

Craig-Y-Parcau and Island Farm, Bridgend



April 2020

Ecology | Green Space | Arboiculture | GIS

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1.0 INTRODUCTION

Ethos Environmental Planning (Ethos) have undertaken this ecological appraisal of land at Craig-Y-Parcau and Island Farm, Bridgend – hereafter referred to as the “site” – see figure 1.

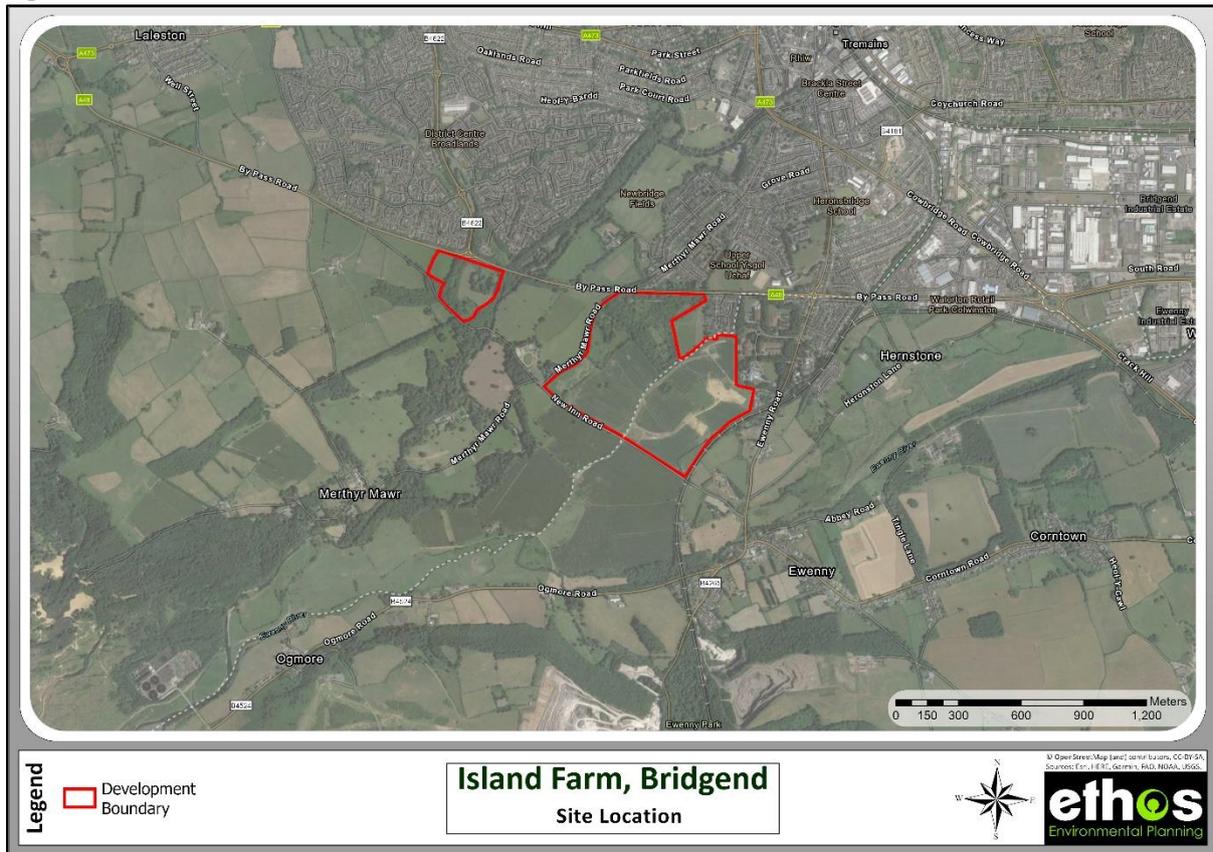
The proposed site was divided into two areas. The main site was approximately 49 Ha in size and included hedgerows, grassland, woodland, arable land and ponds. The smaller site, otherwise known as Craig-Y-Parcau, was 7 Ha in size, comprised of grassland, woodland, hedgerows, waterbodies and built structures. This report provides an assessment of both the areas’ ecological opportunities and constraints and provides recommendations for further surveys.

- to establish baseline ecological conditions and determine the importance of ecological features present within the specified area;
- to identify the existing habitats on Site;
- to identify the potential for protected species;
- to identify if any further surveys are required with regards to protected habitats or species; and
- to identify any key ecological constraints and make recommendations for design options to avoid significant effects on important ecological features/resources.

1.1 Site Location

The Sites were located off New Inn Road in Bridgend, South Wales (Island Farm: central grid reference SS 89832 78097) (Craig-Y-Parcau: central grid reference SS 89009 78602). The northern woodland section forms part of a Site of Importance for Nature Conservation (SINC), designated for a mosaic of habitats and the presence of hazel dormice. No statutory designated sites were noted within 1km of the proposed site.

Figure 1 Site Location



1.2 Proposals

The indicative proposals detailed a green infrastructure mixed-use development comprising of housing, a one form entry primary, a Special Educational Needs school, an area for community/commercial uses, and a tennis centre. Ethos has reviewed the master planning proposals and note that no built development is proposed in the area designated as a SINC, with the exception of the access road from the A48.

An ecological enhancement zone is also proposed to include attenuation ponds and high value habitats for a range of protected species (figure 2).

The Craig-Y-Parcau site is proposed for residential development. The indicative proposals also include the retention of vegetative habitat on site and creation of a swale and an attenuation pond in the east of the site.

Figure 2 Island Farm development proposals



Figure 3 Craig-Y-Parcau development proposals



2.0 METHODOLOGY

2.1 Previous Surveys

The site was subject to an extensive suite of ecological surveys undertaken in 2009 to support the outline planning application for the sports village development. Whilst these surveys are now out of date, they provide significant information regarding habitats and protected species which informed the previously accepted mitigation strategy as part of a historic planning application.

The previous surveys will inform the requirement for updated protected species surveys to support detailed planning proposals.

2.2 Ecological Walkover

A walkover of the site was undertaken on the 4th March 2020 by suitably experienced ecologists to identify the scope of the potential surveys required. This included the identification of broad habitat types and key features, and their value for a range of protected species. No detailed surveys have been undertaken at this early stage. The following includes the protected species surveyed for and the survey methods involved.

2.3 Protected Species Surveys

2.3.1 NERC S. 41 Mammals

The survey included an assessment of the habitats on site for their potential to support NERC Section 41 species such as hedgehog (*Erinaceus europaeus*), polecat (*Mustela putorius*), harvest mouse (*Micromys minutus*) and brown hare (*Lepus europaeus*).

2.3.2 Badger

The assessment for badger (*Meles meles*) included a search of the development site for any evidence of badgers, including setts, foraging signs (snuffle holes), runs and latrines.

2.3.3 Hazel Dormouse

The assessment included consideration of the potential of the Site for hazel dormouse (*Muscardinus avellanarius*), focusing on the connectivity and suitability of the habitat on Site.

2.3.4 Riparian Mammals

The site was assessed for its potential to support riparian mammals such as otter (*Lutra lutra*) and water vole (*Arvicola amphibius*). This included a check for suitable watercourses in the local area and suitable on site terrestrial habitat.

2.3.5 Bats

The methodology for the bat survey has been informed by the Bat Conservation Trust *Bat Surveys Good Practice Guidelines 2016*. The habitats on site were assessed for their suitability for foraging and commuting bats and the potential for roosting bats. A structures assessment was not undertaken, nor an assessment of the trees for roosting bats.

2.3.6 Birds

The site was assessed for its potential to support breeding birds. This included an assessment of the habitats on site for nesting opportunities.

2.3.7 Reptiles

The potential presence of reptiles on Site was assessed considering the habitats present (availability of refugia and basking areas) and suitability of surrounding environment.

2.3.8 Amphibians

The habitats on Site were assessed for their potential to support amphibian species, including great crested newt (*Triturus cristatus*) (GCN). The Site was examined for suitable waterbodies and for breeding terrestrial habitat. A desk-based review of ponds within 500m was also undertaken, in line with the *Great Crested Newt Mitigation Guidelines* (English Nature, 2001).

2.3.9 Invertebrates

Due to the many invertebrate taxonomic groups that exist, the large differences in invertebrate diversity between habitats and the many survey techniques available, invertebrate surveys are highly specific to the site in question. Therefore, an assessment of the potential site for invertebrates was undertaken, including the need for any targeted surveys.

3.0 ECOLOGICAL ASSESSMENT

3.1 Previous surveys

3.1.1 Habitats

The previous surveys identified a mosaic of habitats on site including four habitats protected within the UK Biodiversity Action Plan (BAP); Ancient/species-rich hedgerows, lowland dry acid grassland, lowland mixed deciduous woodland and ponds.

3.1.2 Protected species

The previous surveys identified a range of protected species using the main site including foraging, nesting and foraging birds, dormice and reptiles. Roosting lesser horseshoe bats and brown long-eared bats were also identified roosting within a structure in the SINC in the north of the site.

3.1.3 Previous mitigation strategy

A mitigation strategy was produced in 2009 to offset the impacts of the development. As of 2020 some of the mitigation measures for the Island Farm site have been implemented including the creation of an artificial bat roost for horseshoe bats and the creation of two ponds in the south-west corner of the site which has been identified within draft proposals as the wildlife mitigation area. In addition, the translocation of hedgerows from the centre of the site to the eastern site boundary has been undertaken.

3.2 General habitat description

3.2.1 Island Farm

The Main Site was comprised predominantly of arable land in its winter stubble with very few plant species noted. The arable field margins provide good habitat for a range of species and buffer the existing hedgerows.

There were numerous hedgerows across the site which ranged from mature hedgerows with trees and hazel coppice, to intensively managed species-poor hedgerows which dissected the arable fields. Two hedgerows had been translocated recently to the eastern boundary and appeared to show new growth.

Two ponds which were created as part of the previous applications' ecological mitigation works were noted; however, neither was holding much water. Whilst there was very limited aquatic vegetation in the pond, vegetation in the immediate area included large swathes of tall ruderal and ephemeral/short perennial.

Part of the site, in the northern section, was designated as a SINC partially due to the mosaic of grassland, woodland and scrub. This area is proposed for retention within the current masterplan, with the exception of an access road. Part of the site had been subject to clearance to enable works from the previous development proposals. The area cleared was not within the SINC identified on site. Detailed surveys will be undertaken to consider the botanical diversity of this area.

Part of the area was brownfield land and whilst it was not an appropriate time of year for botany surveys, it was apparent that there were varied nutrient levels and areas of disturbed ground which are likely to result in higher botanical diversity.

Built structures were also noted. These included 'Hut 9' a former prisoner of war camp from World War 2 located within the woodland in the north of the site and a dedicated bat roost located in the south-west of the site.

A number of sink holes were noted across the site. These ranged from those which had apparently been present for a long period of time and had mature trees growing within them, to those very recently emerging and just comprising of small areas of collapsed earth.



Photo 1 – arable field and woodland edge



Photo 2 – arable field



Photo 3 – arable fields and hedgerow



Photo 4 – ephemeral water



Photo 5 – newly created pond with low water level



Photo 6 – dedicated bat roost



Photo 7 – old sink hole with mature trees



Photo 8 – new sink hole



Photo 9 – disturbed ground in SINC



Photo 10 – Hut 9



Photo 11 – woodland in SINC



Photo 12 – woodland in SINC

3.2.2 Craig-Y-Parcau

The Craig-Y-Parcau area was comprised of a mosaic of grassland, scattered and dense scrub, woodland and hedgerows, with the River Ogmore located along the eastern site boundary. There were a number of mature trees across the site and at the site boundaries which had aesthetic and ecological value. Structures were also present – these were in very poor condition and were not accessed internally.



Photo 13 - grassland



Photo 14 - hedgerow



Photo 15 – hard standing



Photo 16 – dense and scattered scrub



Photo 17 – derelict building



Photo 18 – derelict building

3.3 Species

3.3.1 Dormouse

The site contains hedgerows and woodland were assessed to hold high value for dormice. The previous surveys identified the presence of dormice within the SINC located in the north of the site. It was therefore assessed that further surveys would be required to update the status of the site for this species and to inform detailed proposals for the site. Details are included within section 5.

3.3.2 Riparian mammals

The River Ogmore was present along the eastern edge of the Craig-Y-Parcau, with records of both otter and water vole found south of the site. However, the previous surveys identified no evidence of riparian mammals within the development area. Considering the presence of previous records in the area and suitable habitat directly adjacent to the site, it is recommended surveys are undertaken for these protected species and to inform detailed proposals for the site. Details are included within section 5.

3.3.3 Great crested newt

The previous surveys assessed the ponds to be unsuitable for great crested newt (GCN) and that GCN were absent from the site. Since then, it is understood that the previously surveyed ponds have been removed and new wildlife ponds created in the south-west of the main site area. The two water bodies identified during the walkover had relatively low water levels and limited aquatic vegetation. The current proposals indicate the retention and protection of the ponds. Nevertheless, they could provide suitable breeding habitat for amphibians and it is recommended that a Habitat Suitability Index of each of the ponds within 500m of the development site to inform detailed planning application are included within section 5.

3.3.4 Birds

There was a mix of permanent pasture and arable land providing suitable habitat for farmland birds. Also, the hedgerows and their margins within the fields was assessed to provide potential habitat for ground nesting birds. The woodland, hedgerows, scrub and scattered trees were assessed to have high potential for breeding birds. Evidence of barn owl was found in a stable in the south-east of the site. Further surveys for breeding birds have been recommended within section 5 to inform detailed proposals for the site.

3.3.5 Bats

The previous surveys identified roosting lesser horseshoe and brown long-eared bats within Hut 9 in the woodland in the SINC. Since the previous surveys were undertaken, a dedicated bat roost has been created in the south-west of the main site. Additionally, the built structures within the Craig-Y-Parcau area were in extremely poor structural condition and a wide range of bat roosting features were visible for the external walkover. They were assessed to hold high potential for roosting bats. Therefore, it was assessed that an updated assessment of the structures should be undertaken to assess their status for roosting bats. Additionally, emergence/re-entry surveys are recommended. Details of the surveys are included within section 4 to inform detailed design of the proposed development.

The habitats within both sites contained woodland and hedgerows, offering potential commuting, foraging and roosting habitats for bats. may provide potential commuting and foraging habitats for bats. A number of mature trees were also noted which could have potential roosting features for bats. Recommendations have been included within section 5 regarding targeted surveys for bats.

3.3.6 Badgers

The habitats on site were comprised of woodland, grassland and arable land which have potential to support badgers. However, it should be noted that the previous survey identified badgers to be absent from the site. Recommendations are included within section 5 regarding a thorough search of the site for badgers.

3.3.7 Reptiles

Much of the site was comprised of arable land and agriculturally intensified grassland providing negligible potential for reptiles. The key features were assessed to be the sections of grassland and scrub located at the woodland edges. Further presence/absence surveys for reptiles have been recommended within section 5 to inform detailed design of the proposed development.

3.3.8 Invertebrates

The site was comprised of common and widespread habitats providing low potential habitats for invertebrates. No detailed surveys will be required.

4.0 DISCUSSION AND CONCLUSION

The indicative development proposals have included a number of measures to address previously identified ecological constraints including the retention of the majority of the SINC and protection of the artificial bat roost and hedgerows.

Furthermore, the masterplan for Island Farm has indicated the retention of SINC land within the site boundary, with the exception of the access road from the A48. Areas of ecological value are proposed for retention including existing sink holes; which offer value for a range of invertebrates, and an ecological enhancement area located in the south-western field; previously enhanced for ecology in relation to the 2008 sports village application. The masterplan also indicates retention of continuous green areas to ensure a continued network of green and blue infrastructure.

The Craig-Y-Parcau indicates similar green infrastructure considerations including the retention of boundary hedgerows and a green corridor comprising mature trees and grassland through the centre of the site. Measures were also taken to minimise tree removal within the masterplan, with removal only occurring to allow access into the western section of the site.

As the previously ecological surveys have now expired, updated surveys are required to inform the detailed design stage and the planning application. However, considering the indicative development proposals include the retention of the majority of the hedgerows and the SINC, it was assessed that the majority of impacts to protected species could be mitigated for. Careful consideration will need to be made regarding the creation of the access road through the woodland and SINC.

Overall, the site has an extensive planning history which has demonstrated that the site can be developed in an ecologically sensitive way through careful scheme design and the use of mitigation measures. Therefore, it was assessed that the proposed development could be achieved in this manner.

5.0 FURTHER SURVEYS

The recommended protected species surveys and their timings are detailed within table 1 and table 2 below.

Table 1 Recommended surveys and survey timings for Island Farm Main Site

Species/Hab	Survey Type	Number/Description	Timing
Habitats	UK Habitat Classification Survey	Identify and map out the habitats on site, identifying any notable habitats and/or flora.	Can be undertaken at any time of year, but preferably April - October
Background data search	Desktop	Request data from local records centre to inform the need for further targeted surveys	Prior to surveys commencing
Hedgerow	Hedgerow Regs Assessment	Survey any hedgerows proposed for removal to assess if important under Hedgerows Regulations	April - October
Bats	Activity Surveys	Three transects to assess levels of bat activity and identify key habitat features for bats	One survey per month between April – September
	Acoustic Surveys	Two acoustic detectors per transect to assess the species composition of bats on site	Data to be collected on a minimum of five consecutive days each month April - September
	Ground Level Assessment	Trees that are proposed for removal will be ground level assessed for their potential to support bats. If the trees hold moderate to high potential, further surveys will be required	To be undertaken after tree removal plan is provided, ideally in the winter when the trees are not in leaf
	Structures Assessment	A structures assessment will be required if the structures on site are being affected (renovated/demolished within the proposals.	Any time of year
Dormouse	Presence/absence	Nest tubes will be deployed across the site in suitable habitat at between 20 – 30metre intervals	Every month April - October
Birds	Breeding bird survey	Further assessment of the stable will be required to determine if barn owl are breeding on site and if there are any important foraging areas. The background data search will inform whether additional species should be targeted during surveys.	Three surveys between March - June
Otter/Water Vole	Presence/absence	A search for evidence such as trails, droppings, feeding evidence, or holes will be required	Two surveys one between April and June and the other

			between July – September
Badger	Mammal hole monitoring	Mapping of evidence and camera trap monitoring of potential holes will be required	The badger survey should be undertaken between March – October when they are the most active
GCN	Habitat Suitability Index (HSI)	A HSI of each pond on site and within 500m of the site will be undertaken to assess their suitability for GCN.	Can be undertaken at any time of year

Table 2 Recommended surveys and survey timings for Island Farm Craig Parc

Species/Hab	Survey Type	Number/Description	Timing
Habitats	UK Habitat Classification Survey	Identify and map out the habitats on site, identifying any notable habitats and/or flora.	Can be undertaken at any time of year, but preferably April - October
Hedgerow	Hedgerow Regs Assessment	Survey any hedgerows proposed for removal to assess if important under hedgerows regs	April -October
Bats	Emergence/Re-entry Surveys	The structures on site will be surveyed for their potential to support roosting bats.	Three surveys between May - August
	Structures Assessment	A structures assessment will be required if the structures on site are being affected (renovated/demolished) within the proposals. This will likely only be possible as an external inspection due to the unsafe nature of the structures	Any time of year
	Activity Surveys	One activity transect to assess levels of bat activity and identify key habitat features for bats	One survey per month between May – September
	Acoustic Surveys	Two acoustic detectors per transect to assess the species composition of bats on site	Data to be collected on a minimum of five consecutive days each month May - September
	Ground Level Assessment	Trees that are proposed for removal will be ground level assessed for their potential to support bats. If the trees hold moderate to high potential, further surveys will be required	To be undertaken after tree removal plan is provided, ideally in the winter when the trees are not in leaf
Dormouse	Presence/absence	50 nest tubes will be deployed across the site is suitable habitat at 20m intervals	Every month April - October
Reptiles	Presence/absence	Artificial refugia survey	Seven surveys between 8 – 19 degrees Celsius

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APPENDIX 1 LEGISLATION AND POLICY DETAILS

Legislation - Species

This section outlines the key legislation related to the habitats and species considered within this survey report.

Bats

All British bats are fully protected under Section 9 Schedule 5 of the Wildlife and Countryside Act 1981 and amendments. Agreement, and are fully protected under The Conservation of Habitats and Species Regulations 2017. In addition, they are protected under the Berne Convention; they are given migratory species protection within the Bonn Convention. Regulation 43 (1) of The Conservation of Habitats and Species Regulation 2017 makes it an offence to:

- deliberately capture, injure or kill any species of bat;
- deliberately disturb any species of bat;
- damage or destroy a breeding site or resting place of any species of bat.

It is an offence to disturb any bat roosting site, whether the bats are there or not. Under Regulations 43 (2) disturbance includes in particular any disturbance which is likely:

- To impair their ability
 - to survive, to breed or reproduce, or to rear or nurture their young; or
 - in the case of a hibernating or migratory species, to hibernate or migrate; or
- To affect significantly the local distribution or abundance of the species to which they belong.

Presence of bats does not necessarily mean that development cannot go ahead, but that with suitable, approved mitigation, exemptions can be granted from the protection afforded to bats under regulation 43 by means of a licence. Natural England (NE) is the appropriate authority for determining licence applications for works associated with developments affecting bats, including demolition of their roost sites. In cases where licences are required, certain conditions have to be met to satisfy Natural England. Before the Statutory Nature Conservation Organisation (SNCO), in this case NE, can issue a licence to permit otherwise prohibited acts three tests have to be satisfied under the requirement of Regulation 55. These are:

1. Imperative Reasons of Overriding Public Interest [Reg 55(2)(e)];
2. No Satisfactory Alternative [Reg 55(9)(a)];
3. Maintenance of Favourable Conservation Status [Reg 55(9)(b)].

In order to meet the tests, SNCO usually expects the planning position to be fully resolved as this is necessary to satisfy tests 1 and 2. Full planning permission, if applicable, will need to have been granted and any conditions relating to bats fully discharged. ahead of any licence application to the SNCO. The LPA have a legal duty under The Conservation of Habitats and

Species Regulations 2017, to assess whether the application is likely to meet the Three Tests and therefore the requirements for Natural England licensing, prior to determination of an application. The Licence application process may take two months before a licence is issued. Planning Permission and granting of a bat licence are separate legal functions. Therefore receiving planning permission from the Local Authority is no guarantee that the SNCO will issue a derogation licence.

Reptiles

All reptile species in Great Britain receive some legal protection from legislation in the Wildlife and Countryside Act 1981 (as amended), and the two rarest species are afforded additional protection by European law (The Conservation of Habitats and Species Regulations 2017). Both the Wildlife and Countryside Act 1981 and Habitat Regulations 1994 provide mechanisms to protect species, their habitats and sites occupied by the species.

The two European protected species, **Sand lizards** (*Lacerta agilis*) and **Smooth snakes** (*Coronella austriaca*), receive all elements of protection in Section 9 of the Wildlife and Countryside Act 1981 (as amended) and Conservation of Habitats and Species Regulations 2017:

These pieces of legislation prohibits the following on any of the above species:

- Deliberately or intentionally killing and capturing (taking) or intentional injuring.
- Deliberately disturbing
- Deliberately taking or destroying eggs
- Damaging or destroying a breeding site or resting place or intentionally damaging a place used for shelter or protection.
- Intentionally obstructing access to a place used for shelter; and keeping, transporting, selling or exchanging; offering for sale or advertising.

Under Regulations 43 (2) (The Conservation of Habitats and Species Regulations 2017) disturbance includes in particular any disturbance which is likely:

- To impair their ability
 - to survive, to breed or reproduce, or to rear or nurture their young; or
 - in the case of a hibernating or migratory species, to hibernate or migrate; or

To affect significantly the local distribution or abundance of the species to which they belong.

Species that receive protection against intentional killing, injuring and sale only from Schedule 9 of the Wildlife and Countryside Act 1981 (as amended): **Slow-worm** (*Anguis fragilis*), **Common lizard** (*Lacerta vivipara*), **Adder** (*Vipera berus*) and **Grass snake** (*Natrix natrix*).

Both the Wildlife and Countryside Act 1981 and The Conservation of Habitats and Species Regulations 2017 apply to all life stages of the protected species: i.e. eggs and spawn, larvae, juveniles and adults are all protected.

Badger

The Protection of Badgers Act 1992 is based primarily on the need to protect badgers from baiting and deliberate harm or injury. It also contains restrictions that apply more widely and it is important for developers to know how this may affect their work. All the following are criminal offences:

- to wilfully kill, injure, take, possess or cruelly ill-treat a badger;
- to attempt to do so; or
- to intentionally or recklessly interfere with a sett.

Sett interference includes damaging or destroying a sett, obstructing access to a sett, and disturbing a badger whilst it is occupying a sett. It is not illegal, and therefore a licence is not required, to carry out disturbing activities in the vicinity of a sett if no badger is disturbed and the sett is not damaged or obstructed.

Development should not be permitted unless it is possible to take steps to ensure the survival of the badgers in their existing range and at the same population status, with provision of adequate alternative habitats if setts and foraging areas are destroyed. Natural England will normally only issue a licence after detailed planning permission has been granted, where applicable, so that there is no conflict with the planning process.

Before the planning application is determined, the local planning authority should request a detailed ecological survey/report and developers should be prepared to provide the following information:

- The numbers and status of badger setts and foraging areas that are affected by the proposal;
- the impact that the proposal is likely to have on badgers and what can be done by way of mitigation;
- judgment on whether the impact is necessary or acceptable; and
- a recommendation on whether a licence will be required.

A badger survey usually requires assessment of the site and a 30-50m buffer area as tunnels can extend up to 20m from sett entrances. As badgers are not a European Protected species the Three Test do not need to be applied, however Planning Permission and badger licensing are separate legal functions. Thus receiving planning permission from the Local Authority is no guarantee that development operations will not breach the Protection of Badgers Act 1992. Similarly planning permission does not guarantee that a badger licence will be granted.

Birds

All wild birds are protected under the Wildlife and Countryside Act 1981 (as amended) and cannot be killed or taken, their nests and eggs taken, damaged or destroyed while their nest is in use or being built. It also prohibits or controls certain methods of killing or taking except under licence. Other activities that are prohibited include possession and sale. Activities such

as killing or taking birds (including relocating) which would otherwise be illegal can be carried out under licence where there is suitable justification and the issue cannot be resolved by alternative means.

Specially protected or Schedule 1 birds receive full protection under the Wildlife and Countryside Act 1981 (as amended). Part I birds are protected at all times, Part II during the close season only. In addition to the protection from killing or taking that all birds, their nests and eggs have under the Act, Schedule 1 birds and their young must not be disturbed at the nest.

Dormouse

They are protected under both the Conservation of Habitats and Species Regulations 2017 and the Wildlife and Countryside Act 1981 (as amended). Dormice and their breeding sites and resting places are fully protected. Without a licence it is an offence for anyone to deliberately disturb, capture, injure or kill them. It is also an offence to damage or destroy their breeding or resting places, to disturb or obstruct access to any place used by them for shelter. It is also an offence to possess or sell a wild dormouse.

If it is not possible to avoid harming dormice or damaging or blocking access to their habitats, a derogation licence will be required. Planning permission is required to be in place before a licence application.

Planning Permission and granting of a mitigation licence are separate legal functions. Therefore receiving planning permission from the Local Authority is no guarantee that the SNCO will issue a derogation licence.

Great crested newt

Great crested newts are fully protected under UK and European legislation:

- Bern Convention 1979: Appendix III
- Wildlife & Countryside Act (as Amended) 1981: Schedule 5
- EC Habitats Directive 1992: Annex II and IV
- The Conservation of Habitats and Species Regulations 2017
- Countryside Rights of Way Act 2000 (CRoW 2000).

These pieces of legislation prohibit the following:

- Deliberately or intentionally killing and capturing (taking) or intentional injuring.
- Deliberately disturbing
- Deliberately taking or destroying eggs
- Damaging or destroying a breeding site or resting place or intentionally damaging a place used for shelter or protection.
- Intentionally obstructing access to a place used for shelter; and keeping, transporting, selling or exchanging; offering for sale or advertising.

Under Regulations 43 (2) (The Conservation of Habitats and Species Regulations 2017) disturbance includes in particular any disturbance which is likely:

- To impair their ability
 - to survive, to breed or reproduce, or to rear or nurture their young; or
 - in the case of a hibernating or migratory species, to hibernate or migrate; or

To affect significantly the local distribution or abundance of the species to which they belong. Paragraphs 43(1) and 43(2) ensure that protection applies to all stages of their life cycle.

GCN mitigation and licensing can be complex. Natural England have a rapid risk assessment tool which can be used for guidance to assist with determining whether a licence needs to be applied for, or if the development can proceed with Reasonable non-licensed Avoidance Measures (RAM). If a licence is required, the Favourable Conservation Test needs to be met.

Otter

The European Otter is fully protected under UK and European law by the Wildlife and Countryside Act 1981 (as amended) and The Conservation of Habitat and Species Regulations 2017. Otters and their breeding sites and resting places are fully protected. It is an offence for anyone to deliberately disturb, capture, injure or kill them; to deliberately damage or destroy their breeding or resting places; to disturb or obstruct access to any place used by them for shelter. It is also an offence to possess or sell an otter.

Under Regulation 43(2) of The Conservation of Habitats and Species Regulations 2017 the disturbance of otter includes in particular any disturbance which is likely to impair their ability to survive, breed or reproduce, or to rear or nurture their young; or to affect significantly the local distribution or abundance of the species to which they belong.

If it is not possible to avoid harming otter or damaging or blocking access to their habitats, a derogation licence will be required. Planning permission is required to be in place before a licence application.

Planning Permission and granting of a mitigation licence are separate legal functions. Therefore receiving planning permission from the Local Authority is no guarantee that the SNCO will issue a derogation licence.

Water Vole

Water vole are protected from intentional harm or capture or killing, from deliberate damage or destruction to any structure or place used for protection or shelter; from obstruction of access to any structure or place used for protection or shelter or intentional disturbance whilst occupying a place of rest or shelter.

Mitigation and licensing is complex, and usually compensatory habitat will be required and maintenance of connectivity between populations is of key importance. If it is not feasible to avoid disturbing or damaging water vole and/or their habitats it may be possible to apply for a licence. However licences cannot be issued for the specific purpose of development.

Natural England may issue a licence in some situations, if it is considered that the licence action of the development proposal will provide a conservation benefit for water vole.

White clawed crayfish

White clawed crayfish are listed on Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) however, though they are rare in the UK, they only receive protection under some sections making it an offence to take or sell the species only.

Under law, a licence is only necessary to survey for white clawed crayfish (at sites where there is an expectation for presence). The presence of white clawed crayfish is a material consideration in planning and development proposals, however, a mitigation licence is not needed if disturbance or harm cannot be reasonably avoided.

Legislation – Habitats

European Designated Sites: Special Area of Conservation / Special Protection Area

The legal requirements relating to the designation, protection and management of SACs and SPAs in England are set out in the Conservation of Habitats and Species Regulations 2017 (SI No. 1012) , often referred to as ‘the Habitats Regulations’. The 2017 regulations encapsulate all the amendments since they were last consolidated in 2010. SACs are designated under the EC Habitats Directive and SPAs under the EC Birds Directive. Collectively this network of EU-wide nature conservation site is referred to as Natura 2000 sites.

All SACs and SPAs in England are also Sites of Special Scientific Interest (SSSIs). The additional SAC/SPA designation is recognition that some or all of the wildlife habitats and species within a SSSI are particularly valued in a European context and require additional protection.

The Habitats Regulations require that any plans, projects or activities that is likely to significantly affect a SAC/SPA, either alone or in combination with other plans or project, must be subject to an assessment. This is irrespective of whether planning permission or other consent is required. The plan or project can only be consented or proceed if strict conditions are met to ensure protection of the site / favourable conservation status of qualifying species is met with no net negative impacts. The assessment must include consideration of potential off-site impacts to populations for which the sites are designated (for example loss of key foraging habitat beyond the SAC/SPA boundary), and in-direct impacts such as recreational pressure to SAC/SPA habitats and species.

The process is known as a Habitat Regulations Assessment (HRA) and comprises four stages:

- i) Screening – Test of Likely Significant Effect (TOLSE)
- ii) Appropriate Assessment and the Integrity Stage
- iii) Alternative Solutions
- iv) Imperative Reasons of Overriding Public Interest and Compensatory Measures.

The first stage is for the Competent Authority, usually the Local Authority, to carry out a TOLSE, or to request that a shadow HRA is completed to be adopted by the Competent Authority. The screening stage can take the form of an iterative process, whereby potential Likely Significant Effects are designed out or mitigated for. Whilst not a legal requirement until Stage 2 of the HRA process, this stage of the assessment is usually carried out in consultation with Natural England. Mitigation measures must be sufficiently detailed to inform the screening assessment and then secured through condition if it is for a planning proposal. In some situations, this may mean that the Competent Authority may request details for the screening process that would not usually be presented or submitted until the later stages of a proposal.

The decision-making authority may only permit or undertake the proposals if the screening assessment concludes that there would no adverse effect on the integrity of the SAC. Where it cannot reach this conclusion, the project can then only proceed by undertaking an 'Appropriate Assessment' of the adverse effect(s) which could not be screened out. This must be detailed, objective, based on best available scientific evidence and carried out in on-going consultation with Natural England, a legal requirement under the Habitat Regulations. If, with additional assessment and additional mitigation measures, the Competent Authority can still not ascertain that an adverse effect on the SAC/SPA habitats or favourable conservation status of qualifying species cannot be protected/maintained, permission to proceed with the plan or project should not be granted – subject to the provisions of Regulations 64 and 68: i) Overriding Public Interest (in the absence of alternative solutions) and ii) Secure Compensatory Measures (to ensure overall coherence of Natura 2000 is protected) respectively.

The HRA process allows those proposals which clearly will not impact upon the special European wildlife interest of a SAC to proceed. Natural England is able to provide advice to authorities on how proposed activities can avoid adverse impacts on a SAC/SPA.

Under the Habitats Regulations planning authorities must also require that any permitted development normally carried out under a general planning permission, but which may affect a SAC requires further approval before being undertaken.

As the statutory nature conservation body in England, Natural England is duty bound to ensure that SACs/SPAs are protected and managed favourably for conservation in line with the requirements of the Habitats Directive. Our experience is that it is usually possible to find mutually acceptable solutions where sustainable land use and wildlife can flourish.

UK Designated Sites – National Nature Reserves (NNR), Sites of Special Scientific Interest (SSSI)

Nationally protected sites are designated under the Wildlife and Countryside Act 1981 (as amended), reinforcing protection provided by the National Parks and Access to the Countryside Act 1948. SSSIs may also form component units of SACs. Natural England have a statutory duty to protect NNRs and SSSIs and must be consulted for activities or applications where there is risk of damage to the SSSI. Consent from Natural England ('Request permission for works or activity on a SSSI') may be required for certain activities within or near to a SSSI.

Policy considerations

The National Planning Policy Framework (NPPF) set out the Government's planning Policies for England, to provide the framework and planning requirements for local plans; to deliver strategic and sustainable development.

National Planning Policy

NPPF 2019

The 2012 National Planning Policy Framework has been updated and replaced with NPPF 2018. This consolidates proposals from various Government consultation documents in recent years.

The NPPF 2019 sets out principles for conserving and enhancing the local environment. Key policies are that local plans should allocate land with least environmental or amenity value and take a strategic approach to maintaining and strengthening networks of habitats and green infrastructure.

Para 173 sets out nature conservation principles that LPAs should apply to the determination of planning applications:

'When determining planning applications, local planning authorities should apply the following principles:

- 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 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) should be refused, unless there are wholly exceptional reasons and a suitable mitigation strategy exists. Where development would involve the loss of individual aged or veteran trees that lie outside ancient woodland, it should be refused unless the need for, and benefits of, development in that location would clearly outweigh the loss; and*
- d) 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 the environment.'*