

**Discharge of Condition 3 (h):
Construction Environmental
Management Plan (CEMP) - Biodiversity**

for

Coldharbour Road, Gravesend

May 2024

Status: For Planning

Quality Management	
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Quality Standards
This report is certified BS 42020:2013 'Biodiversity – code of practice for planning and development' compliant and has been prepared in accordance with The Chartered Institute of Ecology and Environmental Management's (CIEEM) Technical Guidance Series '<i>Ecological Report Writing</i>' and Code of Professional Conduct. The copyright of this document rests with The Landscape Partnership. All rights reserved.

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1 Introduction

1.1 Commission

- 1.1.1 The Landscape Partnership was commissioned by Simply UK to provide a Construction and Environmental Management Plan: Biodiversity (CEMP) to address Section (h) of Condition 3 of the planning consent planning reference number: 20231182 (Gravesham Borough Council).

1.2 Legislation and policy background

- 1.2.1 There is a range of protection given to sites and species. Sites may be designated for local, national, European or global importance for nature conservation. Species may be protected by European-scale legislation or varying levels of national regulation.
- 1.2.2 The Local Planning Authority has a policy to protect features of nature conservation value within its Local Plan. Other regulators have policies relating to the consents issued by them.
- 1.2.3 Further information is given in Appendix 1.

1.3 Site location and context

- 1.3.1 The site is located southwest of Gravesend, in northwest Kent. The site lies on the corner of Coldharbour Road and New House Lane and the existing access is off Coldharbour Road to the west. The site, approximately 0.49 hectares, consisted of the former Battle of Britain public house. The site is now vacant and from aerial photography and notes on the topographical survey the public house was thought to have been demolished during 2016. The site consisted of ephemeral vegetation in the location of the demolished pub, as well as hardstanding and poor quality grass in 2022. In 2024, the site consisted mainly of bare ground, with some hardstanding and poor quality grassland still present. This was due to site set up works that had begun on site. The site is surrounded by fencing.
- 1.3.2 The site is surrounded predominantly by residential and suburban areas of Gravesend. The River Thames is located approximately 2.2km north of the site, with the A2 is located approximately 850m south of the site.
- 1.3.3 The Ordnance Survey Grid Reference for the approximate centre of the proposed development site is TQ 6366 7226. The location of the site is shown in Appendix 2. A plan showing the site is provided at Figure 01.

1.4 Description of the project

- 1.4.1 It is proposed to construct a 75-bed care home, with associated parking facilities and garden for use by the residents. It is proposed to create a new access into the site off New House Lane. A new footpath is also proposed to link the proposed care home site to an existing bus stop. The development proposals are shown in Appendix 3 and the landscape proposals are shown in Appendix 4.

1.5 Objectives of this report

- 1.5.1 The objectives of the report are to provide the ecology information required in Section (h) to contribute to the overall Construction Management Plan. This report alone will not provide enough information to discharge Condition 3. The full Condition is:

No development approved by this permission shall be commenced until a comprehensive Code of Construction Practice/Construction Management Plan covering all environmental impacts of this development is submitted to, and approved in writing by the Local Planning Authority.

The Code of Construction Practice/Construction Management Plan shall include details, where relevant, of the following, including any other measures deemed reasonably necessary:

- (a) Suitable mitigation measures to minimise noise pollution and vibration during the construction phase including the insulation of fixed plant and the silencing of vehicle and mobile machinery*

- (b) A Dust Management Plan to minimise emissions to air and to prevent nuisance from wind-blown dust including fencing and the dampening down with water of excavated construction and cover materials on site, and other areas traversed by plant vehicles and machinery*
- (c) A Construction Traffic Management Plan covering:*
 - a. Details of numbers and routing of construction and delivery vehicles to/from site*
 - b. Timing of deliveries*
 - c. Parking and turning areas for construction and delivery vehicles and site personnel*
 - d. Type and location of wheel washing and chassis cleaning facilities*
 - e. Temporary traffic management/signage*
- (d) Details of the location of the proposed construction compound and location of the parking for construction workers.*
- (e) Details of security fencing and other site security measures*
- (f) Details of stockpile areas for building materials or for fill or removed topsoil*
- (g) A Construction Drainage Design Plan to identify the required devices to prevent construction run off from flowing into existing drainage*
- (h) Ecological mitigation measures*
- (i) Measures to be undertaken to protect any public sewers and water apparatus*
- (j) Details of vibration monitoring and mitigation during any necessary piling works*
- (k) Details of the location, form and visual appearance of any site hoardings along road frontages and footpaths*
- (l) Details of temporary construction or security lighting; and*
- (m) Monitoring and review provisions with the Local Planning Authority*
- (o) Details of hours of construction.*

The construction of the development shall adhere at all times and be carried out in full accordance with the relevant approved document or any subsequent variations that may be approved in writing by the Local Planning Authority.

Reason: To ensure that construction of the development does not result in avoidable congestion on the local highway network, and to protect the amenity of local residents and businesses and protected species and to mitigate the risks to groundwater, in accordance with Policy CS11 (Transport), CS12 (Green Infrastructure) and CS19 (Development and Design Principles) of the Gravesham Local Plan: Core Strategy (2014).

1.6 Previous relevant documents

- 1.6.1 Previous relevant documents, which have been submitted to Gravesham Borough Council and can be found on the Gravesham Borough Council website for planning application 20221251 (previous planning application number for this project).
- The Landscape Partnership (November 2022) Preliminary Ecological Appraisal for Former Battle of Britain Site, Coldharbour Road, Gravesend.
 - The Landscape Partnership (November 2022) Calculation of Biodiversity Net Gain using Defra Metric 3.1.

2 Risk assessment of potentially damaging construction activities

2.1.1 The table below lists the ecological features present, activities which are potentially damaging, and the risk of harm, prior to application of practical measures to avoid or reduce impacts.

Ecological feature	Potentially damaging activity	Risk before mitigation	Risk after mitigation
Badgers and other terrestrial mammals – foraging	Exposed excavations if left overnight	Individuals may become trapped in exposed trenches/excavations, open pipework, etc. Level of risk – Moderate	Level of risk – Negligible. See Section 2.3
Nesting birds in trees, scrub and shrubs	Removal of trees, scrub and shrubs	Destruction or disturbance of birds' nests whilst they are in use is likely to be an offence. Level of risk - High Noise and visual disturbance from construction will be below the threshold of harm.	Level of risk – Negligible to Low. See Section 2.3
	Construction, excavation, earth moving, traffic movements in close proximity to trees		
Bats in trees	Coppicing of the goat willow T10	Disturbance of bats at roost. This is likely to cause an offence. Level of Risk – Low	Level of Risk – Negligible. See Section 2.3 and Section 3
	Lighting on the development	Disturbance to bats foraging/commuting within the area. Level of risk - Low	Level of risk – Negligible. See Section 2.3
Retained Habitats – Mature trees	Construction, excavation and earth moving inadvertently spilling out of the construction site on to these habitats	Destruction of habitat and disturbance to species present. Level of risk - High	Level of risk – Negligible. See Section 2.3

2.2 Identification of “Biodiversity Protection Zones”

“Biodiversity Protection Zones”

2.2.1 Permanent “Biodiversity Protection Zones” are the retained trees and their immediate surrounds which will be suitably protected throughout construction. See Section 7 for further details and Figure 02 for locations of “Biodiversity Protection Zones”. These will remain as “Biodiversity Protection Zones” during the construction period. No materials will be stored in these areas and no construction activity will take place. No unauthorised site personnel should enter these areas.

2.3 Practical measures, both physical measures and sensitive working practices to avoid impacts during construction

- 2.3.1 These practical measures are aimed to protect biodiversity through the control or regulation of construction-type activities. These are listed below and are integrated so that some practical measures are relevant to more than one feature, and so that measures for different features do not conflict.

General measures

- 2.3.2 As part of the site induction process, all staff working on site will be made aware of the potential presence of nesting birds and foraging badgers on site. The induction will also include the identification of the location of the "Biodiversity Protection Zones" and how these should be safeguarded. The induction talk is to be displayed in the site office so that staff are aware of what these protected species look like and the habitats they may occur in.
- 2.3.3 "Biodiversity Protection Zones" will be fenced using the tree protection fencing as described in Section 7. This will protect the habitats to be retained and the species that are present in these habitats including nesting birds and foraging badgers, from incursion, damage and disturbance during the construction phase. The fence will be checked regularly by the Ecological Clerk of Works and maintenance carried out as explained in Section 6.

Nesting Birds

- 2.3.4 Vegetation clearance, including trees and scrub, during the period March to August inclusive can be damaging to active bird nests during the main breeding season including those that nest in trees, scrub and buildings. Destruction of a bird's nest whilst in use is an offence.
- 2.3.5 Where trees and scrub are to be removed, clearance works should only take place outside of the breeding period of March to August or otherwise only if a check by the ECoW (Section 6) finds that no nest is present.
- 2.3.6 If a nesting bird is found in such a position that its nest would be damaged or destroyed by construction works, the works will temporarily cease in that area until the chicks have fledged the nest and the risk of committing the offence of damaging or destroying the nest is ended.
- 2.3.7 If a nesting attempt is made by a Schedule 1 nesting bird, disturbance of the bird during the nesting attempt would also be an offence. An exclusion zone will be set up, based on the species and the characteristics of the area at the time, so that ongoing works do not cause disturbance.

Terrestrial mammals including badgers

- 2.3.8 Badgers and their setts are protected by the Protection of Badgers Act (1992) and it is an offence to intentionally kill or injure a badger or to damage or destroy their setts or sett entrances.
- 2.3.9 No active badger setts were found on site in 2022; however, if any animal excavations are found to be present on site during the construction period, work in the vicinity should stop immediately and ecological advice should be sought to identify the species making the excavation. If a badger sett is confirmed a mitigation strategy will need to be devised specific to the situation. A Natural England licence would be obtained prior to construction progressing in this area to permit actions that would otherwise be likely to cause an offence.
- 2.3.10 Natural England advice recommends that heavy machinery and excavation work be kept away from setts and has suggested a safe working distance of 30m. "Biodiversity Protection Zone" fences will be located to ensure this working distance from any new setts (in the unlikely event that they arise) is clearly identified on the ground.
- 2.3.11 There is a risk that terrestrial mammals such as rabbits, foxes or hedgehogs can become trapped in the construction zone. The following measures will be taken to prevent this: a) creation of sloping escape ramps, which may be achieved by edge profiling of trenches/excavations or by using planks placed into them at the end of each working day; and b) open pipework greater than 150 mm outside diameter being blanked off at the end of each working day.

- 2.3.12 Any habitat suitable for sheltering hedgehogs such as scrub and hedgerows should be checked prior to any clearance.

Bats in Trees

- 2.3.13 All bat species, their breeding sites and resting places are fully protected by law, namely the Conservation Regulations 2010 (as amended), Wildlife & Countryside Act 1981 (as amended), Natural Environment & Rural Communities Act 2006 (NERC).
- 2.3.14 One tree (T10 – Goat willow) was assessed as providing low bat roost due to the presence of dense ivy. This tree is proposed to be coppiced using soft felling techniques. Prior to any works on this tree, a licensed bat ecologist will undertake an assessment of the potential roost features potentially used by bats. If no bats or roosts are identified the tree will immediately be coppiced whilst works are monitored by the licence bat ecologist. Works will be undertaken during daylight only.
- 2.3.15 If a bat is discovered roosting within trees within the site during unsupervised times, work will cease immediately and the named ecologist will be called for advice.
- 2.3.16 If night time work is required, any illumination will utilise directed site lighting to prevent intrusion of the wider surrounds and impacts to disturbance of sleeping or foraging animals. This would be required particularly in "Biodiversity Protection Zones", such as the boundary vegetation.
- 2.3.17 Illumination at the site compound would also need to be directed to prevent disturbance to bats. The location of the site office or other areas that require lighting should not be in close proximity to "Biodiversity Protection Zones".
- 2.3.18 Lighting guidelines produced by Bat Conservation Trust and Institute of Lighting Professional¹ will be adhered to.

2.4 Retained and Created Habitats

General measures

- 2.4.1 Retained and created habitats present on site will be protected from incursion by construction activities during the construction phase, resulting in destruction and/or disturbance of habitats and species, by being included within the fenced "Biodiversity Protection Zones". Fencing will be installed according to the location of Root Protection Zones as prescribed by an arboriculturist because the Biodiversity Protection Zones are identical to the Root Protection Zones.

Air pollution

- 2.4.2 Information on dust and dirt emissions are to be found in the Construction Method Statement to be provided separately for part (b) of Condition 3. Retained habitats are not sensitive to short-term construction traffic vehicle emissions.

Ground pollution

- 2.4.3 Avoidance of pollution from fuel, chemicals and soil wash-off into terrestrial habitats are outside the scope of this report. Information is to be found in the Construction Management Plan² for this project.
- 2.4.4 Construction Drainage Design Plan to be provided separately for part (g) of Condition 3.

¹ See <https://www.theilp.org.uk/documents/guidance-note-8-bats-and-artificial-lighting/>

² Simply UK (April 2024) Construction Management Plan for Proposed Care Home – Coldharbour Rd Gravesend

3 The location and timing of sensitive work to avoid harm to biodiversity features.

- 3.1.1 The location and timing of sensitive work to avoid harm to biodiversity features will be required in the following instances.

Nesting Birds

- 3.1.2 Vegetation removal should not be carried out within the nesting bird season (March to August, inclusive), unless a nesting bird check has been carried out by the Ecological Clerk of Works (ECoW). See Section 2 for details concerning if a birds' nest is found.

Badgers

- 3.1.3 If any animal excavations are found to be present on site during the construction period, work in the vicinity should stop immediately and ecological advice sought to identify the species making the excavation. In the unlikely event that a badger sett is recorded on site during the construction phase, then closing this sett down under a Natural England licence might be needed and would be carried out between July and November (inclusive).

Bats in trees

- 3.1.4 Works are often avoided during the hibernation period, if possible, when bats may not have sufficient energy or food sources to survive disturbance. However, there is no indication that there is any hibernation use so this avoidance is not formally proposed. The hibernation period for bats runs from November to February inclusive. Works do not need to avoid the bat maternity period because there is no evidence of maternity use.

4 The times during construction when specialist ecologists need to present on site to oversee works

- 4.1.1 The Ecology Clerk of Works (ECoW) will visit the site to monitor tree and scrub removal and coppicing with respect to birds and bats, as described in Section 6. The ECoW will be available at other times to inspect any new burrows which might arise. The role and responsibilities on site of the Ecological Clerk of Works, and when they are required to be present, are described in Section 6.

5 Responsible persons and lines of communication

- 5.1.1 Simply UK is responsible for all the works, including appointing one or more contractors and appointment of the Ecology Clerk of Works. Simply UK is responsible for coordinating communication to and from the Local Planning Authority. If the site is sold, the new owner will take responsibility for communications.

6 The roles and responsibilities on site of an Ecological Clerk of Works

- 6.1.1 An Ecological Clerk of Works (ECoW) is the person responsible for managing biodiversity issues on site, and times and activities during construction or development implementation when they need to be present to oversee works. This person is the first point of contact relating to any biodiversity related issues.

6.2 Ecological Clerk of Works – published standards

British Standard 42020:2013 - Definition

- 6.2.1 British Standard BS42020:2013 'Biodiversity – Code of practice for planning and development' defines an Ecological Clerk of Works (ECoW) as a person who has the ecological qualifications, training, skills and relevant experience to undertake appropriate monitoring and to provide specialist advice to "development" site personnel on necessary working practices required to

i) safeguard ecological features on site and

ii) aid compliance with any consents and relevant wildlife legislation related to the works.

- 6.2.2 It is noted that an ECoW is often required to make decisions quickly, and sometimes in highly pressured circumstances. It is a role that is rarely appropriate for a junior ecologist unless provided with significant support from a senior colleague.

- 6.2.3 The role may also be performed by the involvement of a number of competent persons with differing skill sets, provided written instructions to cover all contingencies are implemented and that a demonstrable and effective management structure within the project team is made available so that team members understand their own remit and responsibilities.

Role of the ECoW

- 6.2.4 The British Standard BS42020 sets out the specific role and responsibilities for an Ecological Clerk of Works, which may include:

- a) desk-top work: site and project familiarization, including input into the preparation, review and update, where necessary, of:
 - 1) the ECOP and risk assessment
 - 2) ecological constraints and "Biodiversity Protection Zones"
 - 3) practical measures to avoid and reduce impacts during construction/ implementation
 - 4) method statements required to achieve ecological mitigation, compensation or enhancements associated with non-construction related impacts and
 - 5)
 - a. timing of sensitive works during construction/implementation;
 - b. on site: monitoring and provision of advice, or practical undertaking of ecological works:
 - 6) practical measures to avoid or reduce construction/implementation impacts;
 - 7) implementation of method statements to secure ecological mitigation, compensation and enhancements that are additional to construction/implementation impacts (e.g. for habitat removal and reinstatement); and
 - 8) micro-siting of works;
- b) provision of training and information, e.g. through "site inductions" and toolbox talks;
- c) monitoring and reporting on compliance with legal, planning and contract requirements;
- d) investigation and reporting of unplanned incidents (e.g. pollution, damage to habitats, unexpected occurrence of protected species, implications of delays due to bad weather);

- e) maintenance of records and regular reporting of outcomes to site managers, the project team, decision-makers and consultees;
- f) monitoring post-construction/implementation success of mitigation methods and aftercare of sensitive habitats and features; and
- g) provision of further advice to the client on any of the above as necessary.

6.2.5 The role of the ECoW at Coldharbour Road is based on this list.

6.3 Roles, responsibilities and operations to be overseen by the Ecological Clerk of Works

Roles and responsibilities

6.3.1 The roles of the Ecological Clerk of Works are based on the published role as described above. However, the preparation, update and review of any method statements would be carried out by the consultant ecologist to the development as a separate piece of work rather than being allocated to the ECoW.

6.3.2 The operations listed below will be carried out by the ECoW. Reference to the word 'advise' will be advice to the site manager in the first instance.

Operations to be overseen by the Ecology Clerk of Works

6.3.3 The ECoW will monitor and advise on site clearance and construction of infrastructure and buildings. In particular, the ECoW will carry out the duties listed below in liaison with the site manager and provide toolbox talks where necessary;

- Regular inspections of any excavations or stockpiles where these are adjacent to "Biodiversity Protection Zones" to advise on any locational creep.
- Nesting bird survey of trees, shrubs or scrub to be felled/removed (only if within bird nesting season, March to August each year), prior felling to advise on presence of nesting birds and roosting bats and constraints to felling.
- Monitor and advise on the use of measures to avoid trapping of badgers in open excavations or pipework.
- Monitor and advise on the use of measures to avoid trapping of badgers and any other species in open excavations.
- Provide limited information to members of the public on request and advise where they can get further information.
- The ECoW will inspect "Biodiversity Protection Zones" and advise on maintenance/repair needs.
- The ECoW will investigate and report unplanned incidents (e.g. pollution, damage to habitats, unexpected occurrence of protected species, implications of delays due to bad weather).
- The ECoW will report on all visits and advice given.

6.4 Frequency of ECoW visits

- 6.4.1 The expected frequency of ECoW visits to the site are described in the table below. The frequency will be increased or decreased according to need, for example, if works are waiting for a nesting birds to finish nesting before works can take place in a certain area, the frequency of visits may increase so that the time of fledging can be recorded and works start without further delay.

Operations	Frequency of visit
All construction works	Toolbox talks as required at Inductions, until the end of operations.
Vegetation clearance works	Weekly, if vegetation removal is carried out during the bird nesting season as required
Inspect "Biodiversity Protection Zones" fencing/signage	Once per month or on request
Investigate unplanned incidents	As required
Reporting	See 6.5 below

6.5 ECoW reporting

Daily log

- 6.5.1 The ECoW will keep a daily log of findings of each visit. These will be available to the Local Planning Authority and other regulatory bodies (e.g. Natural England, Environment Agency) on request.

Reporting of operations

- 6.5.2 The ECoW will provide a report at the end of key milestones in the project, to be provided to the Local Planning Authority if required. The report will include actions carried out, ecological safeguards undertaken, closeness of compliance to planned works, and any unplanned incidents/significant variations from approved methodology.

- 6.5.3 Key milestones will be:

- Completion of "Biodiversity Protection Zone" fencing and signage to a satisfactory standard

Reporting of unplanned incidents and significant variation to approved methodology

- 6.5.4 Unplanned incidents which compromise the approved methodology or cause harm to ecological features will be reported to the Local Planning Authority by Simply UK as soon as possible, with an assessment of the impact of the incident and potential solutions provided by the ECoW for the Local Planning Authority's consideration. If there is a need to significantly vary the approved methodology, a report will be provided to the Local Planning Authority for approval.

- 6.5.5 If the ECoW considers that a wildlife crime has been, or is likely to be committed, and following discussions with the Site Manager and other Simply UK staff where no satisfactory resolution occurs in a timely manner, the ECoW is authorised to inform the police.

6.6 Management of the role

Responsibility for provision

- 6.6.1 Simply UK is responsible for appointing the Ecology Clerk of Works.

Appointed ECoW

- 6.6.2 The Landscape Partnership may be appointed to the Ecology Clerk of Works role in the future. If this is the case, then a team of ecologists will perform the role, rather than a single individual. The team of ecologists will have all the skills available which are required for the role. An arboriculturist can also perform some of the ECoW role, such as inspecting protective fences.

- 6.6.3 The ecology team will consist of:

- Nick Sibbett MCIEEM CEnv CEcol CMLI, Associate Director –ECoW team lead, with some site work and providing advice and support to site ECoW;
- Emily Costello MCIEEM, Senior Ecologist – site EcoW;
- Jess Grundy, Assistant Ecologist – site ECoW assistance;
- Jacob Heath, Assistant Ecologist – site ECoW assistance;
- Kit Hardy, Principal Arboriculturist – tree protection fencing and some tree inspections
- Other ecologists and local sub-consultant ecologists as required, for example if staff changes occur or further skills are required.

7 Use of exclusion fences, protective barriers and warning signs

7.1 Exclusion fences

- 7.1.1 There is no requirement for erection of species exclusion fencing as a part of this development.

7.2 Protective barriers

- 7.2.1 Retained trees will be protected through the construction phase, in accordance with and following guidelines within BS5837:2012 as described in the Arboricultural Method Statement which accompanied the planning application.
- 7.2.2 Areas of habitat creation detailed within the landscape proposals shown in Appendix 4, which include individual hedgerow and tree planting and wildflower planting will be protected by Heras (or similar equivalent) fencing or hoarding, once the habitat creation has been implemented. These barriers will remain in place throughout the construction period for all phases, if further construction in those areas is planned.
- 7.2.3 All protective barriers will be in place prior to any materials or machinery being brought onto the whole or part of the site where a risk has been identified, and before any removal of soil or vegetation commences.
- 7.2.4 These barriers will remain in place and should not be altered without prior recommendation from the ECoW until construction is completed. If during an inspection by the site manager or ECoW or following a report of the protective barriers being broken, then this should be fixed at the earliest possible opportunity to prevent damage or disturbance to "Biodiversity Protective Zones".

7.3 Warning signs

- 7.3.1 Warning signs will be fixed securely on the tree protection fencing (or permanent boundary fencing forming the same function) surrounding the "Biodiversity Protection Zones" such as the trees and hedgerows. The warning sign will state the following, "Biodiversity Protection Zone fence – Keep Out. Do not damage. Report any damage to Site Manager."
- 7.3.2 Warning signs will be placed at 10m intervals or less along the fences. Any lost or damage warning signs will be replaced at the earliest possible opportunity.

Figures



Key

	Site Boundary
	A2.1 Dense / continuous scrub
	A3.1 Broad-leaved scattered trees
	SI B6 Poor semi-improved grassland
	A J1.2 Amenity grassland
	J1.3 Ephemeral / short perennial
	J1.4 Introduced shrub
	J2.1.2 Species-poor intact hedge
	J2.4 Fence
	J4 Hardstanding

Target notes

Rabbit/fox holes

B22032 - Coldharbour Road, Gravesend

Phase 1 Habitat Survey

Figure 01

Scale: NTS

April 2022





Key

-  Site Boundary
-  "Biodiversity protection zones (BPZ)" for retained habitats.
-  Protective barriers around existing habitats

E24030 - Coldharbour Road, Gravesend

Location of "biodiversity protection zones" and protective barriers

Figure 02

Scale: NTS

May 2024



Appendix 1

Legislative and policy context

There is a number of pieces of legislation, regulations and policies specific to ecology which underpin this assessment. These may be applicable at a European, National or Local level. References to legislation are given as a summary for information and should not be construed as legal advice.

Birds Directive

The European Community Council Directive on the Conservation of Wild Birds (79/409/EEC), normally known as the Birds Directive, sets out general rules for the conservation of all naturally occurring wild birds, their nests, eggs and habitats. It was superseded by the 'new' Birds Directive (2009/147/EC) which generally updated the previous directive.

These requirements are interpreted into English law by the Wildlife and Countryside Act 1981 (as amended) with regard to protection of birds, and the Conservation of Habitats and Species Regulations 2017 with regard to the registration and regulation of Special Protection Areas.

Habitats Directive

The European Community Council Directive on the Conservation of Natural Habitats of Wild Fauna and Flora (92/43/EEC), normally known as the Habitats Directive, aims to protect the European Union's biodiversity. It requires member states to provide strict protection for specified flora and fauna (i.e. European Protected Species) and the registration and regulation of Special Areas of Conservation.

These requirements are interpreted into English law by the Conservation of Habitats and Species Regulations 2017 with regard to European Protected Species and the registration and regulation of Special Areas of Conservation.

Conservation of Habitats and Species Regulations 2017

The Conservation of Habitats and Species Regulations 2017 interpret the Birds Directive and Habitats Directive into English and Welsh law. For clarity, the following paragraphs consider the case in England only, with Natural England given as the appropriate nature conservation body. In Wales, the Countryside Council for Wales is the appropriate nature conservation body.

Special Protection Areas and Special Areas of Conservation are defined in the regulations as 'European sites'. The Regulations regulate the management of land within European sites, requiring land managers to have the consent of Natural England before carrying out management. Byelaws may also be made to prevent damaging activities and if necessary land can be compulsorily purchased to achieve satisfactory management.

The Regulations define competent authorities as public bodies or statutory undertakers. Competent authorities are required to make an appropriate assessment of any plan or project they intend to permit or carry out, if the plan or project is likely to have a significant effect upon a European site. The permission may only be given if the plan or project is ascertained to have no adverse effect upon the integrity of the European site. If the competent authority wishes to permit a plan or project despite a negative assessment, imperative reasons of over-riding public interest must be demonstrated, and there should be no alternative to the scheme. The permissions process would involve the Secretary of State and the option of consulting the European Commission. In practice, there will be very few cases where a plan or project is permitted despite a negative assessment. This means that a planning application has to be assessed by the Local Planning Authority, based on information provided by the applicant, and the assessment must either decide that it is likely to have no significant effect on a European site or ascertain that there is no adverse effect upon the integrity of the European site.

Government policy is for Ramsar sites (wetlands of global importance) to be treated as if they were European sites within the planning process.

Appropriate Assessment

Appropriate Assessment is required in certain instances under the Conservation of Habitats and Species Regulations 2017. Regulation 63 says that:

63.— (1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which-

(a) is likely to have a significant effect on a European site or a European offshore marine site

(either alone or in combination with other plans or projects), and
(b) is not directly connected with or necessary to the management of the site,
must make an appropriate assessment of the implications for that site in view of that site's conservation objectives.

(2) A person applying for any such consent, permission or other authorisation shall provide such information as the competent authority may reasonably require for the purposes of the assessment or to enable them to determine whether an appropriate assessment is required.

(3) The competent authority shall for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority may specify.

(4) They must also, if they consider it appropriate, take the opinion of the general public, and if they do so, they must take such steps for that purpose as they consider appropriate.

(5) In the light of the conclusions of the assessment, and subject to regulation 64 (considerations of overriding public interest), the competent authority shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

(6) In considering whether a plan or project will adversely affect the integrity of the site, the authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which they propose that the consent, permission or other authorisation should be given.

The competent authority is typically the local planning authority. The appropriate assessment contains the information the council requires for the purposes of its assessment under the Habitat Regulations.

The Habitat Regulations also are applicable to local authority land use plans and policies. If a policy or plan is likely to have a significant effect upon a European site, the permission may only be given if the policy or plan is ascertained to have no adverse effect upon the integrity of the European site. This approach gives rise to a hierarchy of plans each with related appropriate assessments. For example, the appropriate assessment of a Regional Spatial Strategy will affect policies within a Core Strategy, which will then need its own appropriate assessment, and so on.

European Protected Species

European Protected Species of animals are given protection from deliberate capture, injury, killing, disturbance or egg taking/capture. Their breeding sites or resting places are also protected from damage or destruction, which does not have to be deliberate. A number of species are listed as European Protected Species, with those most likely to be considered in planning applications being bats, dormouse, great crested newt and otter. Natural England may give a licence for actions that are otherwise illegal, subject to them being satisfied on the three tests of no alternative, over-riding public interest, and maintenance of the species in favourable condition.

European Protected Species of plant are also listed and given protection. These species are generally very rare and unlikely to be present in proposed development sites.

Wildlife and Countryside Act 1981

The Wildlife and Countryside Act 1981 has been amended many times, including by the Countryside and Rights of Way Act 2000. It contains provisions for the notification and regulation of Sites of Special Scientific Interest, and for protected species.

The Regulations regulate the management of land within Sites of Special Scientific Interest, requiring land managers to have the consent of Natural England before carrying out management.

All public bodies are defined as 'S28G' bodies, which have a duty to further the nature conservation of Sites of Special Scientific Interest in the undertaking of their functions. In practice, this prevents planning applications being permitted if they would harm Sites of Special Scientific Interest, as it would be a breach of that duty.

The Act makes it an offence intentionally to kill, injure, or take any wild bird, take, damage or destroy the nest of any wild bird, while that nest is in use or being built, or take or destroy an egg of any wild bird. Special penalties are available for offences related to birds listed on Schedule 1, for which there are additional offences of disturbing these birds at their nests, or their dependent young.

The Act makes it an offence intentionally to kill, injure or take any wild animal listed on Schedule 5, and prohibits interference with places used for shelter or protection, or intentionally disturbing animals occupying such places. Some species have lesser protection under this Act, for example white-clawed crayfish, common frog and toads are only protected from sale, and reptile species, other than smooth snake and sand lizard, are protected from intentional killing or injury, but they are not protected from disturbance and their habitat is not protected. It is also an offence intentionally to pick, uproot or destroy any wild plant listed in Schedule 8.

National Planning Policy Framework

The National Planning Policy Framework (NPPF) dated February 2019 replaces previous Government Policy in relation to nature conservation and planning expressed in the NPPF dated March 2012.

Chapter 15 paragraph 170(d) of the NPPF 2018 says that the planning system should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity.

Paragraphs 171 and 172 relate to policy for designated sites of biodiversity or landscape importance. Proposals for any development on or affecting protected wildlife or geodiversity sites or landscape areas will be judged against Local Plans policies which will distinguish between the hierarchy of international, national and locally designated sites and allocate land with the least environmental or amenity value and maintain and enhance networks of habitats and green infrastructure. Further policy is within paragraph 174, where Local Planning Authorities should within their Local Plans aim to protect and enhance biodiversity by:

- Identifying, mapping and safeguarding components of local wildlife-rich habitats and wider ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity; wildlife corridors and stepping stones that connect them; and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation; and
- Promoting the conservation, restoration and enhancement 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.

When determining planning applications Local Planning Authorities should apply the following principles:

- If significant harm resulting from a development cannot be avoided (through locating it on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused,
- development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;
- development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists; and
- development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.

Paragraph 176 adds protection to candidate sites of European or International importance (Special Protection Areas, Special Areas of Conservation and Ramsar sites) and also to those sites identified or required as compensatory measures for adverse effects on habitats sites, potential SPA, possible SAC listed or proposed Ramsar sites.

Paragraph 177 clarifies that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.

Government circular 'Biodiversity and Geological Conservation – Statutory Obligations and their Impact Within the Planning System' referenced ODPM 06/2005 has not been replaced and remains valid. It sets out the legislation regarding designated and undesignated sites and protected species and describes how the planning system should take account of that legislation. It does however pre-date the NERC Act 2006 (see below), which includes a level of protection for a further list of habitats and species regardless of whether they are on designated sites or elsewhere.

Natural Environment and Rural Communities (NERC) Act 2006

This Act includes a list of habitats and species of principal importance in England. Local Authorities are required to consider the needs of these habitats and species when making decisions, such as on planning application.

Local Planning Authority's planning policy

The Local Planning Authority will have policies relating to biodiversity conservation.

Species Legislation

The following table provides an overview of legislation with regard to species.

Protected Species	Legislation			
	Wildlife & Countryside Act, 1981	The Conservation of Habitats and Species Regulations, 2017	Natural Environment & Rural Communities (NERC) Act, 2006	Protection of Badgers Act, 1992
Plants (certain 'rare' species)	✓	✓ ³	✓	
Invertebrates (certain 'rare' species)	✓	✓ ⁴	✓	
White-clawed crayfish	✓		✓	
Great crested newt, natterjack toad, pool frog	✓	✓	✓	
Other amphibians	✓ ⁵		✓	
Sand lizard, smooth snake	✓	✓ ⁶	✓	
Other reptiles	✓ ⁷		✓	
Breeding birds	✓	✓	✓	
Wintering birds (certain 'rare' species)	✓	✓	✓	
Bats	✓	✓	✓	
Dormouse	✓	✓	✓	
Water vole	✓		✓	
Otter	✓	✓	✓	
Badger				✓

³ Nine species present in the UK, with very specialised habitat requirements, are European Protected Species.

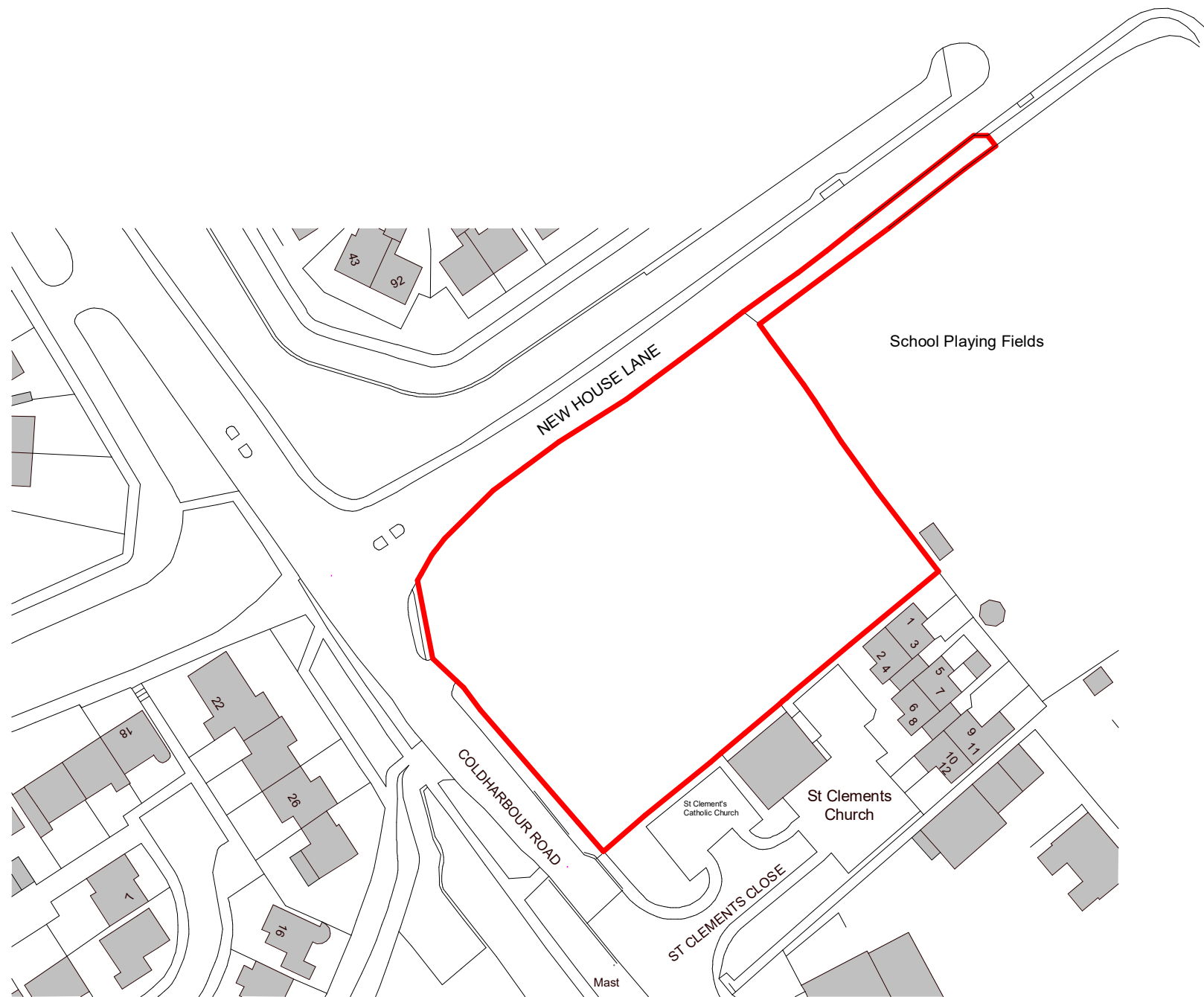
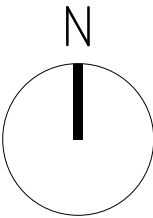
⁴ Fisher's estuarine moth, large blue butterfly and lesser whirlpool ram's-horn snail are European Protected Species.

⁵ The four other native amphibian species (smooth and palmate newts, common frog and common toad) are only protected against trade under this act.

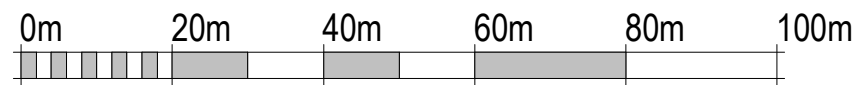
⁶ Smooth snake and sand lizard are European Protected Species.

⁷ The four other native reptile species (common lizard, slow worm, grass snake and adder) are protected against intentional killing, injury and trade under this act.

Appendix 2



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SCALE 1:1000 @ A3

NOTES

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Rev	Date	Description	Drawn By	Checked By
P3	18/08/22	Red Line Amended	SL	AP
P2	09/06/22	Red Line Extended	SL	AP
P1	30/05/22	2nd Draft Issue	SL	AP

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Client:



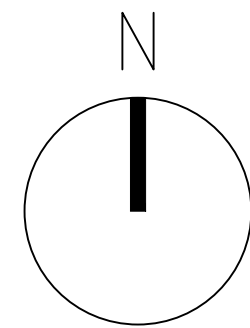
Drawing Title:
Location Plan

For Information

HIA Project Number	Scale @ A3	Suitability
3172	1 : 1000	S2

Project	Originator	Volume	Level	Type	Role	Number
3172	HIA	ZZ	XX	DR	A	0101

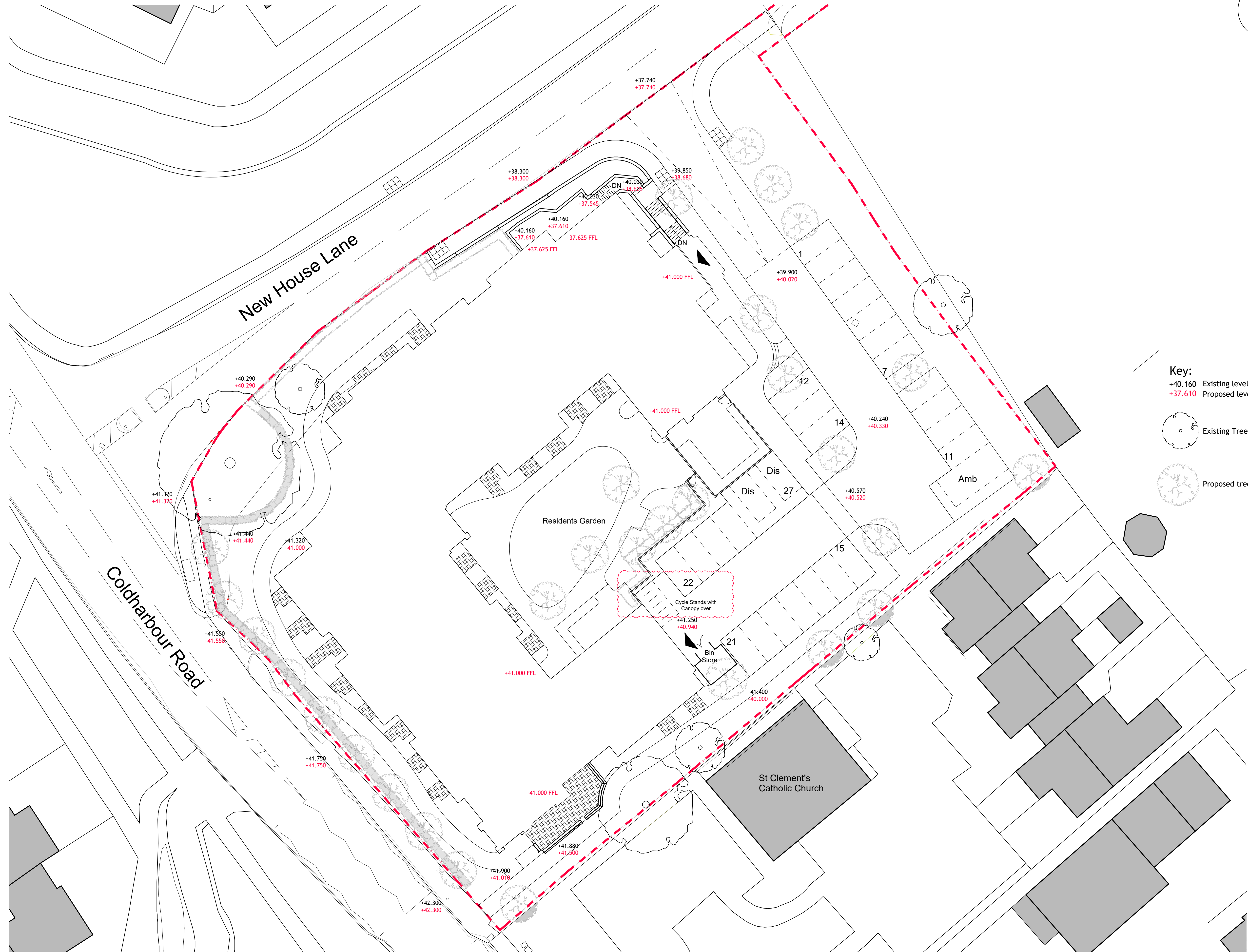
Appendix 3



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Revision Initials Date



Key:
+40.160 Existing level
+37.610 Proposed level
 Existing Tree
 Proposed tree



SCALE 1:200 @ A1

PLANNING

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DRAWING Site Plan as proposed

PAPER SIZE	SCALE	DATE
A1	1:200	26.10.23
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Appendix 4

