



# CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN / BIODIVERSITY ENHANCEMENT STRATEGY

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**LAND TO THE REAR OF BROCK  
COTTAGE, BURFORD ROAD, BRIZE  
NORTON, OXFORDSHIRE,  
OX18 3NR**

Date: 9<sup>th</sup> November 2022

Client: Albright Dene

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## Control Sheet

General Report Information	
<b>Report title</b>	Construction Environmental Management Plan / Biodiversity Enhancement Strategy
<b>Client</b>	Albright Dene
<b>Location</b>	Land to the rear of Brock Cottage, Burford Road, Brize Norton, Oxfordshire, OX18 3NR
<b>Lead ecologist</b>	J. Russ
<b>Report author</b>	Dr. J. M. Russ

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## 1 Background to activity/development

This combined Construction Environmental Management Plan (CEMP) and Biodiversity Enhancement Strategy (BES) has been prepared by Dr Jon Russ at the request of Elliott McDermott<sup>[1]</sup> of Albright Dene. Outline planning consent has been granted on appeal to provide self-build and/or custom housebuilding plots for two detached dwellings (West Oxfordshire District Council Ref: 20/01915/OUT, Appeal Ref: APP/D3125/W/21/3274197).

Condition 6 of the consent states that:

*“No development shall commence until details of ecological protection measures have been submitted to and approved in writing by the local planning authority. The measures shall specify details that seek to prevent the killing or injuring of small mammals, nesting birds, reptiles and amphibians when the site is developed. All works, including demolitions and site clearance, shall be carried out in accordance with the approved measures”.*

Condition 8 states:

*“No external walls shall be erected until details of integrated bat roosting and nesting bird nesting features within the walls of the new buildings have been submitted to and approved in writing by the local planning authority. The details shall include drawings showing the type of features, their locations within the site and their positions on the elevations of the buildings. For each dwelling, the approved details shall be implemented before first occupation and retained thereafter”.*

Ridgeway Ecology Ltd was commissioned in November 2022 to prepare a CEMP/BES to satisfy these conditions.

An Ecological Impact Assessment of the site was carried out by 4 Acre Ecology Ltd in May 2020 (report dated 18<sup>th</sup> June 2020). Habitats noted within the site were a tarmac track with amenity grassland, trees and shrubs, ruderal vegetation, scrub vegetation, a wooden shed with polytunnels and greenhouses. No evidence of protected species was identified during the survey but precautionary working methods were recommended.

## 2 Site description

The 0.3ha site (Grid Reference SP 29230838) is situated in a former quarry at the north-western edge of the village of Brize Norton, with the expanding town of Carterton adjacent to the south-west. The quarry bottom was last used as a garden nursery, which is now mainly disused. The habitats on site and the immediate surrounding area are the result of human activity through farming and residential areas. To the north are agricultural fields beyond the B4477 road, which have few connecting hedgerows leading to the A40 dual carriageway. To the east are large arable fields, also with few connecting hedgerows; to the south-east is the village of Brize Norton with low-density housing and mature gardens. Adjacent to the south of the site is plantation woodland with agricultural fields and the Brize Norton airbase beyond. To the west is the Kilkenny Lane Country Park with arable fields beyond, to the south west is the town of Carterton.

### 3 Proposed works

Outline planning consent has been granted on appeal to provide self-build and/or custom housebuilding plots for two detached dwellings, with all matters reserved except for access (West Oxfordshire District Council Ref: 20/01915/OUT, Appeal Ref: APP/D3125/W/21/3274197).

## 4 Legislative and Planning Policy Context

### 4.1 Legislative Framework

Specific habitats and species receive legal protection in the UK under various pieces of legislation, including:

- The Wildlife and Countryside Act 1981 (as amended);
- The Badger Protection Act 1992;
- The Conservation of Habitats and Species Regulations 2010;
- The Countryside Rights of Way Act 2000;
- The Natural Environment and Rural Communities (NERC) Act 2006; and
- The Hedgerow Regulations 1997

Where relevant, the ecological assessment takes account of the legislative protection afforded to specific habitats and species where applicable.

### 4.2 Planning Policy

#### 4.2.1 National Planning Policy Framework – Conserving and Enhancing the Natural Environment

The National Planning Policy Framework (NPPF), published by the government in March 2012 (and replaces Planning Policy Statement 9 (PPS9)) outlines the Government's commitment to the conservation of wildlife and natural features. Policies set out in NPPF are taken into account by regional planning bodies in the preparation of regional spatial strategies, and by local planning authorities in the preparation of local development documents. They may also be material to decisions on individual planning applications. The NPPF states that the planning system should contribute to and enhance the natural and local environment by:

- protecting and enhancing valued landscapes, geological conservation interests and soils;
- recognising the wider benefits of ecosystem services;
- minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;
- preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability; and
- remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

Local planning authorities should set criteria based policies against which proposals for any development on or affecting protected wildlife or geodiversity sites or landscape areas will be judged. Distinctions should be made between the hierarchy of international, national and locally designated sites, so that protection is commensurate with their status and gives appropriate weight to their importance and the contribution that they make to wider ecological networks. To minimise impacts on biodiversity and geodiversity, planning policies should:

- plan for biodiversity at a landscape-scale across local authority boundaries;
- identify and map components of the local ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity, wildlife corridors and stepping stones that connect them and areas identified by local partnerships for habitat restoration or creation;
- promote the preservation, restoration and re-creation of priority habitats, ecological networks and the protection and recovery of priority species populations, linked to national and local targets, and identify suitable indicators for monitoring biodiversity in the plan;
- aim to prevent harm to geological conservation interests; and where Nature Improvement Areas are identified in Local Plans, consider specifying the types of development that may be appropriate in these Areas

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

- if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;
- proposed development on land within or outside a Site of Special Scientific Interest likely to have an adverse effect on a Site of Special Scientific Interest (either individually or in combination with other developments) should not normally be permitted. Where an adverse effect on the site's notified special interest features is likely, an exception should only be made where the benefits of the development, at this site, clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special scientific interest and any broader impacts on the national network of Sites of Special Scientific Interest;
- development proposals where the primary objective is to conserve or enhance biodiversity should be permitted;
- opportunities to incorporate biodiversity in and around developments should be encouraged;
- planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats, including ancient woodland and the loss of aged or veteran trees found outside ancient woodland, unless the need for, and benefits of, the development in that location clearly outweigh the loss; and
- the following wildlife sites should be given the same protection as European sites:
  - potential Special Protection Areas and possible Special Areas of Conservation;
  - listed or proposed Ramsar sites; and
  - sites identified, or required, as compensatory measures for adverse effects on European sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites

The Government will “now embark on a new exercise to consider what underpinning guidance continues to be needed” with the outcome of this process being “an appropriate and easy to

use set of guidance, focussing on issues that require national expression, to support implementation of the National Planning Policy Framework." The Government has "not established the process or set a timetable" for this yet and "until such time as the guidance review is complete, the existing guidance where relevant can still be used." Regarding what guidance is still relevant, "Annex 3 of the NPPF indicates that ODPM Circular 06/2005: Biodiversity and Geological Conservation - Statutory Obligations and their Impact within the Planning System (Circular 06/05) is still relevant. This Circular provides administrative guidance on the application of the law relating to planning and nature conservation as it applies in England.

#### **4.2.2 The Natural Environment and Rural Communities Act 2006**

Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006 places a duty on the Secretary of State to publish, review and revise lists of living organisms and types of habitat in England that are of principal importance for the purpose of conserving English biodiversity. It also requires the Secretary of State to take, and promote the taking of, steps to further the conservation of the listed organisms and habitats. The current list of species and habitats is largely the same as those listed with the UK Biodiversity Action Plan and includes all reptile species, the hedgehog and a number of bat and bird species.

#### **4.3 Protected species legislation**

The information below, applicable to the current project, is intended only as guidance to the legislation relating to these species. The Acts themselves should be referred to for the correct legal wording.

##### **Bats**

All bats are included in Schedule 2 of The Conservation of Habitats and Species Regulations 2017, which implement the requirements of the Habitats Directive in England, Scotland and Wales and in Schedule 2 of the Conservation (Natural Habitats, &c.) Regulations (Northern Ireland) 1995 (as amended) which implement the requirements of the Habitats Directive in Northern Ireland. Bats and their breeding sites or resting places are protected under Regulation 39. An amendment to the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 came into force in Northern Ireland on 21<sup>st</sup> August 2007 (Conservation (Natural Habitats, etc.) (Amendment) Regulations (Northern Ireland) 2007).

It is an offence for anyone without a license to:

- Intentionally or recklessly/deliberately injure, take or kill a bat;
  - To possess a bat (unless obtained legally) whether alive or dead;
  - Intentionally or recklessly/deliberately damage, destroy or obstruct access to any place that bats use for shelter or protection whether bats are present or not;
  - Intentionally or recklessly/deliberately disturb a bat while it is occupying a structure or place that it uses for shelter or protection.
  - deliberately disturb bats in such a way as to be likely significantly to affect—
- (i) the ability of any significant group of bats to survive, breed, or rear or nurture their young;  
or  
(ii) the local distribution or abundance of that species;

Prosecution could result in imprisonment, fines of £5,000 per animal affected and confiscation of vehicles and equipment used.

Recent amendments to the Habitat Regulations in 2007 have removed many of the defences. This includes the commonly relied upon 'incidental result defence', which previously covered acts that were the incidental result of an otherwise lawful activity and which could not reasonably have been avoided. As the incidental result of a lawful operation defence has been removed from legislation (Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007) operators are now open to this strict liability offence, whether the damage occurs by accident or not. An offence will only be committed if the deliberate disturbance is likely to significantly affect a significant group of animals of that species' ability to survive, breed, or rear or nurture its young or is likely to significantly affect the local distribution or abundance of that species. Deliberate disturbance of a protected animal (species on Schedule 5 which includes EPS) in its place of shelter or protection will continue to be an offence under the Wildlife and Countryside Act 1981. However, the incidental result of a lawful operation defence will be available for that offence where the disturbance could not have been reasonably avoided.

In England, Scotland and Wales all bat species are protected under the Wildlife and Countryside Act 1981 (WCA) (as amended) through inclusion in Schedule 5. The existing offences under the Wildlife and Countryside Act (1981) as amended which cover obstruction of places used for shelter or protection, disturbance and sale still apply to European protected species.

In England and Wales, the WCA was amended by the Countryside and Rights of Way Act 2000 (CRoW), which adds an extra offence ('or recklessly' to S9(4)(a) and (b)), makes species offences arrestable, increases the time limits for some prosecutions and increases penalties.

Exemptions can be granted from the protection afforded to bats under the Habitat Regulations, by means of a EPS (European Protected Species) Habitats Regulations licence obtained from Natural England.

A 'EPS Habitats Regulations Licence' could be required for:

- Demolition of a building known to be used by bats prior to development of a site
- Conversion of barns or other buildings known to be used by bats
- Removal of trees known to be used by bats as well as tree pruning
- Significant alterations to roof voids known to be used by bats
- Road building or widening
- Bridge strengthening

There are three tests, which must be satisfied, before a licence can be issued to permit otherwise prohibited acts;

- Regulation 53(2)(e), for the purpose of preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment; or
- Regulation 53(2)(f) for the purpose of preventing the spread of disease; or
- Regulation 53(2)(g) for the purpose of preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other forms of property or to fisheries; subject to Natural England being satisfied that the application additionally meets:
  - Regulation 53(9)(a) that there is no satisfactory alternative; and



- Regulation 53(9)(b) that the action authorised will not be detrimental to the maintenance of the species concerned at a favourable conservation status in their natural range.

A European Protected Species License is required before the commencement of any development that might impact on bats or their roosts.

## **Birds**

All birds, their nests and eggs are protected by law under the Wildlife and Countryside Act 1981 (as amended). It is an offence, with certain exceptions, to:

- Intentionally kill, injure, or take (handle) any wild bird.
- Intentionally take, damage or destroy any wild bird nest whilst in use or being 'built'.
- Intentionally take or destroy a wild bird egg.
- Have in one's possession or control a wild bird (dead or alive), or egg, (unless one can show that it was obtained legally).

Some species of bird listed under Schedule 1 (e.g. Barn Owls, of the Act receive extra protection. For these species it is an offence to:

- Intentionally or recklessly disturb any wild bird whilst 'building' a nest or whilst in, on, or near a nest containing eggs or young.
- Intentionally or recklessly disturb any dependent young of wild birds.

Disturbance may be deemed reckless if it is committed by someone who could be expected to know that the bird(s) might be present but failed to check.

Under the 1981 Act (Part 1, section 25) local authorities are given the function of bringing this legislation to the attention of the public and may institute proceedings for any offence committed within their area. The police are empowered to enter onto any land and search, or stop and search, any person where an offence is suspected (section 14). Anyone found guilty of an offence is liable to a fine of up to £5,000 or to imprisonment for a term not exceeding six months, or both.

## **Badgers**

Badgers are protected under the Protection of Badgers Act 1992. This act is based on the need to protect badgers from baiting and deliberate harm or injury. The act makes it an offence to:

- Wilfully kill, injure, take possess or cruelly ill-treat a badger, or attempt to do so.
- To intentionally or recklessly interfere with a sett. Sett interference includes disturbing badgers whilst they are occupying a sett, as well as damaging or destroying a sett or obstructing access to it.

A sett is defined as 'any structure or place which displays signs indicating current use by a Badger'.

The legislation does however allow some works, for example where the disturbance or damage to a sett would inadvertently result from an otherwise lawful operation. In these circumstances, a licence to undertake works that would otherwise result in an offence may be applied for.

Licences usually only allow works to be carried out between July and November inclusive.

Where a badger population is found, appropriate mitigation measures should also be provided within the development process in a fully integrated manner to ensure that no “ill-treatment” of badgers occurs throughout the operation of the site.

### Great crested newts

Great crested newts (GCN) and the places they use for shelter or protection receive European protection under The Conservation of Habitats and Species Regulations 2010 (Habitats Regulations 2010). They receive further legal protection under the Wildlife and Countryside Act (WCA) 1981, as amended. This protection means that GCN, and the places they use for shelter or protection, are capable of being a material consideration in the planning process.

Regulation 41 of the Habitats Regulations 2010, states that a person commits an offence if they:

- deliberately capture, injure or kill a GCN;
- deliberately disturb GCN;
- deliberately take or destroy eggs of a GCN; or
- damage or destroy a GCN breeding site or resting place.

### Reptiles

All common reptile species, including common lizard *Zootoca vivipara*, grass snake *Natrix natrix*, and slow-worm *Anguis fragilis*, are partially protected under Section 9(1) and 9(5) of Schedule 5 of the Wildlife and Countryside Act 1981 (as amended). This legislation protects these animals from:

- intentional killing and injury;
- selling, offering for sale, possessing or transporting for the purpose of sale or publishing advertisements to buy or sell a protected species.

This partial protection does not directly protect the habitat of these reptile species. Where these animals are present on land that is to be affected by development, the implications of legislation are that providing that killing can reasonably be avoided then an operation is legal. This requires that:

- the animals must be protected from injury or killing;
- mitigation should be provided to maintain the conservation status of the species.

All common reptile species are species of principal importance under section 41 of the Natural Environment and Rural Communities Act 2006 (NERC).

### Hedgehogs

Hedgehogs do have some degree of legal protection in the UK.

- they are listed on schedule 6 of the Wildlife and Countryside Act (1981) which makes it illegal to kill or capture wild hedgehogs, with certain methods listed
- they are also listed under the Wild Mammals Protection Act (1996), which prohibits cruel treatment of hedgehogs
- a species of ‘principal importance’ under the NERC Act, which is meant to confer a ‘duty of responsibility’ to public bodies

## 5 Ecological Consultant

Albright Dene has appointed Dr Jon Russ as the ecological consultant for this project.

Dr Jon Russ is a terrestrial and behavioural ecologist with a specialist interest in bats. As Director of Ridgeway Ecology Ltd and through his academic research and work with the Bat Conservation Trust he has managed, designed and carried out large- and small-scale bat surveys and bat monitoring programmes in the UK and the tropics. He has extensive experience of the United Kingdom and European Union legislation regarding bats and has been a fully licensed bat worker for over 20 years, holding bat conservation, education and scientific licences for radio-tracking, mist-netting, ringing, harp-trapping, ultrasonic playback and DNA sampling. His publication record includes a large number of articles in scientific journals as well as other publications including the widely used book, “The Bats of Britain and Ireland: Echolocation, Sound Analysis, and Species Identification”, “Review of ASSI designation for bats in Northern Ireland”, “The Northern Ireland Bat Action Plans” which he coordinated and delivered, “British Bat Calls: A Guide to Species Identification” and the recently published “Bat Calls of Britain & Europe”. In addition, Jon has a great deal of experience in avoidance, mitigation and compensation measures relating to bats and development.

Jon currently holds Natural England Class 3 & 4 Bat Licences (CL19, No. 2015-11383-CLS-CLS and CL20, 2015-11384-CLS-CLS respectively) and is a registered consultant under the Bat Low Impact Class Licence Scheme (CL21, No. RC011) as well as the Bat Low Impact Class Licence Scheme for HS2 for Bat in Buildings (CL39, No. B39RC016) and Bats in Trees (CL40, No. B40RC016).

## 6 Mitigation and Enhancement Measures

### 6.1 Bats

- If any works to the mature ivy-covered trees are planned a licensed ecologist will be contacted for advice and further investigation comprising an endoscopic search will be carried out.
- All work will be carried out carefully with the expectation that bats may be found. If bats are observed at any time all work will stop and the ecologist for this project will be contacted for advice.
- An in-wall bat box (e.g. Build-in WoodStone Bat Box) will be installed within the east-facing wall of each dwelling (Figure 1). Boxes will be positioned just under the top of the wall away from windows.
- External lighting will be designed and sited so as not to impact the potential bat commuting/foraging route within and just outside the site. This includes the retained trees and shrubs and the woodland to the west. Lighting will be low level with directional shrouding/shields to prevent unnecessary light spill above halfway up the ground floor level of the dwellings.

### 6.2 Birds

- Any works to habitats that might be used by nesting birds (trees, shrubs etc) will be undertaken outside the bird breeding season (March to August inclusive). If this is not

possible, the habitat will be checked immediately before work starts by a suitably qualified ecologist. If there are breeding birds present, work will not continue until the chicks have fledged and left the nest and a suitable buffer (usually 5m) will be implemented using fencing.

- An integrated sparrow nesting box (e.g. Vivara Pro Woodstone House Sparrow Nest Box or 1SP Schwegler Sparrow Terrace) will be built into the north wall of one of the dwellings and a swift box (PRO UK Rendered Build-In Swift Box) will be built into the north wall of the other dwelling. Boxes will be installed as high up the wall as possible. (Figure 1). In addition, two Vivara Pro Seville 28mm WoodStone Nest Box will be erected on retained trees.

### 6.3 Reptiles

- The grass will be strimmed to ground level during the weeks prior to work commencing. Ideally, this will occur on a hot day during the summer months when reptiles are very mobile and can easily escape. Subsequently, the vegetation will be kept close to ground level or cleared prior to development, and will be maintained in that condition until the development is complete. Any taller vegetation will be cut in two passes, from north to south. The first will be no lower than 150mm and the second, on the following day will be as close to ground level as possible. Arisings will be removed on both days to prevent the creation of hibernacula.
- Prior to works commencing any log piles, brash piles and stone piles will be removed carefully. If any reptiles are discovered work will stop and an ecologist contacted to relocate the animal(s) to a suitable location identified off site. Clearance of any potential refuges should ideally be undertaken on a warm (above 13°C), dry day with little wind when reptiles will be active and can escape harm's way if they are present.
- Work on the site may create rubble piles which, if left, may have the potential to be utilised as places of rest or shelter. Consequently, such debris will be removed from the site immediately or placed into skips prior to removal.
- An escape route for reptiles will be provided within any pits dug for the foundations. Such ramps will be no steeper than 45 degrees in angle and will be constructed using rough wooden planks.
- If at any point during these activities, or at any other stage during works, a reptile is discovered, all work will stop and a suitably licensed ecologist will be consulted.

### 6.4 Great Crested Newts and Other Amphibians

- The guidance for reptiles (above) will be adhered to.
- If during any time great crested newts are identified, work will stop immediately and Natural England will be contacted for advice.

### 6.5 Hedgehogs

- Any wood or brash piles within the development area will be removed carefully by hand. If a hedgehog is found it will be removed carefully and placed in an undisturbed area outside the development zone.

- Ramps will be placed into any deep trenches or excavated holes, to allow hedgehogs an escape route should they fall in.
- To ensure that hedgehogs can easily move between the site and the surrounding habitat, two holes will be created at the base of the fence along the east and west boundaries measuring 130mm x 130mm.

## 6.6 Trees and Shrubs

- Trees will be protected throughout any development by a no-disturbance Root Protection Area (RPA) following the Tree Protection Area Plan submitted to the LPA and in accordance with British Standard 5837. These areas will be fenced off using Heras-style fencing or similar, and no personnel access or storage of equipment or materials will be permitted within this area. The RPA is the minimum area that should be left undisturbed during construction and is designed to prevent any significant long-term damage to the tree by protecting the root plate and to some extent the lower branches of the tree. HERAS fencing should be erected to prevent disturbance and damage to the boundary trees and woodland.
- Where an appropriate RPA is not possible, disturbance of the root zone of trees will be minimised, for example through sensitive routing of access tracks and avoidance of storage of materials or equipment close to the base of trees.

**7** **Figures**

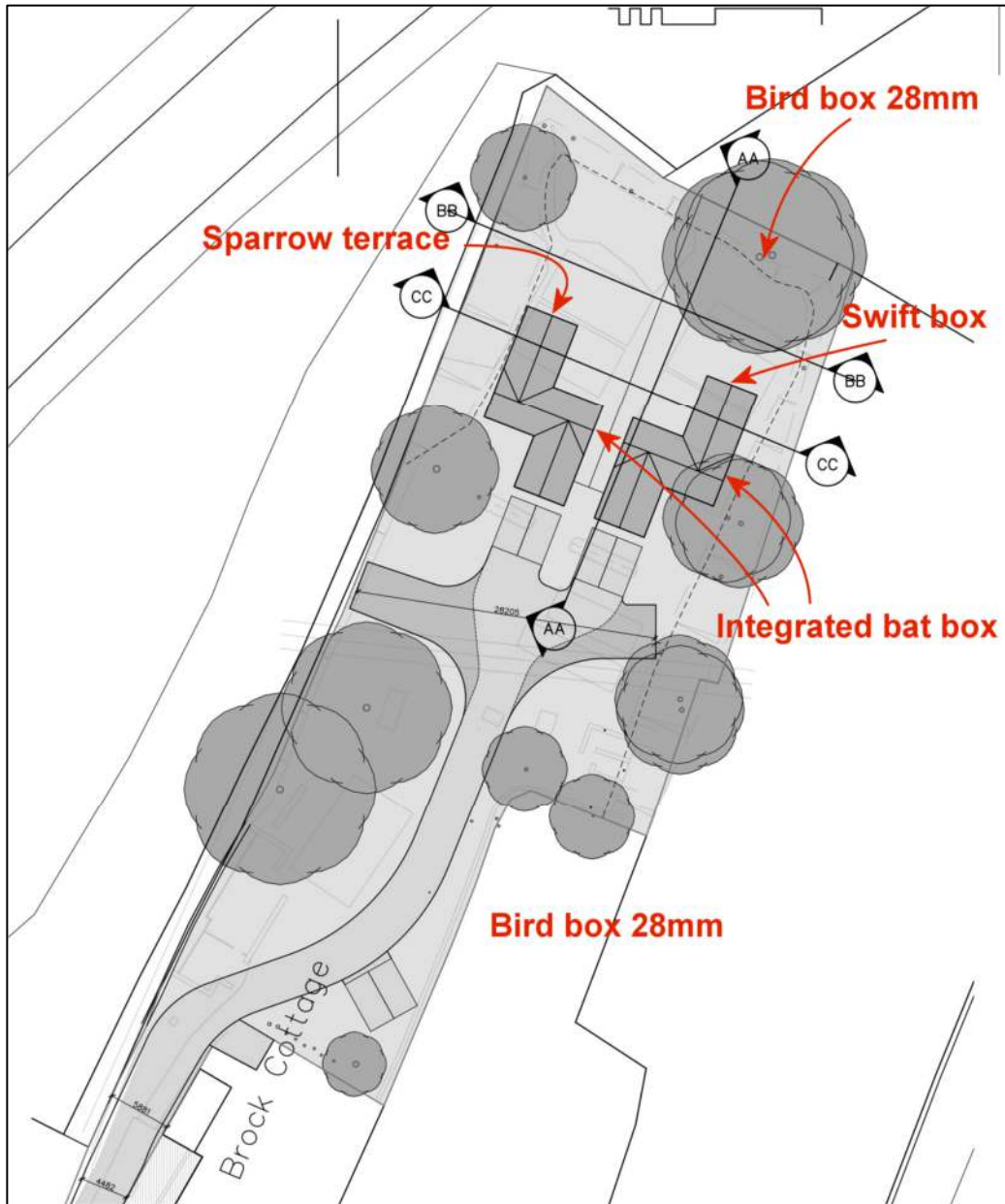


Figure 1. Location of proposed bird and bat boxes