

Mid Kent Golf Club, Singlewell Road, Gravesend, Kent

Preliminary Ecological Appraisal

29th April 2022 / Ref No 2022/02/07

Client: Mid Kent Gold Club



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Contents

1	Introduction	2
1.1	Background to the Scheme	2
1.2	Survey Location/Area.....	2
1.3	Survey Objectives	2
1.4	Limitations.....	2
2	Methodology	6
2.1	Desk Study	6
2.2	Scoping Survey.....	6
3	Baseline Ecological Conditions	8
3.1	Designated Nature Conservation Sites	8
3.2	Habitats	8
3.3	Amphibians	11
3.4	Reptiles.....	12
3.5	Birds	12
3.6	Hazel Dormouse	12
3.7	Badger	12
3.8	Bats	12
3.9	Other Species	13
4	Ecological constraints and opportunities, recommendations for mitigation, compensation and further survey	14
4.1	Designated Nature Conservation Sites	14
4.2	Habitats	15
4.3	Amphibians	15
4.4	Reptiles.....	15
4.5	Birds	15
4.6	Hazel Dormouse	16
4.7	Badger	16
4.8	Bats	16
4.9	Other Species	17
4.10	Additional Recommendations: Enhancements	17
5	References and Bibliography	19

1 Introduction

1.1 Background to the Scheme

KB Ecology Ltd was commissioned to undertake a baseline ecological survey and a preliminary ecological appraisal with regards to a proposed development at Mid Kent Golf Club, Singlewell Road, Gravesend DA11 7RB Kent, in support of a planning application for the refurbishment and extension of the clubhouse.

1.2 Survey Location/Area

The site is located at approximately TQ 646 723. The location of the site is shown on Figure 1 and Figure 2.

1.3 Survey Objectives

The purpose of this survey is to provide a scoping assessment and to assist in demonstrating compliance with wildlife legislation and planning policy objectives.

The key objectives are as follows:

- Identify all relevant statutory and non-statutory designated sites and features of ecological significance within the site and its surroundings.
- Assess the potential for the presence of protected species and species of principal conservation importance, important habitats or other biodiversity features within the site and its surroundings.
- Provide recommendations for further surveys where assessed as necessary and suggest potential enhancements.
- Present the likely significance of ecological impacts on the proposed development.
- Provide an early indication of potential ecological mitigation and compensation requirements necessary as part of any development proposals.

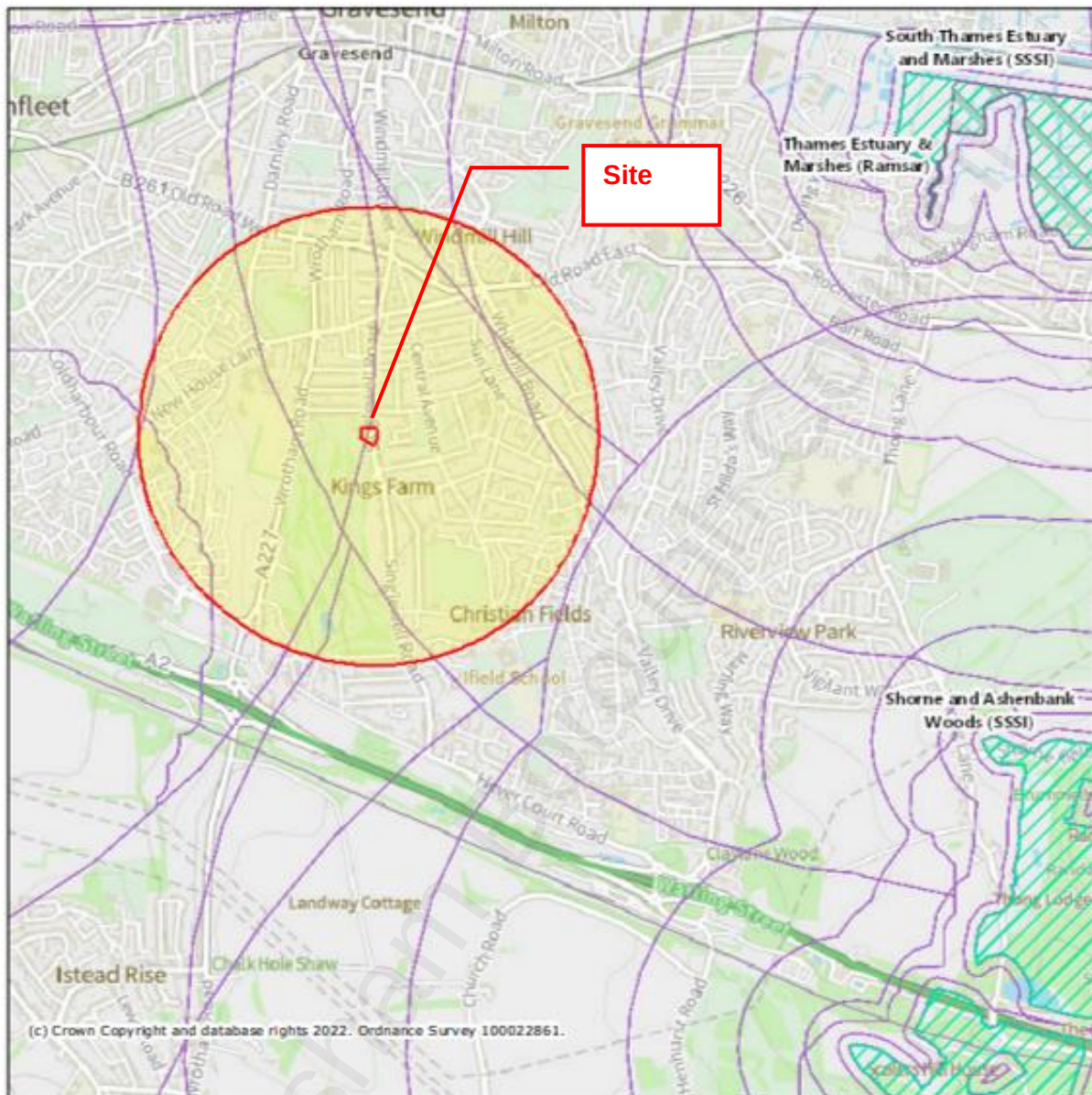
A summary of wildlife legislation and policy has been included in Appendix A.

1.4 Limitations

This report has been prepared and provided in accordance with the Chartered Institute of Ecology and Environmental Management's Code of Professional Conduct and the opinions expressed are true and professional bona fide opinions. It records the potential for flora and fauna evident on the days of the site visits. It does not record any flora or fauna that may appear at other times of the year and, as such, were not evident at the time of visit.

The findings of this report represent the professional opinion of a qualified ecologist and do not constitute professional legal advice. The client may wish to seek professional legal interpretation of the relevant wildlife legislation cited in this document.

Figure 1



Legend

- Ramsar Sites (England)
- Sites of Special Scientific Interest (England)
- SSSI Impact Risk Zones - to assess planning applications for likely impacts on SSSIs/SACs/SPAs & Ramsar sites (England)
- Special Areas of Conservation (England)
- Special Protection Areas (England)



Projection = OSG836

xmin = 558800

ymin = 168600

xmax = 572100

ymax = 175100

Map produced by MAGiC on 29 April, 2022.

Copyright resides with the data suppliers and the map must not be reproduced without their permission. Some information in MAGiC is a snapshot of the information that is being maintained or continually updated by the originating organisation. Please refer to the metadata for details as information may be illustrative or representative rather than definitive at this stage.

K-LIS - Figure 2

April 29, 2022

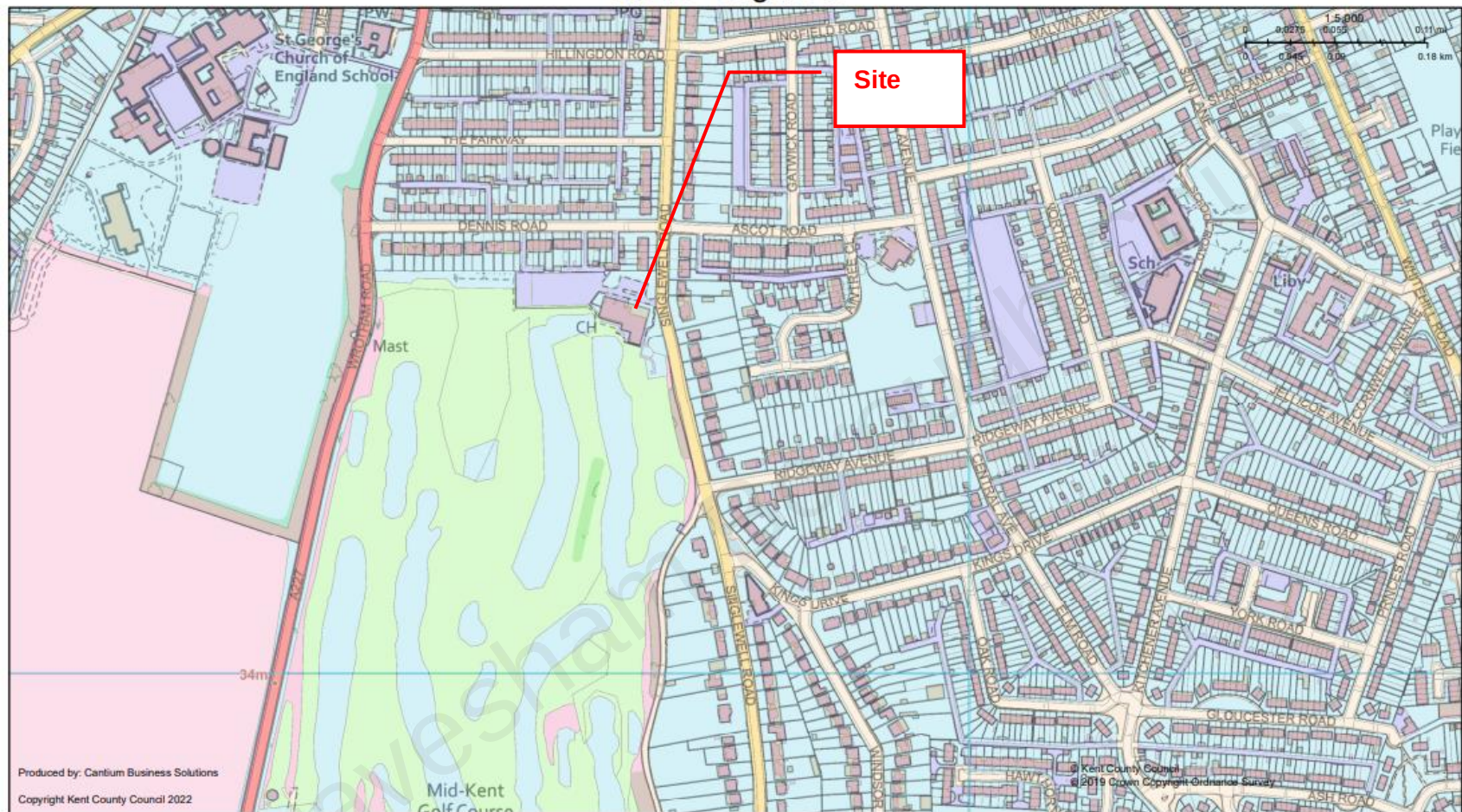


Figure 3: indicates location of ponds from Krag data search



2 Methodology

2.1 Desk Study

Internet-based resources were consulted to identify designated nature conservation sites within 1km of the site and habitats of potentially high ecological importance and sensitivity within 500m of the site (e.g. ancient woodlands, ponds).

A data search was carried out with the Kent Reptile and Amphibian Group KRAG^{1, 2}.

2.2 Scoping Survey

The site and its immediate surroundings were considered in terms of habitats, protected species and species of principal conservation importance during a walkover survey undertaken on 13th April 2022 by Katia Bresso CEnv MCIEEM, a qualified professional consultant ecologist with over 20 years of experience³, licensed bat surveyor (Class Licence CL19, Level 3, Registration Number: 2016-27133-CLS-CLS) and Registered Consultant of the Bat Mitigation Class Licence (BMCL) (formerly Bat Low Impact Class Licence) WML-CL21 with Natural England (Registered Consultant Reference Number RC056, since May 2015), licensed dormouse surveyor (Class Survey Licences Registration Number 2016-22060-CLS-CLS) and licensed great crested newt surveyor (Class Licence registration number 2020-50030-CLS-CLS). Evidence of the use of the site by species was recorded (i.e. field signs).

The habitat survey was undertaken in general accordance with Phase 1 Habitat Survey (JNCC 2010), i.e. within the survey area every parcel of land is classified, recorded and mapped in accordance with a list of ninety specified habitat types using standard colour codes to allow rapid visual assessment of the extent and distribution of different habitat types.

The survey and report aim at following the guidance and recommendations in the 'British Standard Biodiversity Code of Practice for Planning and Development (BS 42020: 2013)'.

A visual examination of the external and internal areas of the buildings was undertaken. This consisted of a ground level visual inspection using a bright torch (Cluson CB1 Clubman Standard High Power, 500,000 candle power). Cracks and holes were inspected using an endoscope or night vision scope where needed. The purpose of the survey was to look for signs of bats such as droppings, urine staining, marking around entrance/exit holes and any animals; and to note any potential roosting locations and access points. The latter is important because signs of bats are frequently not present; for example, they can be washed off external surfaces by wind and rain and are often not visible where bats roost in crevices such as gaps between tiles and boarding or felt, behind weatherboarding, holes in brickwork, timbers and similar.

¹ Please note that absence of records should not be taken as confirmation that a species is absent from the search area.

² Due to the scale of the project, it was judged disproportionate to undertake a costly data search with the local Biological Record Centre as the data would be unlikely to be relevant to this site.

³ Katia Bresso is a Suitably Qualified Ecologist with regards to Code for Sustainable Homes assessment and BREEAM

Bat roosting potential of all structures, buildings and trees was classified according to the following criteria set out in the Table below, taken from the Bat Conservation Trust Good Practice Guidelines (2016).

Suitability	Criteria
Negligible	Negligible habitat features on site likely to be used by roosting bats.
Low	A structure with one or more potential roost sites that could be used by individual bats opportunistically. However, these potential roost sites do not provide enough space, shelter, protection, appropriate conditions, and/or suitable surrounding habitat to be used on a regular basis or by a larger number of bats (i.e. unlikely to be suitable for maternity or hibernation). A tree of sufficient size and age to contain PRFs but with none seen from the ground or features seen with only very limited roosting potential.
Moderate	A structure or tree with one or more potential roost sites that could be used due to their size, shelter, protection, conditions, and surrounding habitat but unlikely to support a roost of high conservation status (with respect to roost type only - the assessments in this table are made irrespective of species conservation status, which is established after presence is confirmed).
High	A structure or tree with one or more potential roost sites that are obviously suitable for use by larger numbers of bats on a more regular basis and potentially for longer periods of time due to their size, shelter, protections, conditions and surrounding habitats.

3 Baseline Ecological Conditions

3.1 Designated Nature Conservation Sites

The site is not part of, nor directly adjacent to, any statutory designated sites and none are located within 1km of the site.

But there is a statutory site of International Importance (Natura 2000 sites) within 3km: the South Thames Estuary and Marshes. It is a Ramsar site, a Special Protection Area and a SSS), from Gravesend to the eastern end of the Isle of Grain, which forms a major component of the Greater Thames Estuary. The site consists of an extensive mosaic of grazing marsh, saltmarsh, mudflats and shingle characteristic of the estuarine habitats of the north Kent marshes. Freshwater pools and some areas of woodland provide additional variety and complement the estuarine habitats. The site supports outstanding numbers of waterfowl with total counts regularly exceeding 20,000. Many species regularly occur in nationally important numbers and some species regularly use the site in internationally important numbers. The breeding bird community is also of particular interest. The diverse habitats within the site support a number of nationally rare and scarce invertebrate species and an assemblage of nationally scarce plants. It is located within 2km to the North East of the site.

3.2 Habitats

The site is surrounded by a golf course and dwellings.

The Integrated Habitat System (IHS) classification of the Kent Habitat Survey 2012 describes the site as:

- *Built-up areas,*
- *Improved grassland,*
- *Neutral grassland.*

The site indeed consists of a large clubhouse building, car parking areas, short-mowed grass⁴ and trees (with sycamore, flowering cherry, birch, hawthorn, privet as well as ornamental bushes).

Plates are present in Appendix B. Figure 4 below shows the location of the habitats.

⁴ The quality of the grassland was not ascertained due to the early time of year of the site visit but, as the site has been a golf course since 1909, it's likely that the grassland is 'semi-improved' to 'improved'.

Legend of Phase 1 habitat survey map hereafter:

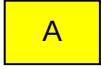
-  Site boundary
-  Hard standing
-  Building
-  Amenity short-mowed grass
-  Individual tree (number and location approximate)

Figure 4

April 29, 2022



Legend

Kent Habitat Survey 2012

Acid grassland	Bracken	Coniferous woodland	Inland rock/Quarry	Neutral grassland	Supralittoral Sediment
Arable and horticulture	Broadleaved, mixed, and yew woodland	European dry heaths	Littoral Rock	Rivers and streams	Traditional orchard
Boundary and linear features	Built-up areas	Fen, marsh and swamp	Littoral Sediment	Standing open water and canals	Unknown terrestrial vegetation
	Calcareous grassland	Improved grassland	Maritime grassland	Supralittoral Rock	



3.3 Amphibians

The data search carried out with Krag (Enquiry No: CES/22/071) revealed that the closest recorded Great Crested Newt *Triturus cristatus* site is located at Dering Way, Denton, Gravesend, 2.34 km to the NE (record id: 125409).

Great crested newts favour areas of high pond density and occupancy levels can exceed 40% of ponds when conditions are favourable. Krag's database risk assessment indicates that the likelihood of presence of great crested newts *in the overall area* is 'Possible'⁵, with only one pond present within 1km.

Like nearly all amphibians, the great crested newt is dependent on water-bodies for breeding but usually spends most of its life on land.

The 'Great Crested Newt Mitigation Guidelines' (English Nature 2001) state the following: *'Great crested newts have been found to move over considerable distances (up to 1.3km from breeding sites). However, the vast majority of newts will inhabit an area much closer to the pond, and the exact distribution and migration patterns of newts on land depends on a variety of factors. The quality of terrestrial habitat near to breeding ponds is important, as are the lack of barriers to dispersal (such as fast-flowing rivers, or very busy roads). The distribution of ponds and hibernation opportunities may also influence movements. [...] Several studies have been conducted which reveal a great deal of variation, but great crested newts commonly move between ponds that are within around 250m of each other.'*

No ponds were present on site or within 500m. Therefore it is judged unlikely that great crested newts would be present on site

⁵ Likelihood of Presence Scores are described using the following categories:

Unlikely<Possible<Likely<High

Preliminary Ecological Appraisal

Mid Kent Golf Club, Singlewell Road, Gravesend

KB Ecology Ltd- April 2022

3.4 Reptiles

The Krag datasearch revealed that the closest recorded reptile is Slow-worm, located 0.86 km to the NW (record id: 41263). The likelihood of reptiles to be present *in the overall area* is judged as per table below:

Reptiles		
	Likelihood of Presence	
	Score	Dist (km)
Viviparous Lizard:	Likely	0.99
Slow-worm:	Likely	0.86
Sand Lizard:	unlikely	71.26
Grass Snake:	Possible	1.49
Adder:	unlikely	7.07
Smooth Snake:	n/a	n/a

Reptile survey effort in local area is considered to be average.

The proposed development area consists of grassland, which is species poor, heavily managed and kept at a short sward, without a thatch layer. This habitat is considered unsuitable for common reptile species, due to a lack of cover from predators and foraging opportunities.

3.5 Birds

It is considered that the site has high potential to support breeding birds within the trees.

All species of bird whilst actively nesting are afforded legal protection under the Wildlife & Countryside Act 1981 (as amended) and special penalties are available for offences related to birds listed on Schedule 1. Some species are also listed as species of principal conservation importance, including sky lark, common cuckoo, house sparrow, tree sparrow and song thrush (See Appendix A).

For more information, guidance from Natural England is available at <https://www.gov.uk/wild-birds-protection-surveys-and-licences>

3.6 Hazel Dormouse

It is considered that the site has no potential to support the hazel dormouse due to lack of connection to suitable woodlands.

3.7 Badger

No setts or signs of badgers *Meles meles* were identified during the survey.

3.8 Bats

No bats nor signs of bats were found during the internal/external inspection of the building. A very restricted number of potential access points were found: a gap along the plastic fascia on the north elevation (where a single crevice-dwelling bat, such as a pipistrelle bat, could be roosting) and the canopy repair with plastic sheeting on the south elevation. Thus the most western part of the building has low suitability for roosting bats, whereas the rest of the building has negligible suitability.

None of the trees present on site offered suitability for roosting bats. But the surrounding area is likely to be used by foraging and commuting bats.

All species of bat are afforded full legal protection under Schedule 5 of the Wildlife & Countryside Act 1981 (as amended). They are also listed under Schedule 2 of the Conservation of Habitats and Species Regulations 2017 and are therefore a “European Protected Species” (EPS). Some species of bats (noctule, soprano pipistrelle, brown long-eared bat, barbastelle) are also listed as species of principal conservation importance.

Bats rarely use the same roosting place all year round as they need different conditions for breeding and hibernating. But bats are creatures of habit and tend to return to the same sites at the same time year after year. For this reason, roosts are legally protected even if bats don't seem to be living there at certain times of year.

The legislation makes it a criminal offence to:

- Deliberately capture, injure or kill a bat;
- Intentionally or recklessly disturb a bat in its roost or deliberately disturb a group of bats;
- Damage or destroy a bat roosting place (even if bats are not occupying the roost at the time);
- Possess or advertise/sell/exchange a bat (dead or alive) or any part of a bat;
- Intentionally or recklessly obstruct access to a bat roost.

For more information, guidance from Natural England is available at <https://www.gov.uk/bats-protection-surveys-and-licences>

3.9 Other Species

It is considered that the surroundings have potential to support hedgehogs (*Erinaceus europaeus*), which are a Species of Principal Importance under Section 41 of the NERC Act (2008 updated list) and an Indicator Species under the Kent Biodiversity Strategy⁶.

All mammals are afforded protection against unnecessary suffering by the Wild Mammals (Protection) Act 1996 (see Appendix A).

⁶ <http://kentnature.org.uk/uploads/files/Nat-Env/Kent%20Biodiversity%20Strategy%202020.pdf>

4 Ecological constraints and opportunities, recommendations for mitigation, compensation and further survey

The details of the proposed development were as below at the time of writing this report. The extension will be 6m wide from the existing Western Elevation (to be built over an external storage area).



Should the scope of the proposed works be amended following the completion of this scoping survey, or be deferred for an extended period of time, there may be a requirement to update this scoping report and its recommendations.

4.1 Designated Nature Conservation Sites

A site check report was generated for the site using the Impact Risk Zones on the Magic website⁷:

⁷ The Impact Risk Zones (IRZs) dataset is a GIS tool which maps zones around each SSSI according to the particular sensitivities of the features for which it is notified and specifies the types of development that have the potential to have adverse impacts.

Natural England uses the IRZs to make an initial assessment of the likely risk of impacts on SSSIs and to quickly determine which consultations are unlikely to pose risks and which require more detailed consideration. Publishing the IRZs will allow LPAs, developers and other partners to make use of this key evidence tool.

<http://www.naturalengland.org.uk/ourwork/planningdevelopment/impactriskzonesgistoolfeature.aspx>

29/04/2022, 13:48

Site Check Report generated on Fri Apr 29 2022
You selected the location: Centroid Grid Ref: TQ64677235
The following features have been found in your search area:

SSSI Impact Risk Zones - to assess planning applications for likely impacts on SSSIs/SACs/SPAs & Ramsar sites (England)

1. DOES PLANNING PROPOSAL FALL INTO ONE OR MORE OF THE CATEGORIES BELOW?	2. IF YES, CHECK THE CORRESPONDING DESCRIPTION(S) BELOW. LPA SHOULD CONSULT NATURAL ENGLAND ON LIKELY RISKS FROM THE FOLLOWING:
All Planning Applications	
Infrastructure	Airports, helipads and other aviation proposals.
Wind & Solar Energy	
Minerals, Oil & Gas	Planning applications for quarries, including: new proposals, Review of Minerals Permissions (ROMP), extensions, variations to conditions etc. Oil & gas exploration/extraction.
Rural Non Residential	
Residential	Residential development of 500 units or more.
Rural Residential	Any residential development of 500 or more houses outside existing settlements/urban areas.
Air Pollution	Livestock & poultry units with floorspace > 500m², slurry lagoons & digestate stores > 750m², manure stores > 3500t.
Combustion	General combustion processes >50MW energy input. Incl: energy from waste incineration, other incineration, landfill gas generation plant, pyrolysis/gasification, anaerobic digestion, sewage treatment works, other incineration/ combustion.
Waste	
Composting	
Discharges	Any discharge of water or liquid waste of more than 5m³/day to ground (ie to seep away) or to surface water, such as a beck or stream.
Water Supply	
Notes 1	For new residential development in this area financial contributions are required to mitigate increased recreational disturbance on coastal SPAs and Ramsar Sites. Check with Local Planning Authority.
Notes 2	
GUIDANCE - How to use the Impact Risk Zones	/Metadata for magic/SSSI IRZ User Guidance MAGIC.pdf

The type of development proposed is not listed as being a category for which the LPA should consult Natural England. The proposal is not judged detrimental to any protected sites.

4.2 Habitats

Trees to be retained should be protected during any construction work and guidance is given in the 'BS 5837:2012 Trees in relation to design, demolition and construction. Recommendations' document. This standard requires a tree protection plan to be developed which involves erecting physical barriers to prevent damage to existing trees, with an exclusion area around the trees. It also looks at defining a root protection area and requires consideration when compulsory work is carried out within the root protection area.

4.3 Amphibians

No impact is expected onto great crested newts and thus no further work is recommended for this species.

4.4 Reptiles

No impact is expected onto reptiles and thus no further work is recommended for these species.

4.5 Birds

Although a breeding bird survey is not deemed to be necessary, on the basis that the site contains suitable habitat for breeding birds, consideration must be given to the timing of the clearance works, if any is to take place.

The effect on birds can be avoided by undertaking any vegetation clearance outside of the nesting season (which extends from March – August inclusive⁸) or only after a survey has confirmed the absence of nesting birds⁹. New hedgerow/trees/scrub planted and bird nesting boxes erected as part of the proposed development can replace the habitat lost.

4.6 Hazel Dormouse

No impact is expected onto dormice and thus no further work is recommended for this species

4.7 Badger

No impact is expected onto badgers and thus no further work is recommended for this species.

4.8 Bats

Should bats be roosting on site, the proposed development would lead to a loss of habitat and animals could be killed or injured during the works.

The Bat Conservation Trust's guidelines provide a table stating the 'minimum number of presence/absence survey visits required to provide confidence in negative preliminary roost assessment from buildings, built structures and trees in summer.

Table 7.3 Recommended minimum number of survey visits for presence/absence surveys to give confidence in a negative result for structures (also recommended for trees but unlikely to give confidence in a negative result).

Low roost suitability	Moderate roost suitability	High roost suitability
One survey visit. One dusk emergence or dawn re-entry survey ^a (structures). No further surveys required (trees).	Two separate survey visits. One dusk emergence and a separate dawn re-entry survey. ^b	Three separate survey visits. At least one dusk emergence and a separate dawn re-entry survey. The third visit could be either dusk or dawn. ^b

^a Structures that have been categorised as low potential can be problematic and the number of surveys required should be judged on a case-by-case basis (see Section 5.2.9). If there is a possibility that quiet calling, late-emerging species are present then a dawn survey may be more appropriate, providing weather conditions are suitable. In some cases, more than one survey may be needed, particularly where there are several buildings in this category.

^b Multiple survey visits should be spread out to sample as much of the recommended survey period (see Table 7.1) as possible; it is recommended that surveys are spaced at least two weeks apart, preferably more. A dawn survey immediately after a dusk one is considered only one visit.

Table 7.1 Recommended timings for presence/absence surveys to give confidence in a negative result for structures (also recommended for trees but unlikely to give confidence in a negative result).

Low roost suitability	Moderate roost suitability	High roost suitability
May to August (structures) No further surveys required (trees)	May to September ^a with at least one of surveys between May and August ^b	May to September ^a with at least two of surveys between May and August ^b

⁸ It should be noted however that certain species are known to breed throughout the year (e.g. collard dove) and remain protected.

⁹ Inspection by a qualified ecologist must first be completed a maximum of 48hrs before clearance works commence. If during the inspection a nest considered to be in use is discovered, works must be delayed until the young have fledged.

It is therefore recommended that one night-time survey is undertaken between May and August. Two surveyors will be necessary to cover all sides of the building.

Besides, as lighting can be detrimental to roosting, foraging and commuting bats¹⁰, the recommendations from the Bat Conservation Trust and the Institution of Lighting Professionals, titled 'Guidance Note 8 Bats and Artificial Lighting'¹¹, should be considered, when designing any lighting scheme for the proposed development.

4.9 Other Species

There is some potential for hedgehogs to be present on site. Therefore any areas where mammals could be sheltering should be hand searched prior to disturbance. Excavations should not be left open for animals to fall into, or planks of wood should be placed to enable any animals which may fall into such a hole to escape.

4.10 Additional Recommendations: Enhancements

Ecological enhancements should where possible be incorporated into the proposed development to contribute towards the objectives of planning legislation.

Under section 40 of the NERC Act (2006), paragraph 174 of the NPPF (2021) and the Environment Act (2021), biodiversity must be maintained and enhanced through the planning system. Additionally, in alignment with paragraph 180 of the NPPF 2021, the implementation of enhancements for biodiversity should be encouraged.

Suggested biodiversity enhancements are listed below, as a palette for the developer to choose from:

- Provision of ready-made bird boxes¹² on retained trees;
- Provision of integrated 'swift bricks' in new buildings (as these are often occupied by other small cavity-nesting birds^{13,14})¹⁵. It is suggested better to install them in small groups of 2/6 approx. one metre+ apart in suitable locations at a minimum height of 4 metres (5 metres is better).¹⁶
- Provision of integrated bat boxes on new buildings¹⁷ or bat boxes on retained mature trees¹⁸.

¹⁰ <https://www.bats.org.uk/about-bats/threats-to-bats/lighting>

¹¹ <https://www.theilp.org.uk/documents/guidance-note-8-bats-and-artificial-lighting/>

¹² Integrated nest boxes in new buildings are preferred as they provide longer term nesting opportunities.

¹³ <https://drive.google.com/file/d/1ljcJ7rIkNMrr4lxd41XcBU3YC6IFKM6z/view>

¹⁴ <https://actionforswifts.blogspot.com/p/swift-bricks.html>

¹⁵ Boxes integrated into buildings offer much greater longevity but need to be considered in the design process. One study found that incorporating bird/bat boxes into walls could cause cold spots on the interior, leading to condensation and possibly mould. They recommend additional insulation to prevent this; advice from an architect is advisable.

¹⁶ Please note that there may be a need to provide insulation around the integrated box (thickness of 5 cm of insulation) in order to increase the thermal resistance of this wall and thus avoid the risk of condensation. The project architect should be consulted about such matters.

¹⁷ Please note that there may be a need to provide insulation around the integrated box (thickness of 5 cm of insulation) in order to increase the thermal resistance of this wall and thus avoid the risk of condensation. The project architect should be consulted about such matters.

¹⁸ <https://www.bats.org.uk/our-work/buildings-planning-and-development/bat-boxes>

- Provision of owl boxes in trees¹⁹
- Establish climbing plants on walls and other vertical structures²⁰.
- Establish wildflower plug/bulb planting in amenity grassland²¹.

¹⁹ More information can be found here <http://www.barnowltrust.org.uk/infopage.html?id=56>

²⁰ More information can be found here: <http://www.greenblueurban.com/climbing-plant-guide.php> and <http://www.london.gov.uk/priorities/environment/urban-space/parks-green-spaces/green-roofs-walls>

²¹ Spring flowering bulbs and plugs of nectar rich flowering plants should be embedded into amenity grassland to increase the biodiversity and amenity value of the grassland and to provide early sources of nectar for insects. Suitable bulbs include Snake's head fritillary *Fritillaria meleagris*, Ramsons *Allium ursinum*, Snowdrop *Galanthus nivalis*, Primrose *Primula vulgaris*, Bluebell *Hyacinthoides non-scriptus*, Wild daffodil *Narcissus pseudonarcissus*, Lesser celandine *Ranunculus ficaria*

5 References and Bibliography

- Joint Nature Conservation Committee (2003). *Handbook for Phase 1 Habitat Survey: A Technique for Environmental Audit*. JNCC, Peterborough.²²
- Bat Conservation Trust (2012). *Bat Surveys - Good Practice Guidelines – 2nd Edition*. Bat Conservation Trust, London.
- English Nature (2004). *Research Reports Number 576: An assessment of the efficiency of capture techniques and the value of different habitats for the great crested newt Triturus cristatus*. English Nature, Peterborough

Websites Visited:

- <http://webapps.kent.gov.uk/KCC.KLIS.Web.Sites.Public/ViewMap.aspx>
- <http://www.magic.gov.uk/magicmap.aspx>
- <http://www.kentbap.org.uk/species/>

With kind permission from Google Earth Brand

²² http://www.jncc.gov.uk/pdf/pub90_HandbookforPhase1HabitatSurveyA5.pdf

Appendix A – Wildlife Legislation & Policy

The following is a summary of wildlife legislation and planning policy which affords protection to plants and animals and seeks to conserve, enhance and restore biodiversity. This section is provided for general guidance only. While every effort has been made to ensure accuracy, this section should not be relied upon as a definitive statement of the law.

For further information, please see:

<https://www.gov.uk/protected-species-and-sites-how-to-review-planning-proposals>

and

<https://www.gov.uk/government/policies/protecting-biodiversity-and-ecosystems-at-home-and-abroad/supporting-pages/species-protection>

Commonly encountered protected species

Many species of plants, invertebrates and animals receive protection under the legislation detailed above. However, of these, the following are the most likely to be affected by development in the southeast:

Species	Legislation
Bats (all species) Dormice Great crested newts Otters Sand lizards and smooth snakes	The Wildlife and Countryside Act 1981 (as amended) & The Conservation of Habitats and Species Regulations 2017. These make it an offence to: • Deliberately or recklessly capture, injure or kill any wild animal of a European protected species • Deliberately or recklessly disturb wild animals of any such species • Damage or destroy their breeding site or resting place • Keep, transport, sell or exchange, or offer for sale or exchange, any live or dead animal, or any part of, or anything derived from these species. Disturbance of animals includes in particular any disturbance which is likely • to impair their ability: -to survive, to breed or reproduce, or to rear or nurture their young, or -in the case of animals of a hibernating or migratory species, to hibernate or migrate; • to affect significantly the local distribution or abundance of the species to which they belong.
Breeding birds	The Wildlife and Countryside Act 1981 (as amended). This makes it

Species	Legislation
(in particular barn owls)	illegal to intentionally kill, injure or take any wild bird and to take, damage or destroy the nest (whilst being built or in use) or eggs.
Adders, grass snakes, common lizards and slow worms	The Wildlife and Countryside Act 1981 (as amended) (intentional killing and injuring only). This makes it illegal to kill or injure these animals.
Water voles	The Wildlife and Countryside Act 1981 (as amended). This makes it illegal to intentionally damage, destroy or obstruct access to any structure or place which water voles use for shelter or protection; it is also an offence to intentionally disturb water voles while they are using these places.
White clawed crayfish	The Wildlife and Countryside Act 1981 (as amended). This makes it an offence to: - intentionally, or recklessly, kill or injure any of the above species, and/or; - sell, or attempt to sell, any part of the species, alive or dead. Advertises that he buys or sells, or intends to buy or sell.
Badgers	The Protection of Badgers Act 1992. This makes it an offence to: - Willfully killing, injures or takes, or attempts to kill, injure or take, a badger. - Cruelly ill-treating a badger, digging for badgers, using badger tongs, using a firearm other than the type specified under the exceptions within the Act. - Interfering with a badger sett by damaging, destroying, obstructing, causing dog a dog to enter a sett, disturbing an occupied sett - either by intent or by negligence. - Selling or offering for sale a live badger, having possession or control of a live badger. - Marking a badger or attaching any ring, tag, or other marking device to a badger.

The Wildlife and Countryside Act 1981 (as amended)

The Wildlife and Countryside Act 1981 (as amended) implements the Birds Directive (1979) and the Berne Convention (1979) into national legislation. The Wildlife and Countryside Act 1981 (as amended) includes a number of Schedules which are reviewed (usually every five years) on which details of the protected species, and their level of protection, are detailed. A detailed summary of the sections of the Wildlife and Countryside Act, along with the

protection afforded under them can be found within Paragraphs 118-122 of ODPM Circular 06/2005 (Circular06/2005)

Full details of the legislation can be found at www.jncc.gov.uk/page-3614 and details of the species listed on the Schedules can be found at:

- Birds www.jncc.gov.uk/PDF/waca1981_schedule1.pdf
- Animals www.jncc.gov.uk/page-1815
- Plants www.jncc.gov.uk/page-1816

There are no licensing functions within the Wildlife and Countryside Act for development activities which may affect a species protected under The Wildlife and Countryside Act 1981 (as amended) and works need to proceed following good practice and if appropriate rely on the 'incidental result of an otherwise lawful operation defence'. However, with regards to the water vole, where translocation of animals is proposed, Natural England does not feel this could be considered the incidental result of other activities and so would not be covered by the defence in the legislation. If there is no alternative to translocation, Natural England may be able to issue a licence to trap and translocate the water voles for the purpose of conservation.

The Countryside and Rights of Way Act 2000

The Wildlife and Countryside Act 1981 was amended by the Countryside and Rights of Way Act (CROW Act) in 2000. The CROW Act strengthened the protection afforded to species listed within the Schedules of the Wildlife and Countryside Act by adding 'reckless' to several of the offences and increased the penalties for wildlife offences.

In addition, Section 74 of the CROW Act introduced a new duty on Government Ministers and Department to further the conservation of biodiversity for habitats and species of principal importance. This was superseded by Sections 40 and 41 of the Natural Environment and Rural Communities (NERC) Act of 2006. Section 40 provides that every public authority must, in exercising its functions, have regard to the purpose of conserving biodiversity. Details of the lists of habitats and species provided for at Section 41 of the NERC act can be found at www.ukbap-reporting.org.uk/news/details.asp?X=45. The ODPM Circular 06/2005 (Circular06/2005) place a clear responsibility on Local Planning Authorities to further the conservation of habitats and species of principal importance where a planning proposal may adversely affect them.

Full details of the legislation contained within the Countryside and Rights of Way Act can be found at www.opsi.gov.uk/acts/acts2000/ukpga_20000037_en_1.

The Protection of Badgers Act 1992

The legislation affording protection to badgers is primarily concerned with animal welfare and the need to protect badgers from activities such as baiting and deliberate harm. The Protection of Badgers Act 1992 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 (this includes disturbing badgers whilst they are occupying a sett, as well as damaging or destroying a sett or obstructing access to it).

As with The Wildlife and Countryside Act 1981 (as amended), there are several defences to prosecution in the legislation and the text should be consulted for details of these. Penalties

for offences include fines up to £5,000, plus up to six months imprisonment for each illegal sett interference, or badger death or injury.

Full Details of the legislation can be found at
www.opsi.gov.uk/ACTS/acts1992/ukpga_19920051_en_1.

Conservation of Habitats and Species Regulations 2017 (SI 2010/490) came into force (the "2010 Regulations").

The Conservation of Habitats and Species Regulations 2017 provides safeguards for European Protected Sites and Species. The **Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (SI 2019/579)** were made on 14 March 2019 and come into force on exit day. The Regulations ensure that the habitat and species protection and standards derived from EU law will continue to apply after Brexit.
<http://www.legislation.gov.uk/ukdsi/2019/9780111176573>

Full details of the legislation can be found at
http://www.opsi.gov.uk/si/si2010/uksi_20100490_en_1

The Regulations state that:

Part 3 - 41.—

(1) A person who:

- (a) deliberately captures, injures or kills any wild animal of a European protected species,
- (b) deliberately disturbs wild animals of any such species,
- (c) deliberately takes or destroys the eggs of such an animal, or
- (d) damages or destroys a breeding site or resting place of such an animal,

is guilty of an offence.

(2) For the purposes of paragraph (1)(b), disturbance of animals includes in particular any disturbance which is likely:

(a) to impair their ability:

- (i) to survive, to breed or reproduce, or to rear or nurture their young, or
- (ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate;

Or

(b) to affect significantly the local distribution or abundance of the species to which they belong.

(3) It is an offence for any person:

- (a) to be in possession of, or to control,
- (b) to transport,
- (c) to sell or exchange, or
- (d) to offer for sale or exchange, anything to which this paragraph applies.

(4) Paragraph (3) applies to—

- (a) any live or dead animal or part of an animal—
 - (i) which has been taken from the wild, and

- (ii) which is of a species or subspecies listed in Annex IV(a) to the Habitats Directive; and
- (b) anything derived from such an animal or any part of such an animal.

(5) Paragraphs (1) and (3) apply regardless of the stage of the life of the animal in question.

(6) Unless the contrary is shown, in any proceedings for an offence under paragraph (1) the animal in question is presumed to have been a wild animal.

(7) In any proceedings for an offence under paragraph (3), where it is alleged that an animal or a part of an animal was taken from the wild, it is presumed, unless the contrary is shown, that that animal or part of an animal was taken from the wild.

(8) A person guilty of an offence under this regulation is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.

(9) Guidance as to the application of the offences in paragraph (1)(b) or (d) in relation to particular species of animals or particular activities may be published by—

- (a) the appropriate authority; or
- (b) the appropriate nature conservation body, with the approval of the appropriate authority.

(10) In proceedings for an offence under paragraph (1)(b) or (d), a court must take into account any relevant guidance published under paragraph (9).

(11) In deciding upon the sentence for a person convicted of an offence under paragraph (1)(d), the court must in particular have regard to whether that person could reasonably have avoided the damage to or destruction of the breeding site or resting place concerned.

Licences may be obtained to permit activities that would otherwise be unlawful, but they can only be granted for certain purposes. Those purposes include that 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 (Regulation 42(10)). It is the imperative reasons of overriding public interest element of this that is relied upon by those seeking to carry out development where those activities affect a European protected species or their places used for shelter or protection. Even where that purpose is met, however a licence may only be granted where:

- There is “no satisfactory alternative”; and
- The action authorised “will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range”

Natural England issues licences for these purposes under Regulation 44(2)(e).

It is not the responsibility of Natural England staff to decide when a licence is required/recommended. This decision is down to the proposer of the operation who should consider whether, on balance and usually with the assistance of an ecological consultant, the operation would be reasonably likely to result in the commission of an offence under these Regulations. This view should be formed in the light of survey information and specialist knowledge. A licence simply permits an action that is otherwise unlawful. A licence should be applied for if, on the basis of survey information and specialist knowledge, it is considered that the proposed activity is reasonably likely to result in an offence (killing, breeding site destruction, etc – see above).

It should be noted that the protection afforded to species under the UK and EU legislation referred to here is in addition to that provided by the planning system and the applicant must ensure that any activity they undertake on the application site (regardless of whether or not planning permission has been obtained) complies with the appropriate wildlife legislation. Failure to do so may result in fines and, potentially, a custodial sentence.

Kent Biodiversity Strategy

The Kent Biodiversity Strategy was approved by the Kent Nature Partnership in February 2020. It aims to deliver, over a 25 year period, the maintenance, restoration and creation of habitats that are thriving with wildlife and plants and ensure that the county's terrestrial, freshwater, intertidal and marine environments regain and retain good health.

The Strategy looks to protect and recover threatened species and enhance the wildlife habitats that Kent is particularly important for. It also aims to provide a natural environment that inspires citizen engagement and is well used and appreciated, so that the mental and physical health benefits of such a connection can be realised by the people of Kent.

The Strategy has identified 17 priority habitats and 13 priority species that Kent can play a significant part in the restoration of. It has also identified a handful of species that can act as indicators of the health of our ecosystems. In addition, the Strategy looks to further work addressing overarching considerations affecting biodiversity recovery, including wilding, climate change, natural solutions, soil health and invasive species.

Further information can be found here:

<http://kentnature.org.uk/uploads/files/Nat-Env/Kent%20Biodiversity%20Strategy%202020.pdf>

Red Data Books

British Red Data Books (RDB) are an additional method for classifying the rarity of species, and are often seen as a natural progression from Biodiversity Action Plans.

RDB species have no automatic legal protection (unless they are protected under any of the legislation previously mentioned). Instead they provide a means of assessing rarity and highlight areas where resources may be targeted. Various categories of RDB species are recorded, based on the IUCN criteria and the UK national criteria based on presence within certain numbers of 10x10km grid-squares (see <http://www.jncc.gov.uk/page-3425>). As with Biodiversity Action Plans, where possible, steps should be taken to conserve RDB species which are to be affected by development.

Appendix B – Plates



✓ IMG_4822



✓ IMG_4823



✓ IMG_4824



✓ IMG_4825



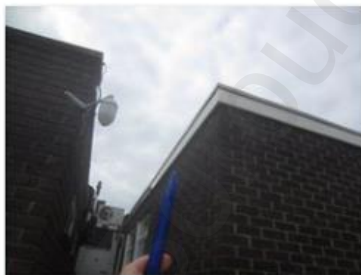
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