



TECHNICAL APPENDIX 8.6 OUTLINE MONITORING AND MITIGATION PLAN

RETFORD CIRCULAR ECONOMY PROJECT

LOUD HIVE LIMITED

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The Outline Monitoring and Mitigation is an iterative document, first produced February 2023. This document will be reviewed and amended accordingly (and approved by the planning authority pursuant to any condition) prior to the commencement of each phase (or combined phases) in respect of applicable legislation, recommended survey methods and statutory licencing requirements, where relevant.

Commencing Phase	Document Review Date	Reviewer	Document Iteration	Comments
HR Phase 1				
LR Phase 1 – Soakaway Ponds				
LP Phase 2 – Filter Ponds				
HR Phase 2				
LR Phase 3				
LR Phase 4				
LR Phase 5				
HR Phase 3				
HR Phase 4				
HR Phase 5				
HR Phase 6				

1 SUMMARY

Arcus Consultancy Services Ltd, an ERM company, was commissioned by Lound Hive Limited to complete an ecological impact assessment for the Retford Circular Economy Project (the 'Proposed Development') on land south of Lound, Nottinghamshire (the 'Site').

The longevity of the Proposed Development means the assessed baseline condition is likely to change during the duration of the works, which presents challenges in ensuring appropriate mitigation and to safeguard ecological features and ensure legal compliance is maintained. This plan provides a means for identifying any changes and ensuring commitments are met.

The survey methodology detailed within this report describes potential protected species survey requirements on the Site through its approximate 22-25 year phased extraction process, based on baseline survey results and desk study information. Whilst monitoring surveys detailed within this report are not exhaustive, standard methodology and potential further mitigation and licensing requirements are provided for: bats, great crested newt, badger, reptiles, water vole, otter and invertebrates.

All of which either are currently present or have the potential to be present on the Site during the lifetime of the Proposed Development.

2 INTRODUCTION AND BACKGROUND

Arcus Consultancy Services Ltd, an ERM company, was commissioned by Lound Hive Limited (the 'Applicant') to complete an ecological impact assessment for the Retford Circular Economy Project (the 'Proposed Development') on land south of Lound, Nottinghamshire (the 'Site').

Due to the phased approach of the Proposed Development over a forecasted 22-25 year time period, ongoing ecological surveys and monitoring would be required to safeguard protected species and ensure legal compliance. This report presents survey requirements throughout the phased approach to works, and potential additional survey requirements and/or mitigation should protected species be located. Survey effort is based on the Ecology¹ and Ornithology² survey results reports created to inform the Ecological Impact Assessment (EcIA), as presented within the Environmental Statement (ES), Chapter 8, Volume 3 Technical Appendices.

This document forms part of the embedded mitigation for the Proposed Development and would be reviewed and updated periodically to ensure scope, survey methods and legislative requirements remain current.

2.1 Planning Policy and Legislation

Relevant legislation and policy are summarised in Appendix A.

¹ Arcus (2022) Ecology Survey Report, Retford Circular Economy Project, Lound Hive Limited. November 2022.

² Arcus (2022) Ornithology Survey Report, Retford Circular Economy Project, Lound Hive Limited. October 2022.

3 PHASED APPROACH

Initially two site establishment phases are planned:

- Establishment Phase 1: the whole Site is secured, protection is put in around retained woodland, advance planting carried out and the construction of the western section of haul route/conveyor takes place.
- Establishment Phase 2: haul route/conveyor extended to its full length, settlement and soakaway ponds, and overburden store created.

Establishment is followed by excavation of the pulverised fuel ash (PFA) and subsequent infilling and restoration which would take place over 11 phases throughout the Site. Table 3.1 below, extracted from the draft working scheme and described further within the Environmental Statement (ES) Chapter 5, Volume 1³, provides an estimate for the timescales for each Phase.

Note that the below assumes the full production tonnage is extracted from the Site from year 1. However, it is likely that extraction would scale up to full production over a longer period, hence the estimated extraction period of 22-25 years.

Table 3.1: Phasing Plan

Phase	Size	Year work commencing	Restoration Finalised (Year)
HR Phase 1	8.2 ha	1	4
LR Phase 1 – Soakaway Ponds	4.0 ha	3	22
LP Phase 2 – Filter Ponds	3.5 ha	3	22
HR Phase 2	7.5 ha	5	5
LR Phase 3	7.0 ha	8	9
LR Phase 4	7.0 ha	9	10
LR Phase 5	7.0 ha	10	11
HR Phase 3	7.5 ha	11	14
HR Phase 4	7.5 ha	14	17
HR Phase 5	7.5 ha	17	20
HR Phase 6	7.5 ha	20	20

³ Arcus (2022) Environmental Statement. Retford Circular Economy Project, Lound Hive Limited.

4 SURVEY VALIDITY

Prior to work on each phased area, survey updates may be required to maintain an accurate baseline and safeguard protected species. In line with guidance⁴, ecological surveys are generally considered valid for 18 months⁴, at which point, if work has not commenced, an update would be required (unless otherwise agreed). It is recommended that an update Extended Phase 1 Habitat Survey is completed prior to the commencement of construction on each phase (if phases commence within 18 months of each other it may be possible to combine surveys, see Section 5). This would ensure results remain valid and allow time for additional surveys/mitigation if required (further discussed in Sections 0 to 0 of this document).

Results of the update Extended Phase 1 Habitat Survey and any additional surveys required as a result of the findings would be presented in a separate report for each phase. Subject to the results of surveys, species licensing may be required and survey efforts must ensure sufficient time is allowed for the applications process, as necessary.

This report is based on current best practice survey techniques and current legislation. Updates and/or changes to protected species survey guidance and legislation would be observed throughout the development period and this document updated accordingly. This is an iterative document, subject to ongoing review throughout the development process.

⁴ CIEEM (2019) Advice note on the lifespan of ecological reports and surveys. April 2019.

5 PRE-PHASE COMMENCEMENT REQUIREMENTS

Prior to the commencement of works within each phase, surveys would be required to update the baseline condition and inform mitigation measures, based on prevailing legislation, standards and guidance. In circumstances where construction on adjacent phases starts within an 18-month time period, a combined survey effort over multiple phases may be undertaken.

6 Desk Study

A desk study update would be undertaken to identify any changes since the initial review. This would include:

- A review of Natural England's Multi Agency Geographic Information for the Countryside⁵ (MAGIC) website to obtain information about local or national statutory designated sites such as Local Nature Reserves (LNR) and Sites of Special Scientific Interest (SSSI) within 2 km of the Site;
- An updated MAGIC search for sites in the National Site Network (Special Area of Conservation (SAC), Special Protection Area (SPA) or Ramsar sites) within 5 km of the Site;
- An updated MAGIC search for information about important habitats, such as Ancient Woodland, and European Protected Species (EPS) mitigation licences; and
- An update consultation with Nottinghamshire Biological and Geological Records Centre (NBGR) would be undertaken to acquire local records of features of ecological interest within 2 km of the Site, which included non-statutory designated Local Wildlife Sites (LWS) and notable and protected species.

Should ecological features additional to the original assessment be identified (e.g. hazel dormouse), additional surveys not detailed within this report may be required.

6.1 Designated Sites

For phases located adjacent to the SSSI, open communication would be maintained with NWT. Any new features and/or management conditions required by NWT and considered proportionate would be incorporated as required.

⁵ Multi Agency Geographic Information for Countryside (MAGIC) [Online] Available at: <https://magic.defra.gov.uk/home.htm>
[Accessed August 2022]

7 Habitats

An update Extended Phase 1 Habitat Survey would be conducted prior to the commencement of construction as required. The survey would include all land within the appropriate phase area and within 30 m. Habitats would be classified and mapped according to standard methods⁶ and their potential to support notable and protected species re-assessed. The survey would be carried out following the Guidelines for Preliminary Ecological Appraisal⁷. Target Notes (TN) would be used to record features of ecological interest.

A biodiversity net gain calculation would be completed per phase, the baseline values would be calculated as per the updated Phase 1 Habitat Survey results.

If habitats recorded are in line with the initial Phase 1, no further action is required. However, should they significantly differ further impact assessment may need to be undertaken. Further survey requirements may include:

- National Vegetation Classification (NVC) survey; and
- Invasive species walkover.

7.1 Potential Mitigation Requirements

7.1.1 Avoidance

As per best practice, avoidance is the preferred means of reducing effects, which may include development and construction methods designed to avoid the loss or damage of identified habitats of importance.

7.1.2 Mitigation

If avoidance is not possible, and subject to final design and construction methods, mitigation may include restoring impacted habitat and/or offsetting for the loss elsewhere on a like for like basis. Exact establishment, management and monitoring prescriptions are dependent on the habitat lost.

Should invasive plant species, as listed on Schedule 9 of the Wildlife and Countryside Act, be identified within the Site measures are required to prevent their spread. A specialist should be consulted to produce an invasive species management plan. Dependant on the invasive species present and its extent, prescriptions could range from hand pulling to broader scale more intrusive removal methods.

⁶ JNCC (2010) *Handbook for Phase 1 habitat survey: a technique for environmental audit*. Nature Conservancy Council.

⁷ CIEEM (2017) *Guidelines for Preliminary Ecological Appraisal, 2nd Edition*. Chartered Institute of Ecology and Environmental Management, Winchester.

8 Bats

During the Extended Phase 1 Habitat Survey, a preliminary assessment of the potential of features within each phase to support bat roosts and/or provide suitable commuting or foraging habitat would be conducted. All bat assessment work and recommendations would follow the latest guidelines produced by the Bat Conservation Trust (BCT)⁸. This initial bat assessment informs whether or not further surveys are required to assess the potential effects of the Development on bats. Further survey requirements may include:

- Roost inspections of trees, buildings or structures;
- Dawn return and/ or dusk emergence surveys;
- Activity surveys comprising walked transects and remote monitoring; and
- Bat swarming assessment.

8.1 Potential Mitigation Requirements

8.1.1 Avoidance

As per best practice, avoidance is the preferred means of reducing effects, which may include Development and construction methods designed to avoid the loss or damage of identified features of importance to bats.

8.1.2 Mitigation

Due to legal protections afforded by the Wildlife and Countryside Act 1981 (as amended) should a roosting bat be located within any tree or structure to be directly impacted or disturbed by the Development a European Protected Species Mitigation (EPSM) licence would be required. A licence application will require the following:

- A method statement detailing how impacts to bats will be reduced;
- A work schedule detailing the order activities will be completed;
- A reasoned statement showing the activity fits the criteria for licensing and there is no satisfactory alternative;
- Full bat survey report(s); and
- A bat licenced ecological consultant who has held a bat mitigation licence for the applicable species for the last three years. Or references to show the bat licenced ecologist has the necessary experience.

In certain situations, if low impact works disturb common, widespread bat species in maximum three low conservation status roosts (feeding, day, night and transitional roosts) registered consultants may complete works under a bat low impact class licence. In this situation works should last a maximum of 6 months. Eligibility of works is at the discretion of the registered consultant.

⁸ Collins, J. (ed.) (2016) *Bat Surveys for Professional Ecologists: Good Practice Guidelines* (3rd ed.). The Bat Conservation Trust, London.

9 Great Crested Newt

All waterbodies located within the Phase and a 500 m buffer would be subject to Habitat Suitability Index (HSI) assessment⁹ during the Extended Phase 1 Habitat Survey. The HSI assessment considers a range of features that affect the suitability of ponds to support GCN; e.g., size of pond, extent of shading, abundance of aquatic plants, presence of fish and quality of surrounding habitat. The assessment results in a score that helps to determine the suitability of ponds and the need for further, more detailed surveys.

Further survey requirements may include:

- Environmental DNA (eDNA) water sample testing;
- Presence-absence surveys; and
- Population surveys.

All surveys would follow prevailing guidance and best practice standards^{10,11,12}.

9.1 Potential Mitigation Requirements

9.1.1 Avoidance

As per best practice, if GCN are identified on Site, avoidance is the preferred means of reducing effects. This which may include amending Development design to avoid waterbodies and suitable terrestrial vegetation and/or updated construction methods and timings of works.

9.1.2 Mitigation

If GCN are found during surveys, a European Protected Species Mitigation (EPSM) licence may be required from Natural England. To determine this a 'rapid risk assessment' would be undertaken for the Proposed Development using Natural England's rapid assessment tool¹³. The tool calculates the likelihood of the works resulting in a legal offence in relation to GCN. If an offence is possible, licencing would be required. In some circumstances, where an offence is unlikely, works may be able to progress under a non-licenced method statement (NLMS).

9.1.2.1 Licensing

Any works with potential to capturing, killing, disturbing or injure GCN, damage or destroy their breeding or resting places or obstruct access to GCN resting or sheltering places, require a mitigation licence.

At time of writing district level GCN licencing does not operate in Nottinghamshire but this may be an option in the future.

9.1.2.2 Non-Licenced Method-Statement

In certain cases, licensing may not be considered appropriate, and works may go ahead under a NLMS. This is at the discretion of a GCN licenced ecologist and may go ahead in specific circumstances when the following are considered:

- Distance of Development from known breeding ponds;
- Barriers to GCN movement;
- Suitable GCN habitat to be retained within the Development;

⁹ Oldham R.S, et al. (2000) *Evaluating the suitability of habitat for the Great Crested Newt (Triturus cristatus)*. Herpetological Journal 10 (4), 143-155.

¹⁰ English Nature (2001) *Great crested newt mitigation guidelines*. Peterborough: English Nature

¹¹ ARG-UK (2017) *Advice Note 4: Amphibian Disease Precautions: A Guide for UK Fieldworkers*. Version 2, revised March 2017

¹² JNCC (2003) *Herpetofauna Workers' Manual*. Peterborough: JNCC.

¹³ Natural England mitigation licence template (WML A14), Available from www.gov.uk [Accessed February 2023]

- Controlled timings of works during the seasonal period when GCN are active (March to October) to avoid hibernating GCN; and
- Planned habitat enhancements.

A NLMS details a method of works to ensure the construction of the Development does not impact GCN, their breeding sites or resting places, all of which are protected by UK and European law. The NLMS would identify specific working methods and controlled timings of works. To ensure robustness, a NLMS generally requires that any works within habitat suitable for terrestrial GCN are completed under the supervision of a suitably experienced and licenced GCN ecologist.

10 Badger

In order to protect badgers from persecution they are not discussed within this report, all detail is provided within a confidential annex¹⁴.

¹⁴ Arcus (2023) Technical Appendix 8.2: Confidential Badger Annex. Lound Hive Limited, February 2023.

11 Birds

Should there be evidence to suggest the baseline condition has changed, or different Schedule 1-listed species may breed within the zone of influence of the Proposed Development, further surveys may be required. Survey methods would be dictated by the nature of the change and potential effects, but would follow prevailing guidance and best practice standards.

Further survey requirements may include:

- Non-breeding season surveys ; and
- Breeding bird surveys.

11.1 Potential Mitigation Requirements

All nesting birds are protected under the Wildlife and Countryside Act 1981 (as amended) and it is likely that nesting birds would be encountered during all stages of the Proposed Development and in most/all phases. As such, a range of sequential mitigation strategies can be used to reduce the chance of adverse effects, some of which may constitute a legal offence. Nesting birds also present a potential risk to delivery of the Proposed Development, through delayed works extending the anticipated timescales.

11.1.1 Avoidance

Where possible, any vegetation removal, including, but not limited to, trees, scrub, tall ruderal and long grassland vegetation, should be avoided.

If it is not possible to avoid removing the vegetation, then clearance should take place in the non-breeding season. This is approximately September to February; however, care must be taken as some species can nest year-round in suitable conditions.

11.1.2 Mitigation

If vegetation is to be removed during the peak breeding season (approximately March to August), then nesting bird checks would need to be completed no more than 48 hours before removal.

11.1.3 Schedule 1 species

Schedule 1-listed species are protected from disturbance when breeding. If there is evidence to suggest any nesting schedule 1 species may be subject to disturbance as a result of the Proposed Development further avoidance and/or mitigation may be required. Any such measures would be based on prevailing research/guidance and would be need to be Site- and situation specific.

11.1.4 Licensing

Disturbance licences for nesting Schedule 1 and/or to permit the known destruction of an active bird nest are not currently available for the purposes of development.

12 Reptiles

During the Extended Phase 1 Habitat Survey, a preliminary assessment of the habitat features within the phase to support reptiles would be conducted. This initial assessment would inform whether any further surveys are required. Further surveys may include presence/ absence surveys and population assessment. All surveys would follow best practice methodology¹⁵.

12.1 Potential Mitigation Requirements

Should reptile surveys be identified as a requirement and reptiles be located, additional measures are required to minimise the impact of the Development on reptiles. A method statement would be produced.

12.1.1 Avoidance

As per best practice, avoidance is the preferred means of reducing effects, which may include one or more of the following:

- Development and construction methods designed to avoid the loss or damage of reptile habitat and to maintain habitat connectivity; and
- Time works to avoid reptile hibernation (October-March).

12.1.2 Mitigation

If avoidance is not possible, and subject to final design and construction methods, mitigation may include one or more of the following:

- Use of fencing to prevent reptile movement into areas of potentially harmful activity;

Habitat manipulation to displace reptiles away from harmful areas (provided there is a suitable safe area adjacent which they can move to). Catching reptiles and translocating them to a suitable receptor site. Reptile translocation should be treated as a last resort and can only be carried out during the active reptile season (ideally late April to June and/or late August to September). Consecutive daily visits are required for a minimum of 30 days (although dependant on population and Site size this may continue for a significantly longer period).

All reptile mitigation would be dependent on whether or not GCN presence is identified and therefore, the specifics of any associated licensing/mitigation needs for this European Protected Species.

¹⁵ Froglife (1999), *Reptile survey: an introduction to planning, conducting and interpreting surveys for snake and lizard conservation*. Froglife Advice Sheet 10. Froglife.

13 Water Vole

During the Extended Phase 1 Habitat Survey, a preliminary assessment of the habitat features within the phase to support water vole would be conducted. The water vole assessment work and recommendations follow good practice guidelines¹⁶. This initial assessment informs whether or not further surveys are required to assess the potential effects of the Proposed Development on water vole. Further presence/ absence surveys in line with industry standard survey methodology¹⁷ may be required.

13.1 Potential Mitigation Requirements

Should water vole be located within a phase, impact analysis would be undertaken. However, in most cases works within 8 m of a watercourse containing water vole would require licencing.

13.1.1 Avoidance

Should water vole be identified on Site, as per best practice, avoidance is the preferred means of reducing effects. An 8 m no-works buffer should be adhered to around any watercourse with water vole presence. This buffer may be increased dependant on working methods and weight of machinery tracking over adjacent land.

13.1.2 Licencing

If avoidance is not possible, licencing may be required, this may entail displacement and/or translocation.

13.1.2.1 Displacement

A displacement licence may only be used by a registered person and their accredited agents on limited extents of water course (details below). This involves vegetation clearance to make the habitat unsuitable for water vole (so they re-locate to adjacent habitat) followed by destruction of the habitat.

Vegetation removal prior to displacement.

Vegetation removal must conform to the following conditions:

- All locations of water vole burrows must be identified prior to removal;
- Vegetation removal must only take place between 15 February to 15 April or 15th September to 15th October, inclusive (although dependant on location and weather conditions this timeframe may be extended);
- Vegetation cutting is limited to a continuous length of bank not exceeding 50 metres;
- There must be a gap of at least 500 m in length between cuts on the same bank;
- The unaffected habitat must be sufficient in terms of both quantity and quality to accommodate the displaced animals and those outside the footprint of the works;
- No subsequent attempt at displacement of water voles may be undertaken within the unaffected adjacent habitat for a period of 12 months or where this would result in the permanent loss of a continuous length over 50 m (which may be relevant if a water course is present in multiple phase areas of the Development).

Destructive Search

¹⁷ Dean, M (2021) Water Vole Field Signs and Habitat Assessments: A Practical Guide to Water Vole Surveys Pelagic Publishing, Exeter, UK

After the vegetation strip the area should be left for five to ten consecutive days before a destructive search for water vole burrows is undertaken. Prior to the destructive search the cut area must be surveyed for any evidence of water vole.

Any water voles found during excavation of burrows must either be allowed to escape to an adjacent refuge area or be captured and kept in a suitable container with food and bedding, then released in an adjacent refugia on the same day.

Works should commence within 5 days of completing the destructive search, where this is not possible measures must be taken to deter water vole from returning to the area.

13.1.2.2 *Translocation*

If a licence is required and displacement is not possible e.g., due to the length of the water course, translocation may be used as a last resort. Fencing and traps are used to remove the voles from the Development area. Both the approach to trapping, and the receptor site would require detailing within the licence. Enhancement or habitat creation required at the receptor must be established prior to the translocation. New habitat acting as a receptor site must be capable of supporting water voles before any trapping starts. In extreme cases water voles may require holding in captivity whilst the receptor site establishes, however, this is not best practice and should be avoided.

Exclusion and trapping should only be undertaken in March-April and September-October when the water voles are active and are less likely to have dependent young in their burrows.

To compensate for negative effects on water vole and their habitat, the mitigation proposals may include:

- Providing improved habitat for the water voles, to make up for any lost through the Proposed Development;
- Improving water quality; or
- Enhancing bank and vegetation structure.

Post translocation monitoring is required to measure success of both habitat establishment and the water vole population. This may include surveying for burrows and feeding signs or additional trapping surveys. The length of the monitoring period would depend on the nature of the mitigation and would be detailed in the licence.

14 Otter

During the Extended Phase 1 Habitat Survey a preliminary assessment of the habitat features within the phase to support otter would be conducted. The otter assessment work and recommendations would follow good practice guidelines¹⁸. This initial assessment informs further survey requirement to assess the potential effects of the Proposed Development on otter.

Further survey requirements may include:

- Presence/ absence surveys; and
- Holt monitoring (a licensable activity).

14.1 Potential Mitigation Requirements

14.1.1 Avoidance

Should otter be identified on Site, as per best practice, avoidance is the preferred means of reducing effects. Should a natal holt be located a no works buffer of up to 200 m may be required. This buffer may be amended dependant on working methods.

14.1.2 Licencing

If an otter holt is located, avoidance is not possible and it is likely to be impacted, licencing is required. Impacts include:

- Capturing, killing, disturbing or injuring otter - on purpose or by not taking enough care;
- Damaging or destroying their breeding or resting places - even accidentally; and
- Obstructing access to their resting or sheltering places - on purpose or by not taking enough care.

A licence application would require the following:

- A method statement detailing how impacts to otter would be reduced throughout works;
- A work schedule detailing the order activities would be completed;
- A reasoned statement to show that the activity fits the criteria and that there is no satisfactory alternative;
- Full otter survey report(s); and
- A licenced ecological consultant who has held an otter mitigation licence for the last three years. Or references to show the ecologist has the necessary experience.

If the destruction of an otter holt is unavoidable, the following must be adhered to:

- No net loss of breeding or resting sites;
- An enhanced habitat, for example, its quality or area compared with that lost is provided; and
- Any loss of otter access and habitat connectivity is replaced.

Compensation measures may include (but are not limited to):

- Artificial holt creation to replace those that are lost/ damaged;
- Creation of viaducts or underpasses to maintain habitat connectivity;
- Installation of mammal ledges on bridges and culverts to allow for continued passage alongside water bodies; and
- Restoration (and enhancement) to compensate for lost habitats.

A monitoring and management plan is also likely to be required to ensure the licence is adhered to, the otter population is not adversely impacted and that habitats are managed effectively.

15 Invertebrates

Invertebrate Habitat Potential (IHP) assessment would be undertaken at each phase in order to assess the potential the habitats have to support more specialised, unique or rare invertebrate assemblages and highlight the need for further survey. The survey would follow the IHP assessment methodology¹⁹. Should the initial IHP assessment identify habitats of invertebrate suitability which cannot be avoided or compensated for by the Proposed Development, further invertebrate surveys may be required.

15.1 Potential Mitigation Requirements

Invertebrate surveys may be required, upon completion, a qualified entomologist would make recommendations on mitigation and any further requirements. Avoidance measures such as retaining important habitat, altering the timing of works or changing methods of working may be suggested. Other mitigation and compensation measures may include:

- Reducing the scale of the impact by minimising the Proposed Development footprint where possible;
- Habitat creation, based on the impact to the Site's most valuable resources which may be impacted or lost;
- Phasing of works and restoration activity to provide habitat continuity; and/or
- Maintaining sufficient suitable habitat, for example by re-using soils and substrates.

If there is no alternate habitat close by invertebrate translocation may be used (often as a last resort). More detailed species-specific measures may also be required.

¹⁹ Dobson and Fairclough (2021) Rapid Assessments of the Potential Value of Invertebrate Habitats: Applications for Planning and Nature Conservation ('Phase 1 for Bugs'). CIEEM. June 2021.

16 Other Species

Subject to changing legislation and baseline condition, additional species may need to be considered in future iterations of this document

APPENDIX A – PLANNING POLICY AND LEGISLATION

The Wildlife & Countryside Act 1981

The Wildlife and Countryside Act 1981²⁰, as amended by the Countryside and Rights of Way Act (CROW) 2000²¹ and the Natural Environment and Rural Communities Act (NERC) 2006²², consolidates and amends existing national legislation to implement the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention) and Council Directive 79/409/EEC on the Conservation of Wild Birds (Birds Directive)²³, making it an offence to:

- Intentionally kill, injure or take any wild bird or their eggs or nests (with certain exceptions) and disturb any bird species listed under Schedule 1 to the Act, or its dependent young while it is nesting;
- Intentionally kill, injure or take any wild animal listed under Schedule 5 to the Act; intentionally or recklessly damage, destroy or obstruct any place used for shelter or protection by any wild animal listed under Schedule 5 to the Act; intentionally or recklessly disturb certain Schedule 5 animal species while they occupy a place used for shelter or protection; and
- Pick or uproot any wild plant listed under Schedule 8 of the Act. Schedule 9, Part II of the Act also lists many species for which it is an offence to plant, or otherwise cause to grow, in the wild. Any material containing Japanese knotweed is also identified as controlled waste under the Environment Protection Act 1990 and must be disposed of properly at licenced landfill according to the Environmental Protection Act (Duty of Care) Regulations 1991.

Habitat Regulations 2017

The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019²⁴ (the 'Habitat Regulations') are the principal means by which Council Directive 92/43/EEC on the Conservation of Natural Habitats and Wild Flora and Fauna (the 'Habitats Directive') is transposed into law in England and Wales. The objective of the Habitats Directive is to protect biodiversity through the conservation of natural habitats and species of wild fauna and flora. The Directive lays down rules for the protection, management and exploitation of such habitats and species and makes it an offence to deliberately capture, kill or disturb wild animals protected under the Habitat Regulations. It is also an offence to damage or destroy a breeding site or resting place of such an animal (even if the animal is not present at the time).

Natural Environment & Rural Communities (NERC) Act 2006

The NERC Act 2006²² places a duty on local planning authorities to have due regard for biodiversity and nature conservation during the course of their operations, and thus ensures that biodiversity is a key consideration in the planning process.

²⁰ Legislation.gov.uk *Wildlife and Countryside Act 1981 (as amended)* [online] Available at: <http://www.legislation.gov.uk/ukpga/1981/69> [Accessed June 2022]

²¹ Legislation.gov.uk *The Countryside and Rights of Way Act 2000* [online] Available at: <http://www.legislation.gov.uk/ukpga/2000/37/contents> [Accessed June 2022]

²² Legislation.gov.uk *Natural Environment and Rural Communities Act 2006* [online] Available at: <https://www.legislation.gov.uk/ukpga/2006/16/contents> [Accessed June 2022]

²³ EUR Lex: Access to European Law *Birds Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds* [online] Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009L0147> [Accessed June 2022]

²⁴ Legislation.gov.uk *The Conservation of Habitats and Species Regulations 2017* [online] Available at: <https://www.legislation.gov.uk/uksi/2017/1012/contents/made> [Accessed June 2022]

Protection of Badgers Act 1992

Badgers receive strict protection under the Protection of Badgers Act 1992²⁵, which prohibits the taking, injuring, selling, possessing or killing of badgers and makes it an offence to ill-treat any badger, damage, destroy, disturb or cause a dog to enter a badger sett. The 1992 Act defines a badger sett as "*any structure or place, which displays signs indicating current use by a badger*".

National Planning Policy Framework 2021

The National Planning Policy Framework (NPPF) 2021²⁶ sets out the Government's requirement for the planning system in England and in doing so establishes framework within which local planning authorities can develop their own planning policies. The NPPF explicitly addresses the conservation and enhancement of the natural environment, including biodiversity, through paragraphs 174–177.

The Environment Act 2021

The Environment Act 2021²⁷ provides for the establishment of the Office for Environmental Protection (OEP). It also provides a framework for improving environmental management to include: waste and resources, water quality, nature and biodiversity and air quality. It aims to deliver long-term targets to improve environmental conditions and reduce pollution.

The Act addresses nature conservation with strengthened obligations on developers to ensure Biodiversity Net Gain (BNG) is achieved for developments, together with establishing routes for strengthening woodland protection and Local Nature Recovery Strategies (LNRSs). A Natural England administered public register would be set up where sites have been committed for BNG and such sites would need to be managed for at least 30 years.

²⁵ Legislation.gov.uk *Protection of Badgers Act 1992* [Online] Available at: <https://www.legislation.gov.uk/ukpga/1992/51/contents> [Accessed August 2022]

²⁶ Gov.UK *National Policy Planning Framework 2021* [Online] Available from: <https://www.gov.uk/government/publications/national-planning-policy-framework-2> [Accessed June 2022]

²⁷ Legislation.gov.uk *The Environment Act 2021* [Online] Available at: [Environment Act 2021 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2021/23/contents) [Accessed August 2022]

APPENDIX B: SURVEY EFFORT AND MITIGATION SUMMARY

Survey		Potential Further Survey/ Assessment/ Consultation	Potential Further Requirements/ Mitigation	
			Outcome	Further Requirements
Desk Study Review		If new features are identified as present additional surveys may be required e.g. dormouse or beaver. If adjacent to SSSI, consult with NWT to identify any new management or features present.	Update to CEMP if required. Mitigation based on consultee responses if appropriate.	
Ecology				
Extended Phase 1 Habitat Survey		Phase 1 to inform/ update species specific requirements as detailed below.	Habitats comparable to baseline.	No further action.
			Habitats differ to baseline.	Assessment of potential effects (NVC survey if required).
Bat Roost and Habitat Assessment		If potential roost features are present: nocturnal roost surveys (May to August/ September). If extensive suitable connected habitat is present: activity surveys (April to October). If multiple potential roost features are present in proximity: swarming surveys (mid-August to October).	Bats Absent.	Contractor Awareness.
			Bats Present.	Avoidance or Licensing: box boxes, habitat management, monitoring.
GCN HSI Assessment		If HSI indicated suitable waterbodies: GCN eDNA (mid-April to June) and/ or population surveys (mid-March to June).	GCN Absent	Contractor Awareness
			GCN Present (population fitting Natural England Assessment Tool criteria)	Avoidance or NLMS: specific working methods, supervision and timings.
			GCN Present (population does not fit criteria in Natural England Assessment Tool)	Avoidance or Licensing: receptor site management, habitat creation/ restoration/ enhancement, GCN capture/ exclusion, post-

				Development management, maintenance and population monitoring.
Badger Walkover		Further detail provided with Confidential Badger Annex ¹⁴ .		
Reptile Habitat Assessment		If suitable habitat is identified: Presence-absence surveys (April-September).	Reptiles Absent.	Contractor Awareness.
			Low Population.	Avoidance or Method Statement with staged clearance, construction methods and timings.
			High Population.	Avoidance or Method statement for translocation, receptor site, habitat creation and monitoring.
Water Vole Habitat Assessment		If suitable habitat is identified: Presence-absence surveys (mid-April-to September).	Water Vole Absent.	Contractor Awareness
			Water Vole Present (fits criteria in Section 13.1.2).	Avoidance or Displacement Licence.
			Water Vole Present (does not fit criteria in Section 13.1.2).	Avoidance or Translocation Licence.
Otter Habitat Assessment		If suitable habitat is identified: Presence-absence surveys.	Otter Absent.	Contractor Awareness.
			Otter Present (No Holts).	Habitat restoration and measures to enhance habitat connectivity.
			Otter Holt Present.	Avoidance or Licensing: artificial holt creation, measures to maintain

				connectivity, habitat restoration and enhancement, monitoring and management plan.
Invertebrate Habitat Assessment		If suitable habitat is identified: in depth invertebrate survey (nature of survey depends on species assemblage and habitat type).	No notable species/ population present.	General invertebrate habitat creation/ enhancement.
			Notable species/ population present.	Avoidance, habitat creation and enhancement. and/or Licensing (specific species only).
Ornithology				
Bird Habitat Assessment		If habitats retain suitability update NBBS (October to March) and BBS (March to July) surveys are required. Additional species-specific surveys may also be needed e.g. In presence of a schedule 1 species.	Specific mitigation dependant on species assemblage. Likely to consist of: bird box installation, habitat creation and/or enhancement. In some cases, monitoring may be required. Presence of a schedule 1 bird species may necessitate licensing.	