. As both terrestrial and aquatic habitat are critical for the amphibian life cycle, it is therefore very unlikely that they would be found on site at any time of year.	No impacts foreseen.	No further surveys.	N/A
Other Terrestrial Mammals	Badgers No badger setts or other evidence e.g., tracks, footprints, latrines, hairs etc. was found on site.	Badgers No impacts foreseen.	Badgers No further surveys.	Badgers N/A
	Water Vole No habitat value on site.	Water Vole None foreseen	Water Vole No further surveys.	Water Vole N/A
	Otter No habitat value on site.	Otter None foreseen	Otter No further surveys.	Otter N/A
	Dormouse No habitat value on site.	Dormouse None foreseen	Dormouse No further surveys.	Dormouse N/A

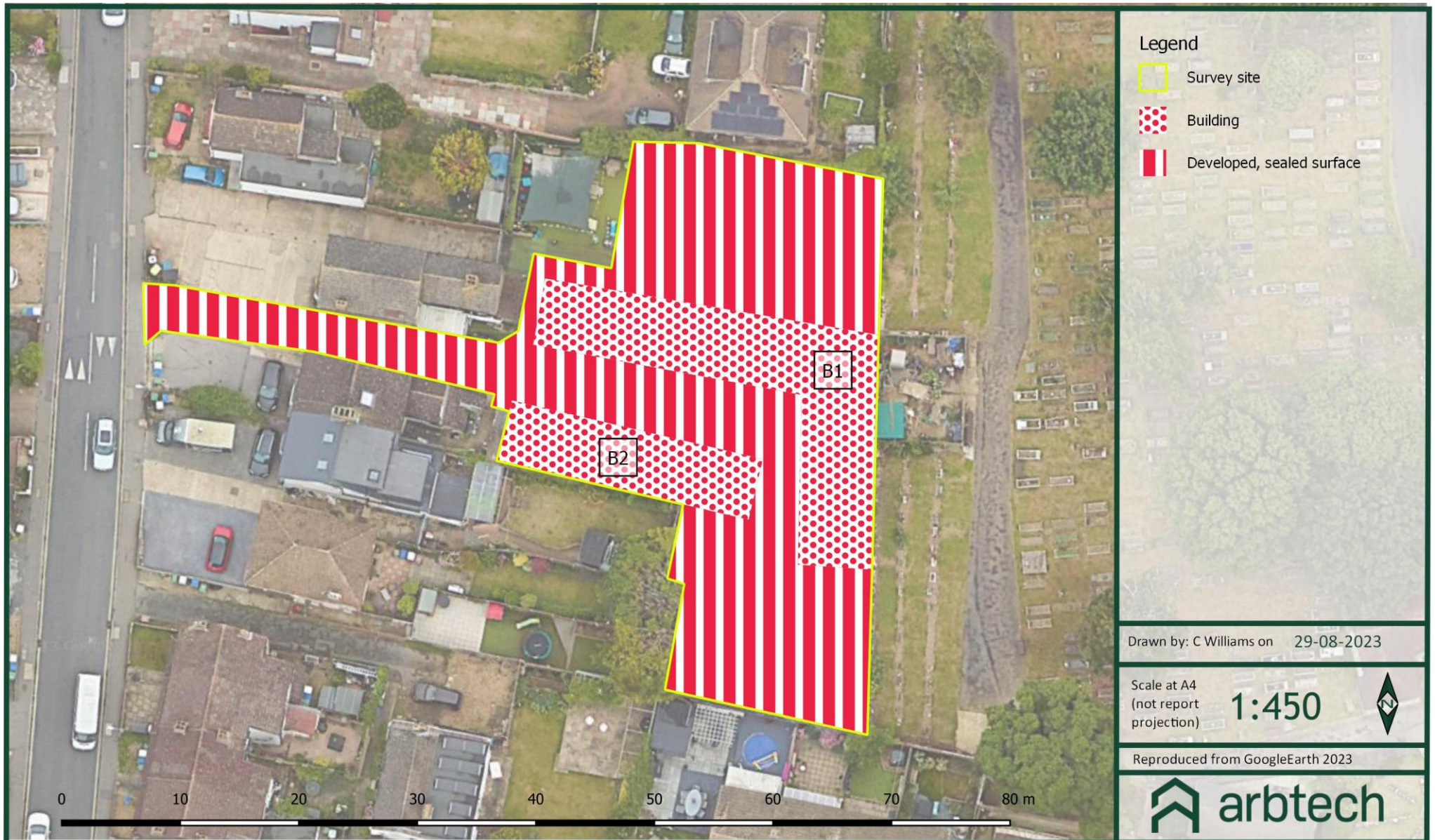
	<p>Hedgehogs There is negligible hedgehog habitat in the interior of the site.</p>	<p>Hedgehogs None foreseen</p>	<p>Hedgehogs N/A</p>	<p>Hedgehogs N/A</p>
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5.0 Bibliography

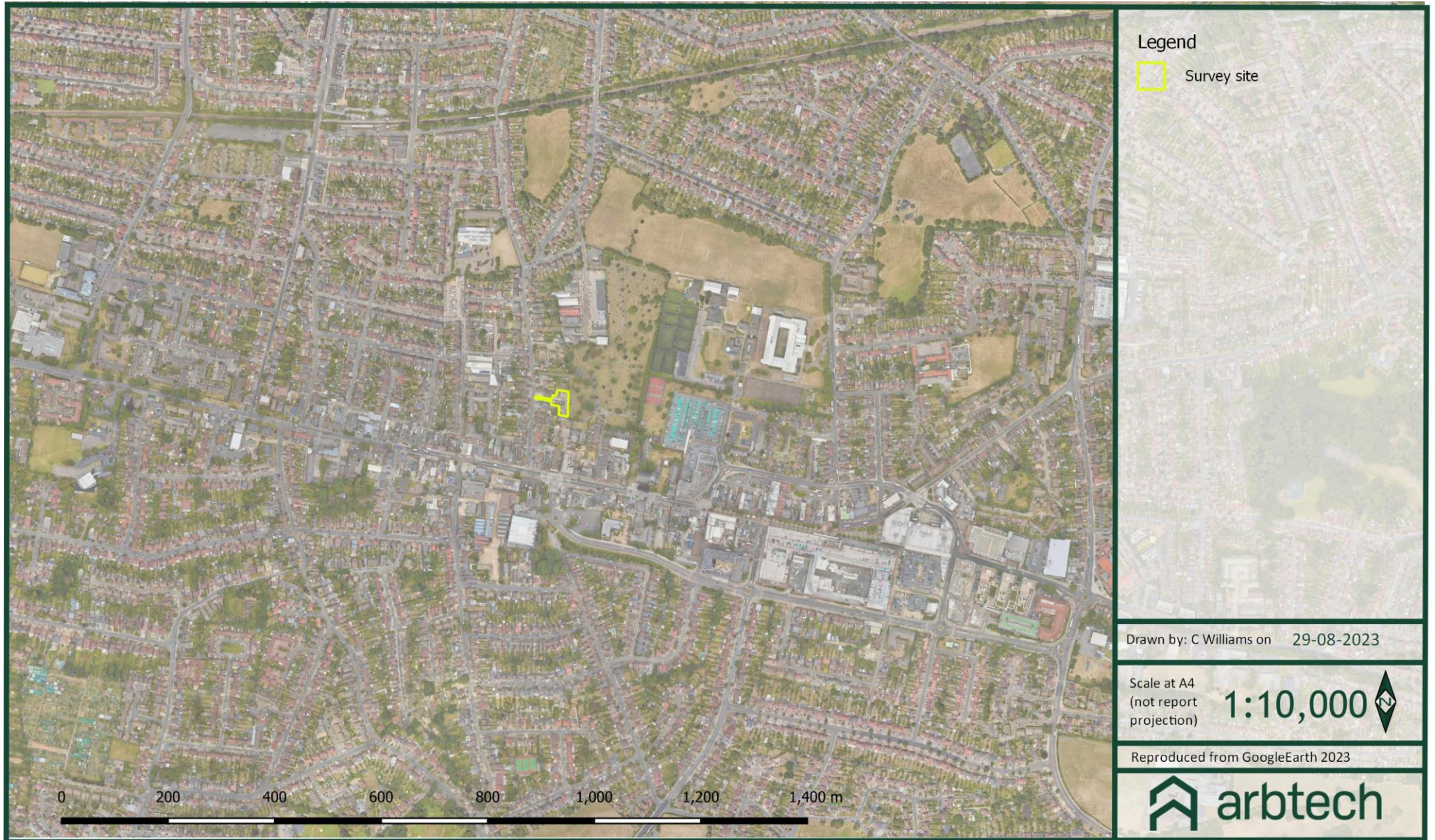
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Appendix 1.1: Habitat Survey Map



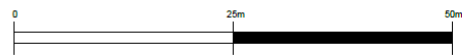
Appendix 1.2: Landscape



Appendix 2: Proposed Site Plan



North



SITE CONTEXT EXISTING 1: 500

LEGEND

- Nursery Playspace
- Existing 1 Storey
- Existing 2 Storey
- Existing 3 Storey



SITE CONTEXT PROPOSED

LEGEND

- Nursery Playspace
- Existing 2 Storey
- Existing 3 Storey
- Proposed 1 Storey
- Proposed 2.5 Storey
- Proposed 3 Storey

Rev.	Date	Description	Name
<p>OUT THE BOX 3 BONCHESTER CLOSE CAMDEN PARK ROAD CHISLEHURST KENT BR7 5HG TELEPHONE 07964 651620 E: oob.architecture@outthebox.com</p>			
Project 41 Church Road, Bexleyheath			
drawn	NP	check	dak
date	MAY 2023	scale	1:500 @ A3
Title Existing and Proposed Site Layouts			
WK-03		PL02	

Appendix 3: Legislation and Planning Policy

LEGAL PROTECTION

National and European Legislation Afforded to Habitats

International Statutory Designations

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

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

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

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

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

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

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

Ramsar sites are designated under the Convention on Wetlands of International Importance, agreed in Ramsar, Iran, in 1971. The Convention covers all aspects of wetland conservation and recognises the importance of wetland ecosystems in relation to global biodiversity conservation. The Convention refers to wetlands as “*areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres*”. However, they may also include riparian and coastal zones. Ramsar sites are statutorily protected under the Wildlife & Countryside Act 1981 (as amended 01.04.1996) with further protection provided by the Countryside and Rights of Way (CRoW) Act 2000. Policy statements have been issued by the Government in England and Wales highlighting the special status of Ramsar sites. The Government in England and Wales has issued policy statements which ensure that Ramsar sites are afforded the same protection as areas designated under the EC Birds and Habitats Directives as part of the Natura 2000 network (e.g. SACs & SPAs). Further provisions for the protection and management of SSSIs have been introduced by the Nature Conservation (Scotland) Act 2004.

National Statutory Designations

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

Local Statutory Designations

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

Non- Statutory Designations

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

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

The Hedgerow Regulations 1997

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

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

National and European Legislation Afforded to Species***The Conservation of Habitats and Species Regulations 2017 (as amended)***

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

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

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

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

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

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

Badgers

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

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

Effects on development works:

A development licence will be required from the relevant countryside agency (i.e. Natural England, Natural Resources Wales, Scottish Natural Heritage) for any development works likely to affect an active badger sett, or to disturb badgers whilst they occupy a sett. Guidance has been issued by the countryside agencies to define what would constitute a licensable activity. It is 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 (or recklessly in Scotland) kill, injure or take any wild bird
- Intentionally (or recklessly in Scotland) take, damage or destroy (or, in Scotland, otherwise interfere with) the nest of any wild bird while it is in use or being built
- Intentionally take or destroy an egg of any wild bird
- Sell, offer or expose for sale, have in his possession or transport for the purpose of sale any wild bird (dead or alive) or bird egg or part thereof.
- Intentionally or recklessly obstruct or prevent any wild bird from using its nest (Scotland only)

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

This affords them protection against:

- Intentional or reckless disturbance while it is building a nest or is in, on or near a nest containing eggs or young
- Intentional or reckless disturbance of dependent young of such a bird
- In Scotland only, intentional or reckless disturbance whilst lekking
- In Scotland only, intentional or reckless harassment

Effects on development works:

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

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

Amphibians and Reptiles

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

- Deliberate killing, injuring or capturing of Schedule 2 species
- Deliberate disturbance of species in such a way as:

- To impair their ability to survive, breed, or reproduce, or to rear or nurture young;
- To impair their ability to hibernate or migrate
- To affect significantly the local distribution or abundance of the species
- Damage or destruction of a breeding site or resting place

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

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

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

- Intentionally or recklessly kill or injure these species.

Effects on development works:

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

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

Water Voles

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

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

Effects on development works:

If development works are likely to affect habitats known to support water voles, the relevant countryside agency (i.e. Natural England, Natural Resources Wales, Scottish Natural Heritage) must be consulted. It must be shown that means by which the proposal can be re-designed to avoid contravening the legislation have been fully explored e.g. the use of alternative sites, appropriate timing of works to avoid times of the year in which water voles are most vulnerable, and measures to ensure minimal habitat

loss. Conservation licences for the capture and translocation of water voles may be issued by the relevant countryside agency for the purpose of development activities if it can be shown that the activity has been properly planned and executed and thereby contributes to the conservation of the population. The licence will then only be granted to a suitably experienced person if it can be shown that adequate surveys have been undertaken to inform appropriate mitigation measures. Identification and preparation of a suitable receptor site will be necessary prior to the commencement of works.

Otters

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

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

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

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

Effects on development works:

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

Bats

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

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

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

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

Effects on development works:

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

Hazel Dormice

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

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

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

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

Effects on development works:

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

White Clawed Crayfish

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

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

It is also classified as Endangered in the IUCN Red List of Endangered Species. As a result of this and other relevant crayfish legislation such as the Prohibition of Keeping of Live Fish (Crayfish) Order 1996, a series of licences are needed for working with White-clawed and non-native crayfish. These are:

- A licence to handle crayfish (therefore survey work) in England
- A licence for the keeping of crayfish in England and Wales with an exemption for Signal crayfish (England).
- People in the post-code areas listed with crayfish present prior to 1996 do not need to apply for consent for crayfish already established. It does not, however, allow any new stocking of non-native crayfish into waterbodies. Consent for trapping of non-native crayfish for control or consumption is most likely to be granted in Thames and Anglian regions in the areas with "go area" postcodes.
- Harvesting of crayfish is prohibited in much of England and in any part of Scotland and Wales.

Effects on development works:

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

Wild Mammals (Protection Act) 1996

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

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

Legislation Afforded to Plants

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

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

- Intentionally (or recklessly in Scotland) picking, uprooting or destruction of any wild Schedule 8 species (or seed or spore attached to any such wild plant in Scotland only)
- Selling, offering or exposing for sale, or possessing or transporting for the purpose of sale, any wild live or dead Schedule 8 plant species or part thereof
- In addition to the UK legislation outlined above, several plant species are fully protected under Schedule 5 of The Conservation of Habitats and Species Regulations 2010. These are species of European importance. Regulation 45 makes it an offence to:

- Deliberately pick, collect, cut, uproot or destroy a wild Schedule 5 species
- Be in possession of, or control, transport, sell or exchange, or offer for sale or exchange any wild live or dead Schedule 5 species or anything derived from such a plant.

Effects on development works:

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

Invasive Species

Part II of Schedule 9 of the WCA lists non-native invasive plant species for which it is a criminal offence in England and Wales to plant or cause to grow in the wild due to their impact on native wildlife. Species included (but not limited to):

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

Effects on development works:

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

Injurious weeds

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

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

Effects on development works:

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

NATIONAL PLANNING POLICY (ENGLAND)***Environment Act 2021***

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

National Planning Policy Framework 2021

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

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

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

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

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

EUROPEAN PROTECTED SPECIES POLICIES

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

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

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