



Proposed New restaurant & Laundry Store,
Riviere Towans, Hayle, Cornwall

Preliminary Ecological Appraisal

Ref:
BE646.1

Date:
22nd March 2024

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CONTENTS

| | | |
|-----|---|----|
| 1. | Introduction | 3 |
| 2. | Aim..... | 3 |
| 3. | Methodology | 3 |
| 3.1 | Desk study | 3 |
| 3.2 | Site survey | 3 |
| 3.3 | Baseline evaluation..... | 4 |
| 3.4 | Identification of impacts and mitigation | 4 |
| 3.5 | Personnel | 4 |
| 3.6 | Limitations | 4 |
| 4. | Ecological Baseline..... | 5 |
| 4.1 | Designated sites of nature conservation value | 5 |
| 4.2 | Habitat Description and Evaluation..... | 6 |
| 4.3 | Floral Species Description and Evaluation..... | 10 |
| 4.4 | Faunal Species Description and Evaluation | 10 |
| 4.5 | Overall Site Evaluation | 11 |
| 5. | Ecological Impacts, Mitigation and Monitoring | 12 |
| 5.1 | Details of proposed works..... | 12 |
| 5.2 | Impacts to designated sites | 12 |
| 5.3 | Loss of Habitats | 12 |
| 5.4 | Disturbance/degradation to habitats..... | 12 |
| 5.5 | Disturbance to Species | 13 |
| 5.6 | Proposed biodiversity gain | 13 |
| 5.7 | Further Surveys | 14 |
| 5.8 | Monitoring | 14 |
| 5.9 | Residual Impacts | 14 |
| 6. | References and bibliography..... | 16 |

1. INTRODUCTION

Bright Environment was commissioned by Situ8 in January 2021 to undertake a preliminary ecological appraisal of land within the Riviere Towans Holiday Park in Hayle. The appraisal is to inform a planning application to construct a new restaurant and laundry store on the land. The survey area is defined in Figure 1 and the OS grid reference for the centre of the site is SW 55774 38358. The nearest postcode is TR27 5AT. It is understood that the site already has planning approval to construct a restaurant in the northern part of the site.

In March 2024 Bright Environment Ltd was appointed by Ben Downton to carry out a repeat site survey and update the report to inform a new application for a single building to house a new restaurant and laundry store.

2. AIM

The aim of the report is to undertake a Preliminary Ecological Appraisal of the proposed linen store development. This involves the following:

- Describe and evaluate the ecological baseline of the site.
- Identify ecological impacts of the development.
- Design mitigation measures for adverse impacts and identify any requirements for further survey.
- Identify any residual impacts following mitigation.
- Identify opportunities for enhancement of biodiversity.

3. METHODOLOGY

The assessment has been carried in accordance with:

- the 'Guidelines for Preliminary Ecological Appraisal' and 'Guidelines for Ecological Impact Assessment in the UK and Ireland' produced by the Institute of Ecology and Environmental Management (CIEEM 2018 & 2017).
- BS42020-2013 Biodiversity – Code of Practice for Planning and Development (British Standard, 2013)
- Cornwall Planning for Biodiversity Guide (Cornwall Council, 2023)

The assessment is informed by UK and EU legislation, National and local planning policies.

The ecological baseline of the site was assessed through a desk study and site survey.

3.1 Desk study

A desk study to identify whether the site lies within a statutory designated site of nature conservation importance was undertaken. This involved the use of Magic Map (www.magic.gov.uk) and Cornwall Council Interactive Map (map.cornwall.gov.uk).

3.2 Site survey

A walk-over survey of the site was carried out on 3rd February 2021 and 7th March 2024 to:

- identify the habitats present within the site according to the Phase 1 Habitat Survey methodology (JNCC, 1993) and compile a list of dominant and rare vascular plants. A full species lists was not compiled.
- undertake a preliminary faunal survey / habitat assessment to identify the presence or the potential of the site to support legally protected species or species of conservation importance.
- assess the ecological 'importance' of any hedges using the criteria in the Hedgerows Regulations 1997 (if applicable).

The weather during the 2021 survey was patchy cloud, dry and calm (9C). The weather during the 2024 survey was patchy cloud, dry and breezy (10C). The survey area is indicated on Figure 1 at the end of this report.

3.3 Baseline evaluation

Evaluation of the ecological baseline for the site was undertaken following the framework provided by CIEEM (2018). The biodiversity value of ecological features is assessed according to various characteristics; including non-statutory designations, rarity, threat, diversity (species-richness), connectivity and size of populations. Each ecological feature is assigned a biodiversity value at the following geographical scales:

- International or European
- National (England)
- Regional (South West)
- County
- Local

3.4 Identification of impacts and mitigation

Assessment of impacts was undertaken following the framework provided by CIEEM (2018). The impacts magnitude, duration, reversibility, likelihood and nature (positive or negative) are described. Consideration to cumulative impacts is also given. Impacts are then assessed as being significant or not significant upon each valued ecological feature.

Mitigation measures to avoid or reduce impacts are included. To ensure proposed mitigation measures are adopted; Bright Environment consulted with the developer to agree achievable measures. Recommendations follow the mitigation hierarchy approach (CIEEM, 2018 and British Standard, 2013). The mitigation hierarchy seeks to avoid impacts, then to mitigate unavoidable impacts, and as a last resort, to compensate for residual impacts. Where possible mitigation has been designed with the aim of the development resulting in net gain (as specified in Cornwall Council, 2018). An assessment of residual impacts and whether net gain has been achieved is given at the end of this report.

3.5 Personnel

Author: This report was prepared by Dr Janine Bright. Dr Bright has been a full member of the Chartered Institute of Ecology and Environmental Management (CIEEM) since 2001 and has been a Chartered Environmentalist (CEEnv) since 2005. Dr Bright has a BSc in Environmental Science and a PhD in Ecology. She has worked as an ecological consultant since 1999.

Surveyors: Dr Bright. Protected species licenses: dormice (2016-21698-CLS-CLS) and bats (2020-49235-CLS-CLS survey level 2).

Bright Environment Ltd is a registered practice with CIEEM.

3.6 Limitations

The surveys were carried out in February and March. At this time of year, it is possible that some plants may have been missed. However, it is possible to assess the value of habitats and their potential to support notable floral species. This is not considered a notable limitation for a project of this size and nature.

As ecological features can change over time it is recommended that this report is valid until April 2025.

4. ECOLOGICAL BASELINE

4.1 Designated sites of nature conservation value

The site is not a designated site of nature conservation importance. There are designated sites nearby (see Figure 1).

There are two Sites of Special Scientific Interest (SSSI) within 1km of the site. Gwithian to Mexico Towans SSSI is located 310m to the northeast. Hayle Estuary and Carrack Gladden SSSI is located 900m to the west. SSSI's are designated under s.28 of the Wildlife and Countryside Act 1981 to safeguard and enhance the characteristic plants, animals and physical features of our natural heritage (HM Government, 1981). They are also protected under the Countryside and Rights of Way Act 2000 (HM Government, 2000). As part of the planning process, Natural England is consulted over any proposed developments that may impact upon a SSSI. Natural England specify a list of operations likely to damage (OLDS) the special interest of a SSSI. Under the Acts, Natural England has to give written consent before any of these operations, or any other activities which may affect the SSSI, can be carried out.

Hayle Estuary and Carrack Gladden is of value for estuarine and coastal habitats including mud and sandflats, dunes, coastal heathland and grassland, saltmarsh, reedbeds and pools. It supports notable plants and is of high value for birds especially migratory birds and wintering birds.

Gwithian to Mexico Towans is the second largest dune system in Cornwall, stretching for approximately 3km along the North Cornwall coast from Hayle to Gwithian. This complex and extensive dune system supports a rich and diverse flora, including many rare species and it of importance for its butterflies and moths.

There are two County Wildlife Sites (CWS) within 1km of the site. Namely Hayle Dune system and Hayle Estuary. Both located approx. 500m away. CWSs are designated by the Cornwall Wildlife Trust and Cornwall County Council. They are designated in accordance with a set of criteria (ERCCIS & CWT, 2010). Although not statutory designations, they are shown on local plans as CNC sites (Cornwall Nature Conservation sites) and are given greater protection through the planning process with respect to development. They are prime sites for wildlife in Cornwall, having been identified as supporting species, groups of species or habitats of at least county importance.

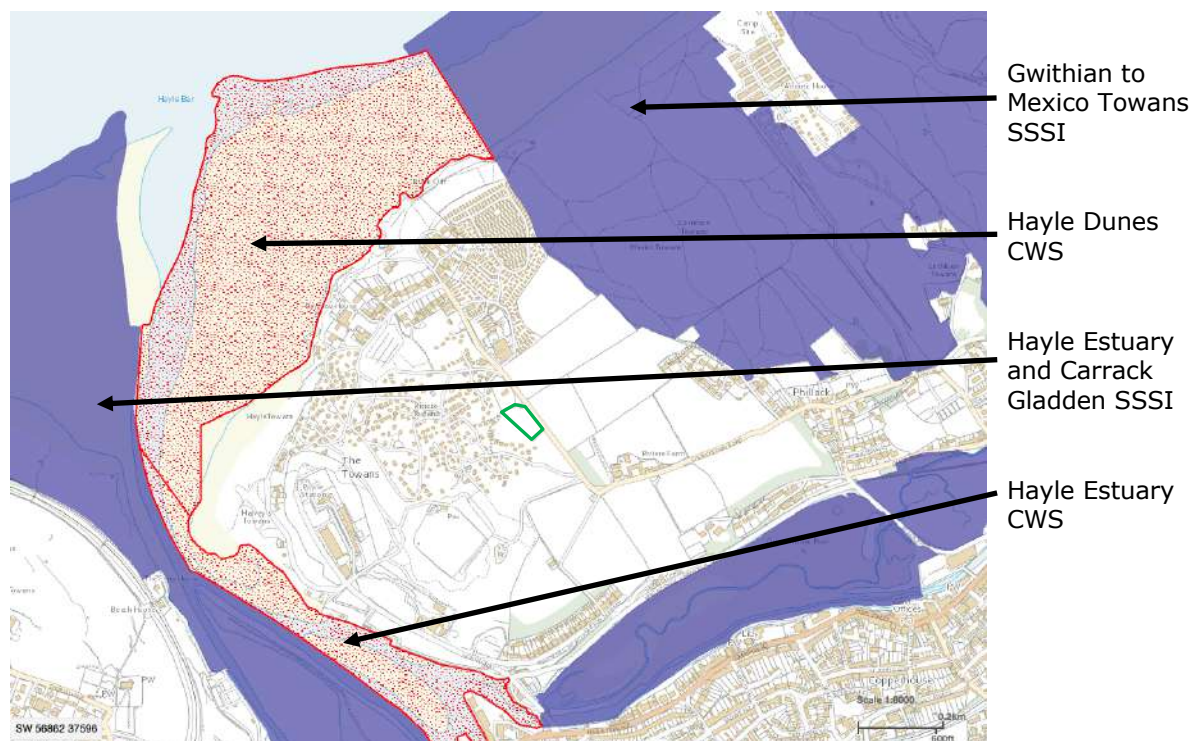


Figure 1. Location of site (outlined in green) and designated sites of nature conservation importance. Purple = SSSI and red (CWS)

4.2 Habitat Description and Evaluation

This section describes the habitats present, according to the standard Phase 1 notation (JNCC, 2010). Phase 1 habitat distribution is shown on Figure 2.

The site is a small 0.34Ha enclosure between the holiday chalets and the holiday park entrance road. The holiday complex with chalets and short mown grassland are to the west and north. There are arable fields on the other side of the access road to the east. Further afield are dune systems, beach and estuarine habitats.

Each of the habitats recorded during the Phase 1 Habitat Survey are described below and their distribution is shown on Figure 1. The dominant species recorded within each habitat are given together with any notable floral species observed.

Photographs are from 2024 unless stated on the photograph title.

4.2.1 Fence

The enclosure is bound on three sides by wooden post and chain-link fencing. The access gate is on the north boundary (photograph 1). Some sections of fencing are defunct.



Photograph 1. North boundary entrance gate.

4.2.2 Stone wall

The east boundary of the enclosure is stone wall topped with cement mortar (photograph 2). It is not a Cornish hedge and does not qualify as biodiversity action plan priority habitat. The wall supports sparse flora including red fescue, bramble, ivy, nettle, red campion, ground elder, bracken and dandelion. The wall is not of biodiversity value.



Photograph 2. East boundary stone wall.

4.2.3 Neutral semi-improved grassland

The main body of the enclosure supports a closely mown semi-improved neutral grassland established on a substrate of windblown sand with thin soil.

During the 2021 survey the enclosure had been recently cleared of bracken/bramble scrub with nettle and primrose establishing in the recently cut sections. During the 2024 a more established herb-rich coastal grassland was present. The sward is very short and is maintained by regular mowing. Low growing herb species and grasses dominate. Species include common bent grass, springy turf moss, meadow grass, red fescue, ribwort and greater plantain, common moue ear, Spanish bluebell, common cats' ear, lesser celandine and spotted medic. Pyramidal orchid is reported to be present on the site (Hayle Town Council, comment on planning register). As the soils are nutrient poor and thin the growth of competitive grasses is hindered and as such a more floristically diverse sward is present. The grassland is a typical coastal grassland and as it is herb rich is it considered to be of biodiversity value at the 'low local' geographic scale (see section 3.3).



Photograph 3. From S boundary looking N.

4.2.4 Scattered trees

There is a mature Monterey cypress near the southern boundary of the site (photograph 5). Behind (to the south of) this mature tree are Cornish palms. There are also four young sycamore trees and an elder tree on the southern boundary and young elder and young grey willow on the east boundary. These trees provide structural diversity and provide niche diversity. They are not considered to be of value at any of the geographic levels detailed in section 3.3.



Photograph 4. Monterey cypress



Photograph 5. Scattered trees.

4.2.5 Scrub

A small area of (recently cleared) scrub is present along the east boundary and is also present along the west boundary fence line. The habitat is co-dominated by bramble and bracken. Other species

include primrose, nettle, ivy and hedge bedstraw. The habitat is small in extent and commonplace and not of notable biodiversity value at any of the geographic scales listed in section 3.3.



Photo 6. Recently cleared bramble/bracken scrub on E boundary. Photo 7. Scrub on west boundary.

4.2.6 *Bare ground*

There is a hardcore parking area just inside the entrance gate. This is not of biodiversity value.



Photograph 8. Bare ground near site entrance.

Figure 2. Phase 1 habitat distribution.



Key:

- Site boundary
- Semi improved neutral grassland
- ▨ Scrub
- - - Wall
- - - - Fence
- Scattered broad-leaved trees
- Scattered conifer trees
- Target note - Montbreaia (schedule 9 invasive weed)

4.3 Floral Species Description and Evaluation

No notable/rare plants were observed.

The soils within the site are nutrient poor and thin. This hinders the growth of competitive grasses and as such a more floristically diverse sward is present. Pyramidal orchid is reported to be present on the site (Hayle Towan Council, comment on planning register). The grassland is a typical coastal grassland and as it is herb rich is it considered to be of biodiversity value at the 'low local' geographic scale (see section 3.3).

The invasive weed Montbretia (*Crocsmia x crocosmiiflora*) is present around the boundaries of the site as target notes on Figure 2. This species is included under Schedule 9 of the Wildlife and Countryside Act 1981 making it an offence to 'cause it to spread'. Non-native, invasive species represent a significant threat to nature conservation. Not only do they directly compete with the native flora, but they also threaten native fauna indirectly through the displacement of their food plants.

4.4 Faunal Species Description and Evaluation

4.4.1 Badgers

No evidence of badgers was observed and it is unlikely that any evidence was overlooked.

There are several large mounds of sand from rabbit activity.



Photograph 9. Mound of sand from rabbit activity (photo from 2021).

4.4.2 Bats

The site has no features for roosting bats and due to being exposed and near a dune setting with little cover it is very unlikely to have a function for foraging bats.

4.4.3 Otters

There is no suitable habitat for otter.

4.4.4 Dormice

The areas of scrub are isolated and small in extent and very unlikely to support dormice.

4.4.5 Hedgehog

It is possible that hedgehog is present in the boundary scrub habitats.

Hedgehogs are listed as a priority species for conservation on the UK BAP and are protected under the NERC Act 2006. They hibernate in log / leaf / rubble piles, at the base of Cornish hedges and under tree roots from October to March inclusive. They are listed on Schedule 6 of Wildlife & Countryside Act 1981 (as amended), which protects them from being killed or taken by certain methods under Section 11(1) of the Wildlife and Countryside Act 1981.

4.4.6 Invertebrates

The neighbouring dune habitats are of value for invertebrates. It is possible that the site with its sandy substrate could support diverse populations. The site may be of low local value for this group.

4.4.7 Birds

The scrub and scattered trees provide nesting habitat for birds. The habitats present are unlikely to support notable populations of birds. The nests (while in use or being built) and eggs of all wild birds are protected against taking, damage and destruction under the Wildlife and Countryside Act 1981 (as amended). It is also an offence to kill, injure or take any wild bird.

4.4.8 Reptiles

At the time of both surveys, the vegetation was cut to ground level and would not provide cover for reptiles. However, if left to grow the site could support slow worm, common lizard and adder with a mosaic of short grass on a sandy substrate for basking and scrub for cover.

The common reptiles that occur in Cornwall (adder, slow worm, grass snake and common lizard) are UK BAP priority species and are partially protected under Schedule 5 (section 9(1) and 9(5)) of the Wildlife and Countryside Act 1981 (as amended) and protected under the NERC Act 2006. Cornwall is considered a UK stronghold for adder. This legislation makes it an offence to kill and/or injure reptiles and puts a duty on local authorities to have regard to list group of principle species.

4.4.9 Amphibians

The site does not offer suitable habitat for amphibians.

4.5 Overall Site Evaluation

The site is a small 0.34Ha enclosure between the holiday chalets and the holiday park entrance road. The holiday complex with chalets and short mown grassland are to the west and north. There are arable fields on the other side of the access road to the east. Further afield are dune systems, beach and estuarine habitats.

The site is not a designated site of nature conservation importance. There are designated sites nearby as follows:

There are two Sites of Special Scientific Interest (SSSI) within 1km of the site. Gwithian to Mexico Towans SSSI is located 310m to the northeast. Hayle Estuary and Carrack Gladden SSSI is located 900m to the west. Hayle Estuary and Carrack Gladden is of value for estuarine and coastal habitats including mud and sandflats, dunes, coastal heathland and grassland, saltmarsh, reedbeds and pools. It supports notable plants and is of high value for birds especially migratory birds and wintering birds. Gwithian to Mexico Towans is the second largest dune system in Cornwall, stretching for approximately 3km along the North Cornwall coast from Hayle to Gwithian. This complex and extensive dune system supports a rich and diverse flora, including many rare species and it of importance for its butterflies and moths.

There are two County Wildlife Sites (CWS) within 1km of the site. Namely Hayle Dune system and Hayle Estuary. Both located approx. 500m away.

Of the habitats present within the site the following are of biodiversity value:

- The grassland is a typical coastal grassland and as it is herb rich is it considered to be of biodiversity value at the 'low local' geographic scale.

An assessment of the potential of the site to support legally protected of notable species was undertaken and can be summarised as follows:

- The grassland is herb rich is it considered to be of biodiversity value at the 'low local' geographic scale.
- The invasive Sch 9 weed *Montbretia* is present around the boundaries of the site.
- The site may be of low local value for invertebrates.
- It is possible that hedgehog is present in the boundary scrub habitats.
- The scrub and scattered trees provide nesting habitat for birds. The habitats present are unlikely to support notable populations of birds.
- At the time of both surveys, the vegetation was cut to ground level and would not provide cover for reptiles. However, if left to grow the site could support slow worm, common lizard and adder with a mosaic of short grass on a sandy substrate for basking and scrub for cover.

5. ECOLOGICAL IMPACTS, MITIGATION AND MONITORING

5.1 Details of proposed works

The appraisal is to inform a planning application to construct a new restaurant and laundry store on the land. It is understood that the site already has planning approval to construct a restaurant in the northern part of the site. The proposed site plan is included as Figure 3 along with proposed ecological mitigation measures.

The likely ecological impacts of the proposed development are considered below, along with suitable mitigation and requirements for further survey and monitoring. An assessment of the residual impacts is given at the end of this section.

5.2 Impacts to designated sites

The proposed development will not directly impact upon any designated sites of nature conservation importance or the features for which they were designated. The construction of a restaurant and laundry store are considered unlikely to cause any added human pressure to the neighbouring designated sites as their users are likely to be customers of the existing holiday park.

5.3 Loss of Habitats

The existing gateway will be used.

Young elder and willow trees will be removed from the eastern boundary. To compensate for this loss **four native trees/shrubs will be planted along the southern boundary**. Suggested species are spindle, common oak, hawthorn and blackthorn (all are tolerant to coastal conditions). The import of compost and topsoil will be avoided across the main body of the site in a desire to retain low nutrient status for coastal habitat establishment/retention. Small amounts may be employed around the root zones of the proposed tree/shrub planting. Cornwall Council's adopted Climate Emergency Development Plan Document (CEDPD, 2023) requires all major developments to provide, through the retention of existing and / or the establishment of new tree canopy coverage equal to at least 15% of the site area (excluding areas of the site that are priority habitat types). Minor developments (such as this proposal) should include where appropriate and practicable provision of new canopy. Planting four trees will meet this target.

Just over half of the coastal grassland will be lost under the footprint of the proposed building and car park. This habitat has been valued as being of low local biodiversity value and its loss required mitigation. Proposed mitigation and habitat creation is as follows:

- **The remaining grassland areas will be maintained as coastal grassland by cutting twice a year.** It will be protected from damage during the construction phase by the erection of temporary fencing. Cutting will avoid the summer months to allow flowers to set seed. Coastal grassland is a biodiversity action plan priority habitat and considered more valuable than the previous established scrub/bracken mosaic habitat. Top soil will not be imported as the coastal habitats desired require nutrient poor sandy soil. If a grass seed is required BFS 11 – Coastal meadow grassland seed mix will be employed.
- **A sand dune plant community will be established on the sandy embankments around the site. Strictly only native dune species will be utilised.** The planting theme should be sympathetic to the local dune landscape of ecological importance. Marram grass, sea holly, creeping willow, sea sandwort, wild carrot, sea campion, thrift and kidney vetch are suggested.
- The wall on the eastern boundary will be retained. Currently this is not of biodiversity value. The top of the wall will be planted to create a **native coastal heathland community**. The following species are recommended; *Erica cinerea*, *Calluna vulgaris*, thrift, red fescue, sheeps fescue, sea campion and kidney vetch. Only native species will be employed. If top soil is required this should be thinly applied to the wall top and ericaceous.

5.4 Disturbance/degradation to habitats

The site contains the invasive weed **montbretia**. It is an offence to cause this weed to spread. To avoid the risk of spreading this weed it **will be treated prior to the commencement of works**. Montbretia can be removed by digging to remove underground corms and aerial parts; these are then crushed (e.g. with a garden roller) and laid out thinly to dry for 4 weeks, ideally on a sheet of corrugated iron (or, if possible, burnt on-site). It is likely there will still be some new growth later

in the season; wipe these leaves with Glyphosate the following October. Any material removed from the site must be checked for Montbretia including Montbretia bulbs to prevent spread of this weed off-site. This is especially important given the presence of valuable wildlife sites nearby. All invasive weeds will be eradicated prior to site works. Control methods will follow government guidance (Natural England and DEFRA, 2019).

5.5 Disturbance to Species

The site is currently not suitable for reptiles. **To ensure the site remains unsuitable for reptiles and avoid the need for an ecological watching brief during ground works; the site will be maintained by regular mowing until construction commences.**

Hedgehogs and nesting birds may be present in the boundary scrub and tree habitats. These will not be affected by the proposals so no mitigation for these species is required. Planting to create the dune communities will be informed by a search for nesting birds and hedgehogs. If nesting birds are encountered works will be delayed until dependant young have fledged. If hedgehogs are encountered they will be moved to a neighbouring area of undisturbed habitats.

Any trenches left open overnight will have a means of escape (e.g. a ramp).

The grassland is herb rich is it considered to be of biodiversity value at the 'low local' geographic scale. Some of the grassland will be retained. Habitat creation as detailed in section 5.3 will increase niche and native floristic diversity of the site and create habitats of high biodiversity value that are fitting to the local area.

The site may be of low local value for invertebrates. Habitat creation as detailed in section 5.3 will increase niche and native floristic diversity of the site and therefore increase invertebrate niche diversity.

5.6 Proposed biodiversity gain

Once the development is complete the sites potential for reptiles will be enhanced through the favourable cutting regime detailed in section 5.3. The landscape scheme for the site will include log or stone features with crevices to provide good refuge habitat for reptiles.

In compliance with the Biodiversity Supplementary Planning Document (SPD) and to achieve biodiversity gain the **new building will include three integral bee bricks, and integral bat box and an integral bird box.** The bee bricks will be installed on the south-facing wall 1-2m above ground level. Bee bricks contain multiple cavities for bees to lay their eggs and are integral to a building (see photograph 10). The bat box will be installed flush with the wall surface (as shown in Photograph 11) and sited near the roof in a dark location. The 'Green and Blue' bat block works well for rendered or clad finish and the woodstone box is appropriate for stone facing. A sparrow terrace (Photograph 8) will be installed flush with the wall surface and will be located under or close to the roof, on a sheltered side of the building.

A kestrel box will be placed within the mature cypress.



Photograph 10. Example bee brick



Photograph 11. 'Green and Blue' bat block and built in woodstone bat box `.



Photograph 12. Sparrow terrace.

5.7 Further Surveys

No further surveys are required.

5.8 Monitoring

No monitoring is required.

5.9 Residual Impacts

If all of the mitigation discussed above is implemented successfully, then it is considered likely that the residual impacts of the development will be minor positive due to the net gain of coastal sand dune and heath communities resulting in increased niche diversity and integral bat, bird and bee features.

Figure 3. Proposed site layout and ecological mitigation measures.



To ensure the site remains unsuitable for reptiles and avoid the need for an ecological watching brief during ground works; the site will be maintained by regular mowing until construction commences. Include stone and log pile features in the landscaping.

Treat montbreaia prior to work commencing onsite.

- Coastal heathland and rock crevice community to be created on wall top. See text for details.
- Coastal grassland community. See text for protection, retention and creation details.
- Sand dune community to be established on embankments. See text for details.

No topsoil to be imported onto the site (with exception of wall top planting and tree planting).

- Plant four native trees/shrubs.

New building to include three integral bee bricks, one integral bat tube and one integral bird box.

- A kestrel box to be installed on the retained cypress tree.

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Appendix 1 Summary of relevant legislation, policies and case law

Protection of Badgers Act (1992)

Badgers are protected by the Protection of Badgers Act (1992) and the Wildlife and Countryside Act 1981 (as amended), Schedule 6. It is an offence to intentionally kill, capture, injure or ill-treat any badger and to obstruct, destroy or damage a badger sett or disturb badgers within a sett.

Hedgerow Regulations 1997

Any hedgerows classified as 'important' under the 1997 Hedgerows Regulations cannot be removed without a Hedgerow Removal Notice issued by the relevant Local Authority unless previously approved as part of a planning permission.

National Planning Policy Framework 2023

The National Planning Policy Framework (NPPF) sets out national planning policy that is committed to minimising impacts on biodiversity and providing net gains in biodiversity where possible. Under NPPF, local planning authorities have an obligation to promote the preservation, restoration and recreation of Priority habitats, ecological networks and the protection and recovery of Priority species and identify and pursue opportunities for securing measurable net gains for biodiversity.

Natural Environment and Rural Communities Act (NERC) 2006

The Natural Environment and Rural Communities Act (NERC) requires all public authorities, including planning authorities to have regard to the purpose of conserving biodiversity whilst carrying out their normal functions. The NERC Act includes lists of Habitats and Species of Principal Importance (HPIs and SPIs) to the conservation of biodiversity (Section 41) that should be considered in the implementation of duties under the NERC Act. In line with government circular 06/2005 (ODPM, 2005) which provides supplementary guidance, the presence of a Priority species may be a material consideration when a planning authority is considering a development proposal.

The HPI and SPI listed under the NERC Act are largely also UK BAP Priority habitats and species. The UK Post-2010 Biodiversity Framework succeeds the UK BAP partnership; though its list of Priority species and habitats agreed under the UK BAP still form the basis of much biodiversity work in the UK. The current strategy for England is 'Biodiversity 2020: A Strategy for England's wildlife and ecosystem services'.

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

The Wildlife and Countryside Act 1981 (as amended) is the primary legislation for England and Wales for the protection of flora, fauna and the countryside. Part 1 of the Act deals with the protection of wildlife.

Amended by the Countryside and Rights of Way (CRoW) Act 2000

Most European Protected Species are now covered under the Conservation of Habitats and Species Regulations (see below) but some activities are still covered by the WCA such as obstructing access to a bat roost.

The WCA prohibits the release into the wild of non-native animal species listed on Schedule 9. It is also an offence to 'cause the spread' of plants listed on Schedule 9.

All British birds, their nests and eggs are protected in law. It is an offence to deliberately take, kill or injure any wild bird or to take, damage, or destroy any nest or egg of any wild bird. The birds listed under Schedule 1 of the Wildlife and Countryside Act are afforded additional protection against intentional or reckless disturbance whilst building a nest or in or near a nest containing eggs or dependent young.

All species of reptile and amphibian are protected by the WCA. Under Schedule 5, Reptiles such as adder, common lizard, slow worm and grass snake are protected against intentional killing, injuring or selling, and smooth newt, palmate newt, common frog and common toad are protected only against sale. Species such as the smooth snake, sand lizard and great crested newt are afforded additional protection by European legislation as described below. These species are thought to be absent from Cornwall (apart from one site in north Cornwall where sand lizard has been reintroduced).

A number of invertebrates, including the white-clawed crayfish, are protected under Schedule 5 of the Act.

The CRoW Act also specifies the duty of Local Authorities to further the conservation of listed (UK BAP priority) habitats and species.

Conservation of Habitats and Species Regulations 2010 (as amended)

The Conservation of Habitats and Species Regulations 2010 (as amended) are the means by which the EC Habitats and Species Directive (92/43/EC) is transposed in England and Wales and update the legislation and consolidate many amendments which have been made to the Regulations since they were first made in 1994.

These Regulations provide protection for European Protected Species (animals and plants listed in Annex IV Habitats Directive which are resident in the wild in Great Britain) including bats, dormice, great crested newts and otters. The Conservation of Habitats and Species (Amendment) Regulations 2012 placed new duties on public bodies to help "preserve, maintain and re-establish habitat for wild birds".

The designation and protection of domestic and European Sites e.g. Sites of Special Scientific Interest and Special Areas of Conservation (SAC) also falls within these Regulations.

Public bodies (including the Local Planning Authority) have a duty to have regard to the requirements of the Habitats Directive in carrying out their duties i.e. when determining a planning application.

European Protected Species (EPS) occurring in Cornwall: Bats, Dormice and Otter are protected under both the Conservation Regulations 2010 and the Wildlife and Countryside Act 1981 (as amended), it is an offence to:

- Intentionally kill, injure or capture an EPS;
- Intentionally or recklessly disturb an EPS;
- Intentionally or recklessly damage, destroy or obstruct access to a place of shelter or breeding (for example, bat roosts, hedgerows used by dormice), and this applies regardless of whether the species is actually present at the time (for example, a bat roost used in the winter for hibernation is protected throughout the year, even during the summer when it is not occupied).
- Possess or transport a bat or any part of an EPS, unless acquired legally;
- Sell, barter or exchange bats, or parts of an EPS.
- Intentionally handle a wild EPS or disturb an EPS whilst using a place of shelter/ breeding unless licensed to do so by the statutory conservation agency (Natural England).

Town and Country Planning Environmental Impact Assessment Regulations 2017

These regulations apply the amended EU directive "on the assessment of the effects of certain public and private projects on the environment" (usually referred to as the 'Environmental Impact Assessment Directive') to the planning system in England.

British Standard

In 2013 the first British Standard on Biodiversity (BS42020) was produced. This sets the standard for assessment of biodiversity within the planning process.

Case Law

There are several case laws in Britain relating to the duty of developers and planning authorities with respect to wildlife, resulting in several key principles summarised in the table below:

| Case / Appeal | Providing support for |
|---|---|
| Morge v Hampshire County Council (2011) | 'Disturbance' under the Conservation Regulations 2010 applies to an activity likely to impact negatively on the local population of a European Protected Species. |
| R v Cheshire East Council 'The Woolley Case' (2009) | Regarding European Protected Species, Local Authorities must apply the 'three tests' under the Conservation Regulations 2010 when deciding on planning applications: that there is no satisfactory alternative, there is an appropriate reason for the development, and that the development will not affect the favourable conservation status of protected species present. |

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| APP/P9502/A/08/2070105 (Appeal decision, Brecon, 2008) | Para 18: Local Planning Authorities cannot condition provision of a mitigation scheme; detailed mitigation must be provided prior to determination. |
| APP/C0820/A/07/2046271 (Appeal decision, Padstow, 2007) | Para 18: Full survey information must be provided prior to determination; not just for protected species, but also for BAP species (in this case corn buntings). |
| R v London Borough Council Bromley (2006) | Para 30: Environmental Impact Assessment required at outline planning stage. |
| R v Cornwall County Council 'The Cornwall Case' (2001) | Surveys for protected species cannot be conditioned; must be undertaken prior to determination. |

