

ECOLOGICAL MITIGATION STATEMENT

KEADY CONSTRUCTION LIMITED

DALEFIELD INDUSTRIAL PARK

DALEFIELD WAY, GRAVESEND, KENT

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1. EXECUTIVE SUMMARY

- S.1 The proposed development involves the construction of two new buildings (a storage building and an office building) and a small car park extension. A total of 27 new parking spaces will be built. The Site is small, measuring approximately 0.14ha in total.
- S.2 The Site is of low ecological importance and no ecological survey, assessment, or mitigation beyond the precautionary measures set out below, is required.
- S.3 The main findings of this assessment are: -
- The Site is of low ecological importance, no additional ecological surveys are required;
 - The Site is located c. 80m from the South Thames Estuary and Marshes SSSI.
- S.4 The following measures will be adopted and implemented to address the low-level ecological impacts of the scheme and deliver an ecological enhancement of the site: -
- The proposed development works will adhere to guidance under the Pollution Prevention Guidance Note PPG6 'Working at construction and demolition sites (2012)'. This will be required to minimise the risk of indirect impacts upon the SSSI during construction.
 - The proposed development will include soft landscaping in the form of a garden area consisting of grassland, trees, mixed shrubs, perennials, herbs and bulbs.
 - Three bird boxes will be installed on the workshop building present within the wider site ownership to increase opportunities for nesting birds;
 - A wildlife sensitive lighting scheme will be designed and implemented to avoid illumination of the SSSI north of the Site.
- S.5 This report provides further detail of the above findings and recommendations. As such, it should be read in full.
- S.6 Note that Biodiversity Net Gain is not a requirement for the proposed development because it will not impact any habitat.

2. INTRODUCTION

SCOPE OF WORKS

- 2.1 Lloydbore Ltd was instructed to prepare an Ecological Mitigation Statement suitable for submission to planning in relation to the proposed development at land at Dalefield Industrial Park, Dalefield Way, Gravesend, Kent DA12 2EH (approximate centre: TQ 6706 7357).
- 2.2 Following completion of the desk study, which confirmed that the proposed development site is entirely hardstanding and is not located directly adjacent to any vegetated areas, it was determined that the site is of low ecological importance and that no ecological survey work is required prior to development.
- 2.3 However, given the proximity of the Site to the South Thames Estuary and Marshes SSSI (c. 80m distant), which forms a part of a wider designated site complex that includes the Thames Estuary and Marshes Ramsar site (c.155m east of Site at closest point) and Special Protection Area (SPA) (c.1.35km north east of Site at closest point), precautionary mitigation measures will be required during site works and during the operational stage of the proposed development.
- 2.4 In accordance with report guidance produced by the Chartered Institute of Ecology and Environmental Management (CIEEM) (CIEEM, 2017a), this report has been produced to inform a planning application.
- 2.5 This report has also been produced to inform the project team of the potential ecological risks and opportunities associated with site development.
- 2.6 The scope of works did not include any habitat survey, protected species surveys or associated reports.
- 2.7 Defra standing advice states that Biodiversity Net Gain (BNG) is not a requirement for:
'A development that does not impact a priority habitat and impacts less than:
- *25 square metres (5m by 5m) of on-site habitat*
 - *5 metres of on-site linear habitats such as hedgerows'.*
- 2.8 Because the Site as-existing does not support any habitats, no assessment of the net change in biodiversity units that will arise through implementation of the proposed development is required and none has been undertaken.

3. METHOD

DESK STUDY

- 3.1 The Multi Agency Geographic Information for the Countryside (MAGIC) website was used to obtain information relating to: -
- Statutory designated sites of international, national and local importance;
 - Proposed, possible and potential statutory designated sites of international importance;
 - Impact Risk Zones (IRZs) for statutory designated sites of national and international importance;
 - Habitats of Principal Importance;
 - Ancient Woodland; and
 - Granted European Protected Species Mitigation (EPSM) licences.
- 3.2 A 500m search radius was used for statutory designated sites of local and national importance.
- 3.3 Based on the habitats present within and adjoining the Site, the nature of the proposed development (non-residential), this reduced search radius is assessed as appropriate and proportionate to the potential ecological impacts of the proposed development.
- 3.4 A 6km search radius was used for statutory designated sites of international importance, based on regional guidance and planning policy.
- 3.5 The online mapping tool provided by the Kent Landscape Information Service (KLIS) was used to identify any non-statutory designated sites located within 500m of the Site.
- 3.6 An assessment of publicly available aerial imagery and ordnance survey maps was undertaken to search for waterbodies located within 250m of the Site and assess the local habitat network.
- 3.7 In addition to the above, a pre-application consultation document for the proposed new development was also reviewed and informed the assessment and mitigation measures detailed within this document (Leach Rhodes Walker Architects, 2023).

ASSESSMENT AND EVALUATION

- 3.8 The assessment approach used within this report has been informed by guidelines provided within *BS 42020:2013: Biodiversity: Code of practice for planning and development* (BSI, 2013).
- 3.9 In particular, Section 5.5 of this guidance states that:
- *'The work involved in preparing and implementing all ecological surveys, impact assessments and measures for avoidance, mitigation, compensation and enhancement should be proportionate to the predicted degree of risk to biodiversity and to the nature and scale of the proposed development'.*
- 3.10 Paragraph 44 of the National Planning Policy Framework (NPPF) (Department for Levelling Up, Housing and Communities, 2023) states that local authorities should only require *'supporting information that is relevant, necessary and material to the application in question'*.
- 3.11 The report structure and content is informed by guidance provided within CIEEM 2017b, and within CIEEM's *Guidelines for Ecological Report Writing* (CIEEM, 2017a). CIEEM 2017a states that:

- *'It is important to remember that the structure and content of a report should be proportionate to the predicted degree of risk to biodiversity and to the nature and scale of the proposed development. Authors should only provide information that is relevant, necessary and material to the purpose identified, while at the same time ensuring that adequate details are provided for the intended reader and / or audience e.g. a local planning authority (LPA).'*

3.12 *Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and Marine* (CIEEM, 2018) has also been used to inform an assessment method that can be applied to small development schemes where ecological risk/s are low and where no additional ecological survey work is recommended. In particular, the assessment approach has been informed by Paragraphs 1.9, 1.10 and 1.11 of CIEEM 2018, which state that: -

- *'The level of detail required in an EcIA will inevitably be proportionate to the scale of the development and complexity of its potential impacts. These Guidelines do not prescribe exactly how to undertake an EcIA, but provide guidance to practitioners for refining their own methodologies'* (Para. 1.9);
- *Scoping should be proportionate to potential effects on ecological features. Professional ecologists need to use their knowledge and experience to judge the resources required to complete an adequate and effective EcIA'* (Para. 1.10); and
- *Emphasis in EcIA is on 'significant effects' rather than all ecological effects* (Para. 1.11).

IDENTIFICATION OF IMPORTANT ECOLOGICAL FEATURES

- 3.13 Habitat criteria listed in best practice guidelines for individual species or species groups, such as ARG UK (2010) and BCT (2023), have been used to assess the suitability of habitats to support protected and/or priority species.
- 3.14 Where best practice guidelines are unavailable or unclear, experienced ecologists have used their judgement to categorise the suitability of habitats to support protected or priority species.
- 3.15 The need and scope for additional protected species surveys has been determined on the basis of the suitability of the habitats to support protected species, the potential impacts of the development proposals and the nature of the legal protection afforded to the species most likely to be present on site.
- 3.16 Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006 has been used to identify habitats and species considered to be a conservation priority at a national scale. These are also known as Habitats and Species of Principal Importance. The value of these habitats and species are recognised in the NPPF.
- 3.17 Although it does not offer any legal protection *Birds of Conservation Concern* 5 provides guidance on the conservation status of UK bird species. Thus, it can be used to inform judgements on the ecological value of bird populations and the habitats that they rely on, particularly at a local level. Red status species are those species of highest conservation concern and green status species are those of low or no conservation concern. Amber status species are those species of some conservation concern.
- 3.18 A summary of relevant wildlife legislation and national planning policies can be found in Appendix 1.

ZONE OF INFLUENCE

- 3.19 The potential impacts of a development are not always limited to the boundaries of the site concerned. The area over which a development may impact ecologically important features is known as the Zone of Influence (Zoi).
- 3.20 The Zoi is determined by the source / type of impact, the presence of any potential pathways for that impact and the location and sensitivity of the ecologically important off-site features.
- 3.21 Potential sources of direct impact associated with the development proposals include disturbance the off-site SSSI during construction through pollution and nocturnal illumination of such sites.
- 3.22 If the measures set out in this report are effectively implemented, the Zoi of the proposed development - in relation to all important ecological features considered in this report, is likely to be limited to the red line boundary of the development site and those areas just beyond.

LIMITATIONS

- 3.23 No site visit was undertaken to inform this assessment. A detailed review of aerial and street level imagery and Site imagery provided in the Design and Access Statement, it is evident that the Site does not support and is not located directly adjacent to any habitats. Therefore, the potential impacts of the proposed development are limited to indirect impacts to the nearby SSSI and wider designated site complex, which can readily be avoided through use of industry standard pollution prevention and control measures during site works and lighting controls during the development and operational stages of the proposed project. Therefore, it was assessed that no Site visit is required.
- 3.24 There are no material constraints to the survey or assessment. The survey and ecological assessment are therefore suitable to fulfil the objectives of this report.

LIFESPAN OF THIS ASSESSMENT

- 3.25 If the commencement of site works is delayed beyond two years from the date of issue of this report, an update assessment will need to be undertaken by a suitably experienced ecologist.
- 3.26 If there have been any material changes in baseline ecological conditions, the potential ecological impacts of the proposed development and/or associated legal risks, or any material changes to relevant ecology-related legislation, standing advice, best practice and/or guidance, an updated report should be produced by a suitably experienced ecologist.

4. DEVELOPMENT PLAN

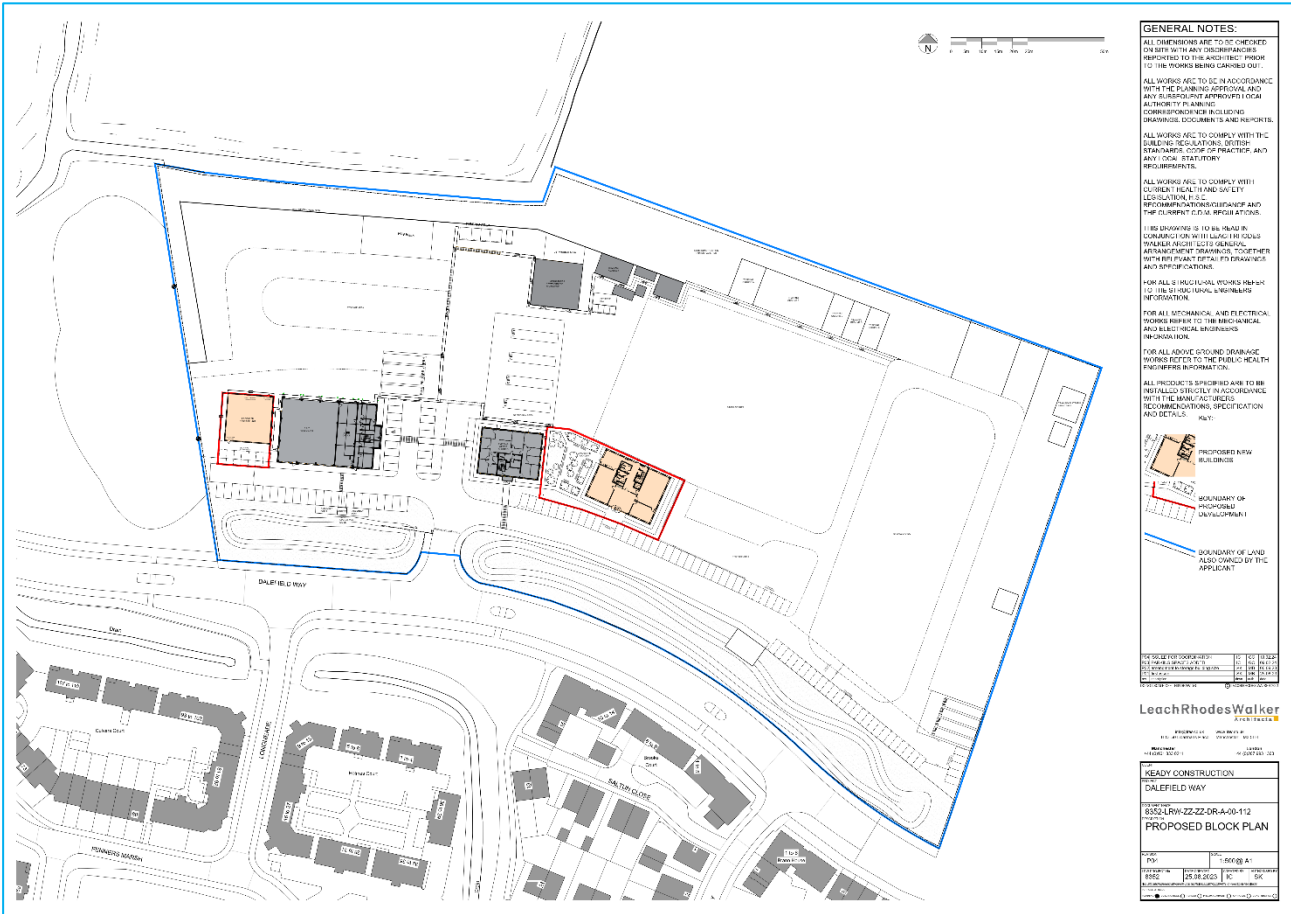


Figure 1 Plan of proposed development (Proposed Block Plan - 8352-LRW-ZZ-ZZ-DR-A-00-112, Leach Rhodes Walker Architects dated: 25/08/2023). The extent of the proposed works is restricted to the red line boundaries as depicted on the above plan. The blue line boundary illustrates the wider land ownership.

5. RESULTS, ASSESSMENT AND RECOMMENDATIONS

- 5.1 The Site is located within an industrial estate and supports hardstanding with no vegetated habitat present. The wider site supports buildings (office buildings, warehouses and workshops), storage facilities (shipping containers), plant machinery and small areas of managed amenity grassland which is of low ecological value.

IMPORTANT ECOLOGICAL FEATURES

- 5.2 This section provides: -
- Detail of the suitability of on-site and adjacent habitats for relevant legally protected species, Species of Principal Importance and otherwise notable species;
 - Detail of any on-site and adjacent Habitats of Principal Importance, and designated sites that are located within the known or potential Zol of the proposed development; and
 - Recommendations in relation to these important ecological features.
- 5.3 Due to an absence of suitable habitat within the likely Zone of Influence of the Proposed Development, the following species have been scoped out of this assessment:
- Ancient Woodland;
 - Habitats of Principal Importance;
 - Invasive flora;
 - Invertebrates (terrestrial and aquatic);
 - Great crested newts and other amphibians (due to absence of suitable aquatic and terrestrial habitat within 500m of the Site);
 - Reptiles;
 - Riparian mammals (water vole, otter and beaver);
 - Hazel dormouse; and
 - Badger;
 - Brown hare; and
 - Harvest Mouse.

- 5.4 No further survey, assessment or measures are required in relation to the aforementioned species, and they are therefore not considered further in this appraisal.

- 5.5 The remainder of this document focusses only on the ecological features for which further assessment is required and those features where more detailed rationale has been provided to justify scoping out the feature.

DESIGNATED SITES

- 5.6 Two statutory designated sites of international importance are located within 6km of the Site and one statutory designated site of national importance is located within 500m of the Site.
- 5.7 The qualifying features for all designated sites of international and national importance located within the Zone of Influence of the Site, and their distance and direction from the Site are summarised in Table 1.

Table 1 Designated sites located within Zone of Influence

Importance Level	Site	Direction and approximate distance from Site	Qualifying Features	Relevant threats, pressures, activities, factors that may adversely affect the site:
International	Thames Estuary and Marshes Ramsar	c.130m east of the Site	Criterion 2 - supports on endangered plant species at least 14 nationally scarce plant species of wetland habitats and more than 20 British Red Data Book wetland invertebrates; Criterion 5 - assemblages of waterfowl ($\geq 20,000$) of international importance occur with species peak counts in winter: 45,118 (5-year peak mean 1998/99-2002/2003); and Criterion 6 - regularly supports 1% of the individuals in a population of a species or subspecies of waterbird occurring at levels of international importance.	Dredging; Erosion; Eutrophication; and General disturbance (of qualifying bird species and/or assemblages) from human activities.
International	Thames Estuary and Marshes SPA	c.130m east of the Site	Waterbird assemblages; and Supports good numbers of non-breeding: Hen harrier (<i>Circus cyaneus</i>); avocet (<i>Recurvirostra avosetta</i>); ringed plover (<i>Charadrius hiaticula</i>); grey plover (<i>Pluvialis squatarola</i>); red knot (<i>Calidris canutus</i>); dunlin (<i>Calidris a alpina</i>); black-tailed godwit (<i>Limosa lislandica</i>); and common redshank (<i>Tringa totanus</i>)	Invasive non-native species; and Outdoor sports and leisure activities, recreational activities.
National	South Thames Estuary and Marshes SSSI	c.71m north of the Site	International important number of redshank, redknot, dunlin, avocet and ringed plover. Nationally important numbers of European white-fronted goose (<i>Anser albifrons spp albifrons</i>), shelduck (<i>Tadorna tadorna</i>), gadwall (<i>Anas strepera</i>), teal (<i>A. crecca</i>), pintail (<i>A. acuta</i>), shoveler (<i>A. clypeata</i>), grey plover, curlew (<i>Numenius arquata</i>) and black-tailed godwit, grey plover, curlew, black-tailed godwit, redshank and greenshank (<i>Tringa nebularia</i>). Nationally rare and scarce plant species. Nationally rare invertebrates including beetles, flies and true bugs.	Dumping, spreading or discharge of any materials. Construction, removal or destruction of roads, tracks, walls, fences, hardstands, banks, ditches or other earthworks, or the laying, maintenance or removal of pipelines and cables, above or below ground. Erection of permanent or temporary structures, or the undertaking of engineering works, including drilling

- 5.8 The Site is located within the outer IRZ for Thames and Medway Estuary Ramsar and SPA. However, the proposed development does not fall within any of the planning application types that require further assessment to determine their potential for adverse impacts upon the Ramsar/SPA.
- 5.9 There are no statutory designated sites of local importance located within 500m of the Site.
- 5.10 The Site is located within the IRZs of South Thames Estuary and Marshes SSSI, however, the proposed development does not fall under those application types identified by Natural England's IRZ mapping tool as requiring further assessment by the local planning authority.

- 5.11 Although further assessment is not a requirement of Natural England's IRZ mapping tool, comment was provided by Kent County Council (KCC)'s Ecological Advice Service (EAS) within the Gravesham Borough Council comments in relation to the pre-application for the proposed development, which stated the following:

'... The site is less than 100m from the South Thames Estuary and Marshes SSSI and therefore we are concerned that the construction of the office and storage area may have a negative impact on the designated sites due to increase in noise, vibration and dust. ...We recommend that any future planning submission must include details assessing the impact proposal will have on the designated site and provide details of any mitigation required to avoid impacts on the SSSI.'

ASSESSMENT AND RECOMMENDATIONS

- 5.12 The proposed development is small in scale, and involves the creation of a commercial building and an industrial storage unit within the Site.
- 5.13 An area of industrial site comprising workshops and hardstanding separates the Site and South Thames Estuary and Marshes SSSI. Although the proposed development will not result in direct impacts upon the SSSI or wider designated site complex through habitat removal, there is potential for indirect impacts arising during construction which primarily relate to the risk of pollution of the SSSI particularly in relation to noise and dust pollution and light spillage, and a lower level risk of pollution effects upon the more distant but connected (to the SSSI) Ramsar site and SPA.
- 5.14 The proposed development will adhere to guidance under the Pollution Prevention Guidance Note PPG6 'Working at construction and demolition sites (2012)'. This will be required to minimise indirect impacts upon the SSSI during site development works.
- 5.15 The implementation of additional good construction practices during construction will include but are not limited to:
- Vehicles and mechanical plant will be fitted with exhaust silencers;
 - Acoustic covers will be used over generators and other plant;
 - Plant and machinery will be turned off when not in use;
 - Enclosure and sheeting of material stockpiles;
 - Sheltered location for material storage;
 - The use of wheel washes to reduce the trafficking of soil onto adjacent highways, with prompt clearance as a remedial action;
 - The use of a bowser on-site during extended periods of dry weather to damp down dust;
 - Sheeting of vehicles carrying spoil;
 - Dust suppression measures for any on-site crushers
 - Bunding of fuel stores and material stockpiles to prevent pollution; and
 - Artificial lighting will be minimised and will be directed away from the off-site SSSI.
- 5.16 The Ecological Mitigation Plan provided in Appendix 2 illustrates the proposed location of heras fencing fitted with dust suppression netting or similar, a measure that will be employed during Site works to minimise the risk of airborne dust pollution of the SSSI.

- 5.17 A Construction Environmental Management Plan (CEMP), providing full detail of pollution prevention and control measures, and detailing the below good construction practice measures, will need to be developed and adhered to during works. The production of, and adherence to, a CEMP can be secured through use of a planning condition.
- 5.18 As per the Design and Access Statement, the proposed development will include fixed plant, but the rating noise from these fixed building services / mechanical plant will be at least 10dB below the existing LA90 background level at the nearest noise sensitive receptors when measured and assessed in accordance with BS4142:2014.
- 5.19 If the measures set out above are effectively implemented, the proposed development is unlikely to result in any significant adverse ecological impacts from construction upon the features for which the SSSI or the more distant Ramsar site or SPA are designated.

NESTING BIRDS

- 5.20 Nesting birds, their nests, eggs and chicks are afforded legal protection by the Wildlife and Countryside Act 1981 (as amended).
- 5.21 The Site does not currently support any suitable features for nesting birds, therefore, no mitigation measures have been recommended in relation to nesting birds.
- 5.22 The proposed development will include soft landscaping in the form of a garden area consisting of grassland, trees, mixed shrubs, perennials, herbs and bulbs.
- 5.23 A recommended species mix for the grassland could include but is not limited to Emorsgate Seeds EL1 Flowering Lawn Mixture and consist of a 20% wildflower and 80% slow-growing grasses composition.
- 5.24 Native tree plantings will be incorporated into the proposed scheme. A recommended species mix includes but is not limited to bird cherry (*Prunus padus*), hornbeam (*Carpinus betulus*), hawthorn (*Crataegus monogyna*), silver birch (*Betula pendula*), whitebeam (*Sorbus aria*) and wild service tree (*S. torminalis*). Shrubs species could include dogwood (*Cornus sanguinea*), hazel (*Corylus avellana*), woolly willow (*Salix lanata*), osier (*S. viminalis*), wayfaring tree (*Viburnum lantana*), guelder rose (*V. opulus*), spindle (*Euonymus europaeus*) and goat willow (*Salix caprea*), which comprise a dense scrubby structure will be included.
- 5.25 In addition to the above, native perennials, herbs and bulbs will be incorporated into the landscaping scheme.
- 5.26 The above will significantly enhance the Site by providing foraging opportunities for common and widespread birds.
- 5.27 In addition to the above, 3 no. 1MR Shwegler Avianex boxes (or similar) suitable for house sparrow will be affixed to the northern or eastern external wall of the workshop building located in the north of the wider site ownership. Such features should be installed between 3-5m above ground level, with at least 2m spacing between each nest box.
- 5.28 A suitably experienced ecologist was consulted for more detailed advice prior to the installation of nest boxes, to ensure that they are securely installed in appropriate locations that house sparrows are likely to use.

BATS

- 5.29 Bats are afforded legal protection by the Conservation of Habitat and Species Regulations 2017 (as amended) and the Wildlife and Countryside Act 1981 (as amended).

- 5.30 No trees or structures suitable for occupation by roosting bats are present on site.
- 5.31 The SSSI located north of the Site and wider site ownership provides habitat considered to be of moderate suitability for foraging bats and such may be used by a small to moderate number of foraging bats.
- 5.32 To avoid indirect impacts from lighting spillage from the proposed development during construction and occupation all external lighting provision to the development will be designed to minimise light spill into the wider area.
- 5.33 The external lighting will be minimised across the entire Site, particularly along the northern boundaries which are in closer proximity to the off-site SSSI.
- 5.34 Only the minimum level of lighting required for site security / health and safety will be installed on-site. Use of narrow spectrum lighting with no UV content, or 'warm white' LED lighting (ideally <2700 Kelvin, with peak wavelengths higher than 550nm) is recommended.
- 5.35 All lighting will be directed to ground and light spill will be minimised through use of hoods, shields and/or cowls to maintain an upward light ratio of 0%.
- 5.36 Subject to health and safety and safe-by-design considerations, motion sensors and/or timers should be used to limit the duration of nocturnal lighting (ideally to short illuminance periods of 1 minute or less). Low-level external lighting in the form of bollards will be incorporated into the scheme to minimise site illumination.
- 5.37 In general, lighting should follow the principles outlined in Section 3 of the Bat Conservation Trust and Institution of Lighting Professionals *Guidance Note 08/18: Bats and artificial lighting in the UK* (BCT and ILP, 2018), and should only be used where necessary.
- 5.38 As a precaution, an experienced ecologist will review the detailed lighting proposals for the scheme and will provide advice on minimising light spill and illumination of the off-site SSSI.

OTHER MAMMALS

- 5.39 All wild mammals are afforded some degree of legal protection by the Wild Mammals (Protection) Act 1996 (as amended). This Act includes offences of crushing and asphyxiation of any wild mammal with intent to inflict unnecessary suffering.
- 5.40 No mammal burrows or other evidence of the presence of burrowing mammals was identified during the site visit.
- 5.41 If any animal burrows (excluding active badger setts) are found during works, careful excavation of animals from their burrows before works commence should be sufficient to avoid an offence.
- 5.42 No trenches or pits should be left open overnight unless they are fitted with a means of escape for mammals (e.g., a scaffold plank positioned to form a ramp).

6. REFERENCES

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- Multi-agency Geographic Information for the Countryside (MAGIC) Interactive Map. Department for Environment, Food and Rural Affairs. Available from: <http://magic.defra.gov.uk>. [Accessed: February 2024].

7. APPENDIX 1: SUMMARY OF WILDLIFE LEGISLATION AND NATIONAL PLANNING POLICY

7.1 The level of protection afforded to protected species varies dependent on the associated legislation. A full list of protected species and their specific legal protection is provided within the Schedules and/or Sections of the associated legislation. Case law may further clarify the nature of the legal protection afforded to species.

7.2 The legal protection afforded to protected species overrides all planning decisions.

ENVIRONMENT ACT 2021, AND THE TOWN AND COUNTRY PLANNING ACT 1990

7.3 The Environment Act 2021 introduced a requirement for new developments to deliver a measurable 10% net gain in biodiversity, normally measured in 'biodiversity units' under DEFRA/Natural England methodology. This legal duty came into force for most development projects from 12th February 2024, under Schedule 7a of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021).

7.4 Regulations for biodiversity gain will come into force in April 2024 for 'small sites', those of which that do not fall into the category of a major development and that meet the DEFRA 'small site' criteria (DEFRA, 2024c). In addition, it is intended the BNG will apply to all terrestrial Nationally Significant Infrastructure Projects (NSIPs) accepted for examination from November 2025.

7.5 Schedule 7a intends to encourage developers to avoid the most important existing habitat and focus habitat creation and enhancement where it will be most ecologically appropriate in helping to halt and reverse biodiversity decline.

7.6 Schedule 7a also: introduces a new system of strategic Local Nature Recovery Strategies; places a new general duty on public bodies to conserve and enhance biodiversity; introduces Conservation Covenants as a new alternative mechanism to Section 106 Agreements for securing off-site habitat provision and other conservation measures that deliver public good; and introduces a framework for Natural England to develop Protected Site and Species Conservation Strategies.

7.7 The following statutory instruments, published in February 2024, provide further detail of legal duties in relation to biodiversity net gain: *The Biodiversity Gain Site Register Regulations 2024*; *The Biodiversity Gain Site Register (Financial Penalties and Fees) Regulations 2024*; *The Biodiversity Gain Requirements (Exemptions) Regulations 2024*; *The Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024*; *The Biodiversity Gain (Town and Country Planning) (Consequential Amendments) Regulations 2024*; and *The Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) Regulations 2024*.

EUROPEAN PROTECTED SPECIES (EPS) - AND THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2017 (AS AMENDED)

7.8 European Protected Species (EPS) are afforded the highest level of protection through the Conservation of Habitats and Species Regulations 2017 (as amended). EPS are also afforded legal protection by parts of the Wildlife and Countryside Act 1981 (as amended).

7.9 There are a number of relatively common and widespread EPS. These include great crested newt, all species of UK bat, dormice and otter.

7.10 There are other species of plant and animal that are also EPS, but generally these are more scarce / rare and are restricted to narrow geographies or specific habitat types. Examples of this latter group include natterjack toad (*Epidaeia calamita*), sand lizard (*Lacerta agilis*) and smooth snake (*Coronella austriaca*).

7.11 In general, any person and/or activity that: -

- Damages or destroys a breeding or resting place of an EPS. (This is sometimes referred to as the strict liability or absolute offence);
- Deliberately captures, injures or kills an EPS (including their eggs);
- Deliberately disturbs an EPS, and in particular disturbance likely to impair animals ability to survive, breed or nurture young, their ability to hibernate and migrate and disturbance likely to have a significant effect on local distribution and abundance;
- Intentionally or recklessly disturbs an EPS while occupying a structure or place used for shelter and/or protection (Wildlife and Countryside Act 1981 (as amended)); and
- Intentionally or recklessly obstructs access to any structure or place that an EPS uses for shelter or protection (Wildlife and Countryside Act 1981 (as amended)).

...may be guilty of an offence.

7.12 The legislation applies to the egg, larval and adult life stages of great crested newts and to bat roosts even when they are not occupied.

7.13 Actions affecting multiple animals can be construed as separate offences and therefore penalties can be applied per animal impacted.

7.14 Under certain circumstances licences can be granted by the Statutory Nature Conservation Organisation (Natural England in England) to permit actions that would otherwise be unlawful.

7.15 There are some very specific defences associated with the Conservation of Habitats and Species Regulations 2017 (as amended). However, these are unlikely to apply to construction related projects. The Sections of the Regulations provide further details of these defences.

7.16 The Wildlife and Countryside Act (1981) includes defence for those aspects of the legislation that apply to an EPS. These defences are unlikely to apply to construction related projects and do not apply to those acts included in the Conservation of Habitats and Species Regulations 2017 (as amended). The Schedules of the Act provide further details of defences.

7.17 Local authorities have obligations under sections 40 and 41 of the Natural Environment and Rural Communities Act (NERC) 2006 to have regard to the purpose of conserving biodiversity in carrying out their duties. The majority of EPS are listed on Section 41 the NERC Act.

WILDLIFE AND COUNTRYSIDE ACT 1981 (AS AMENDED)

7.18 The level of protection afforded to species listed on the Wildlife and Countryside Act 1981 (as amended) varies considerably.

7.19 'Fully protected species', such as water vole, are afforded the highest level of protection. Any person who intentionally kills, injures, or takes 'fully protected species', or who intentionally or recklessly damages or destroys a structure or place used for shelter and/or protection, disturbs the animal whilst occupying a structure and/or place used for shelter and protection, or obstructs access to any structure and/or place used for shelter or protection is likely to have committed an offence.

7.20 Other species, such as common reptiles, are afforded less protection and for these species it may only be an offence to intentionally or recklessly kill or injure animals.

7.21 All active bird nests, eggs and young are protected from intentional destruction. Schedule 1 listed birds are also protected from intentional and reckless disturbance whilst breeding.

- 7.22 Schedule 9 of The Wildlife and Countryside Act lists plant species for which it is an offence for a person to plant, or otherwise cause to grow in the wild. Schedule 9 also lists animals for which it is an offence to release into the wild.

THE PROTECTION OF BADGERS ACT 1992 (AS AMENDED)

- 7.23 The Protection of Badgers Act (1992) makes it an offence to wilfully kill, injure, take or ill-treat a badger and to interfere with a sett, including damage, disturbance and obstruction.

THE PROTECTION OF MAMMALS ACT 1996 (AS AMENDED)

- 7.24 The Protection of Mammals Act (1996) provides protection for all wild mammals against certain cruel acts with the intention of causing unnecessary suffering, including crushing and asphyxiation.

THE NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006 (AS AMENDED)

- 7.25 Section 41 (S41) of the Natural Environment and Rural Communities (NERC) Act (2006) requires the Secretary of State to publish a list of habitats and species which are of principal importance for the conservation of biodiversity in England. The S41 list is used to guide decision-makers, including local and regional authorities, in implementing their duty under Section 40 of the act to have regard to the conservation of biodiversity in England when carrying out their normal functions.

- 7.26 S41 lists 56 habitats and 943 species of principal importance.

- 7.27 Section 42 of the NERC Act relates to Wales.

ENVIRONMENT PROTECTION ACT 1990 (AS AMENDED)

- 7.28 Japanese Knotweed is classed as 'controlled waste' and if taken off site it must be disposed of safely at a licensed landfill site. Soil containing rhizome material should also be regarded as contaminated and treated accordingly.

STATUTORY PROTECTED SITES

- 7.29 Special Protection Areas (SPAs) and Special Areas of Conservation (SACs) are afforded protection under the Conservation of Habitats and Species Regulations 2017. Ramsar sites, which are designated under the Convention on Wetlands of International Importance (1971), are afforded the same level of protection as SPAs and SACs via national planning policy.

- 7.30 The Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018 came into force on 28 December 2018. The regulations allow neighbourhood plans and development orders in areas where there could be likely significant effects on a European protected site to be subject to an 'Appropriate Assessment' to demonstrate how impacts will be mitigated, in the same way as would happen for a draft Local Plan or planning application. The Regulations provide the UK Government's legislative response to the April 2018 European Court of Justice judgement in the case *People Over Wind & Sweetman v Coillte Teoranta* ("People over Wind"). These Regulations are of limited relevance for most planning applications. However, the UK Government is yet to issue any formal planning practice guidelines on the application of this new legislation.

- 7.31 Sites of Species Scientific Interest (SSSI) are afforded protection by the Wildlife and Countryside Act 1981 (as amended).

- 7.32 National Nature Reserves (NNRs) are declared by the statutory country conservation agencies under the National Parks and Access to the Countryside Act 1949 (as amended) and the Wildlife and Countryside Act 1981 (as amended). They are managed to conserve their habitats or to provide

special opportunities for scientific study of the habitats communities and species represented within them. In addition they may be managed to provide public recreation that is compatible with their natural heritage interests (JNCC website).

- 7.33 Local Nature Reserves (LNRs) are declared by local authorities after consultation with the relevant statutory nature conservation agency under the National Parks and Access to the Countryside Act 1949 (as amended). LNRs are declared and managed for nature conservation, and provide opportunities for research and education, or simply enjoying and having contact with nature (JNCC website).

NON-STATUTORY PROTECTED SITES

- 7.34 Non-statutory sites may be given various titles, including Local Wildlife Sites (LWS), Sites of Importance for Nature Conservation (SINCs), Sites of Nature Conservation Importance (SNCIs) and County Wildlife Sites (CWS).
- 7.35 These sites are not normally legally protected but are recognised in the planning system and are afforded some protection through planning policy.

NATIONAL PLANNING POLICY FRAMEWORK (NPPF)

- 7.36 In addition to primary legislation, the government published the National Planning Policy Framework on 19th December 2023. Within the NPPF, Chapter 15 is headed *Conserving and enhancing the natural environment* (Paragraphs 180 to 188).

- 7.37 Of relevance are the following statements: -

'Planning policies and decisions should contribute to and enhance the natural and local environment by... minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures (Paragraph 180d).

- 7.38 Paragraph 181 states that: -

'Plans should: distinguish between the hierarchy of international, national and locally designated sites; allocate land with the least environmental or amenity value, where consistent with other policies in this Framework; take a strategic approach to maintaining and enhancing networks of habitats and green infrastructure; and plan for the enhancement of natural capital at a catchment or landscape scale across local authority boundaries.'

- 7.39 To protect and enhance biodiversity and geodiversity, plans should: -

'Identify, map and safeguard 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 (Paragraph 185a); and

'promote 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.' (Paragraph 185b).

- 7.40 When determining planning applications, local planning authorities should apply the following principles (Paragraph 186): -

'a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;

b) 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;

c) 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

d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.'

7.41 In addition to the above, Paragraph 187 confirms that the following should be afforded the same protection as sites that are included within the definition at Regulation 8 of the Conservation of Habitats and Species Regulations 2017 (as amended) (Special Areas of Conservation, Sites of Community Importance, Special Protection Areas and any relevant Marine Sites (which are collectively referred to as 'habitats sites' in the NPPF)): -

a) potential Special Protection Areas and possible Special Areas of Conservation;

b) listed or proposed Ramsar sites; and

c) sites identified, or required, as compensatory measures for adverse effects on habitats sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.'

7.42 Paragraph 188 states 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.'

7.43 This statement applies to the assessment of effects in relation to all confirmed, possible, potential and/or proposed designated sites of international importance, as identified in the *Statutory Protected Sites* section of this Appendix (above).

8. APPENDIX 2: ECOLOGICAL MITIGATION PLAN

[SEE OVERLEAF]



- LEGEND:**
-  Proposed location of 1 no. (3 no. total) bird box
 -  **Proposed Area of Native-Species Planting:**
Grassland, trees, native shrubs, perennials, ferns and bulbs.
 -  Proposed pollution prevention heras fencing with dust suppression measures affixed.
 -  **Habitat of Lower Importance:**
Strict luminance levels of 10 lux or lower to be imposed, including dimming and use of motion sensors or timers to limit duration of any illumination.
 -  **Core Development Zone:**
Sensitive lighting design to achieve targets in adjacent zones.
Low transmission glazing treatments on glass facades.
Baffles, hood and / or louvres can be used to reduce light spill.
Maximum illuminance level of 50 lux or less should be achieved within this zone.
 -  Ownership boundary
Total area approx: 3.906 ha.
 -  Red line boundary
Total area approx: 0.137 ha.



0 5 10 m
1:500

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rev.	rev. date	auth.	rev. note
P01	24/02/24	SD	Initial issue.

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