

**AD Plant, Harvester Farm,  
Greenholme Bank**

Extended Phase 1 Habitat Survey  
Report

July 2015

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## Issuing office

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# 1 Introduction

## Site Description

- 1.1 The Site, as defined by the red line boundary provided by email on 21 April 2015, is known as Harvesters Farm and is located at OS grid reference SE748029, to the west of Epworth in North Lincolnshire. The Site comprises bare ground, buildings and ruderal vegetation with broadleaf plantation woodland to the north, east and south.

## Description of Project

- 1.2 Loveden Estates proposes to construct an Anaerobic Digester (AD) Biogas Plant and associated infrastructure on the Harvesters Farm site to the south of Wroot Road. The proposed layout of the biogas plant is shown on the Proposed Site Plan in Appendix 1 (Biogest Drawing no: UK-2014-01-077-PP-A-12.1).

## Aims of Study

- 1.3 BSG Ecology was commissioned by Pegasus Planning on behalf of Loveden Estates in May 2015 to undertake an extended Phase 1 habitat survey of the site, in order to identify habitats or species that may be affected by the proposed works, and to provide a preliminary ecological assessment.
- 1.4 This report details the methods and results of the desk study and extended Phase 1 Habitat survey. The objectives of the survey were as follows:
- Identify the existing habitats within the Site;
  - Check for evidence of protected species within the Site;
  - Assess the potential for protected species or Species of Principal Importance<sup>1</sup> to be present in within the site;
  - Identify any potential ecological constraints relating to the proposed development;
  - Identify any requirements for further survey;
  - Identify preliminary mitigation measures to avoid or reduce ecological impacts based on currently available information regarding the development design.

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<sup>1</sup> Species of Principal Importance are listed in response to Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006. They are referred to as 'priority species' in the National Planning Policy Framework (NPPF).

## 2 Methods

### Desk Study

- 2.1 As part of the desk study, a data trawl was undertaken in May 2015. The following information was requested:
- The known presence of any protected or notable species or habitats on or within 2km of the centre of the Site (SE 748 029).
  - The presence of non-statutory designated Local Wildlife Survey Areas (LWSs) on or within 2km of the centre of the Site.
- 2.2 Lincolnshire Environmental Records Centre was contacted on 18 May 2015 to provide this information.
- 2.3 In addition, checks for ponds within and up to 500m radius of the Site were carried out by using on-line aerial photographs (obtained from Google Earth software programme, 29 May 2015) and ordnance survey maps (Where's the Path, 29 May 2015).

### Field Survey

#### *Extended Phase 1 Habitat Survey*

- 2.4 Principal Ecologist, Philippa Harvey MCIEEM undertook the field survey on 15 May 2015. The weather during the day was warm and sunny. The site was walked over and the habitats were described using the standard Phase 1 Habitat Survey methodology (JNCC, 2010).
- 2.5 The extended component of the Phase 1 Habitat Survey included making searches for any signs of protected species such as badger and recording any birds using the habitats within the Site. The buildings and mature trees present within the Site were inspected from the ground to assess their potential for supporting roosting bats. Tree features suitable for roosting bats include dead wood, flaking bark, rot holes, cracks and splits in major limbs and woodpecker holes (Hundt, L 2012). These features are typically associated with mature trees (and some semi-mature trees), which are limited to the woodlands within the site. The site was also searched for the presence of potential nesting habitats for breeding birds and the presence of invasive non-native plants, such as Japanese knotweed *Fallopia japonica*.

### Limitations to Methods

The woodlands could not be fully surveyed because the ground of badger setts layer is dominated by tall stands of common nettle *Urtica dioica* which were too dense to access. A thorough search for badger setts has not been undertaken, although the edges of the woodland have been walked and there are no signs of badger activity close to the development footprint.

The drain located to the west of the Site was viewed from the top of the bank. It was not possible to access the drain due to the steepness of the bank and the dense scrub on the banksides. However, this is not considered to be a significant constraint as the ditch will not be affected by the proposed development.

### 3 Results and Interpretation

- 3.1 The findings of the desk study and the Extended Phase 1 Habitat Survey are set out below. The habitat description should be read in conjunction with Figure 1. The photographs referred to below are located at the rear of the report.

#### Desk Study

##### *Designated Sites*

##### Statutory Designated Sites

- 3.2 Hatfield Moor is located 2.3km to the northwest of the Site and is designated as a Special Area of Conservation (SAC), and a Site of Special Scientific interest (SSSI). The moor is a remnant of the once extensive lowland peat bog which once occupied the Humberhead Levels, comprising peatland and a series of drainage ditches with aquatic plant communities. The Annex 1 Habitat that is the primary reason for designation as a SAC is the presence of degraded raised bog still capable of regeneration.
- 3.3 Hatfield Moor also forms part of the Thorne and Hatfield Moors SPA. Thorne and Hatfield Moors is classified as an SPA due to its importance to breeding nightjar which is listed under Annex 1 of Directive 2009/147/EC (commonly referred to as the Birds Directive).
- 3.4 There are three additional SSSIs within 2km from the Site all of which are designated for the habitats present. See Table 1 for details.

##### 3.5 Table 1: SSSIs within 2km of the Site

Name	Reason for designation	Distance from the Site
Hatfield Chases Ditches	Remnants of former marshland supporting a rich assemblage of aquatic and emergent plants. Also support a population of water vole.	819m west
Epworth Turbary	Relict peat vegetation partly covered by blown sand. Habitats include heathland, fen and birch woodland.	857m south
Haxey Turbary	Relict big formerly dug for peat colonised by birch woodland, wet heath and ground flora. Also supports grasshopper warbler and nightingale.	937m northeast

##### Non-statutory Designated Sites

- 3.6 There are seven Local Wildlife Sites (LWS) within the search area, the nearest of which, Greenholme Lane Drain is 210m west of the Site. See Table 2 for details.

## 3.7

**Table 2: Local Wildlife Sites within 2km of the Site**

CODE	Name	Eastings/Northing	Distance from centre of the Site
244	East Ring Drain	470691 403773	1.93
284	Folly Drain North	476688 407254	1.76
285	Folly Drain South	473038 401256	1.87
333	Greenholme Lane Drain	474587 402955	0.21
661	River Torne	475669 406616	1.24
706	Skyers Drain	474945 403788	0.89
729	South Idle Drain, Tunnel Pits	473424 403341	1.43

**Field Survey****Habitat Description**

- 3.8 The Site comprises bare ground, ruderal herb vegetation and two farm buildings (see Photographs 1 and 2). The bare ground has in places been colonised by agricultural grasses and dandelion (see Photograph 2). There is a large stack of straw bales to the eastern edge of the Site (see Photograph 3) and several piles of gravel and fencing wire in the centre of the Site. Beyond the bare ground and bordering the adjacent broadleaved woodland plantations are dense stands of common nettle which extend into the woodland plantations and together with cow parsley *Anthriscus sylvestris*, dominates the field layer (see Photograph 4).
- 3.9 Broadleaved plantation woodland lies within the Site to the north, east and west. The woodlands are open and characterised by a mix of mature and semi-mature trees (see Photographs 5 and 6). The mature trees include sycamore *Acer pseudoplatinus*, beech *Fagus sylvatica*, oak *Quercus* sp., cherry *Prunus* sp., sweet chestnut *Castanea sativa*, horse chestnut *Aesculus hippocastinum* and hybrid black poplar *Populus x canadensis*. The more recently planted woodland supports additional species including silver birch *Betula pendula*, alder *Alnus glutinosa*, rowan *Sorbus acuparia*, goat willow *Salix caprea* and occasional pine *Pinus* sp.
- 3.10 Beyond the Site to the west there is a drain which has steep banks covered in dense bramble scrub. The drain has standing water with algae, floating sweet-grass *Glyceria fluitans* and bulrush *Typha latifolia* (see Photograph 7).

**Protected Species****Bats- Roosting**

- 3.11 Five records of bat activity were provided for the search area and relate to Epworth Turbary, Wroot and Epworth village. One record of a bat roost was provided for Wroot village in 2013 over 2km west of the Site.
- 3.12 There are two farm buildings within the Site (B1 and B2). Building B1 is an open sided shed constructed of corrugated asbestos sheet and metal sheet. There is no evidence of internal or external features with potential to support roosting bats (see Photograph 8).
- 3.13 Building B2 is constructed of brick with a corrugated asbestos roof (see Photograph 9). The building is open at both ends and there are large holes in the roof and ridge, making the building draughty and damp internally. The roof is unlined and there is no roofspace. The brick walls are intact and there are no gaps that could provide suitable roosting opportunities for bats.
- 3.14 Several of the mature trees within the woodland support features which could provide bats with roosting opportunities including rot holes, dead wood and loose bark (see Photographs 10 and 11). Their locations are shown on Figure 1.

- 3.15 It was not possible to survey all the trees within the woodland due to the height and density of the nettle within the woodlands and it is possible that other trees may support features with potential for roosting bats.

#### Bats- Foraging and Commuting

- 3.16 The woodland edges and ruderal vegetation provide suitable habitat features for bat flight lines and are likely to provide invertebrate prey items that could be used by foraging bats.

#### Badger

- 3.17 Four historical records of badger were provided for the search area, none of which relates to the Site or adjacent land. No sign of badger activity was recorded during the survey of the Site. The woodlands within and bordering the Site could provide suitable habitat for badger. Due to the presence of dense undergrowth and nettle, it was not possible to thoroughly search the adjacent woodlands for the presence of badger setts or signs of badger activity.

#### Great Crested Newt

- 3.18 No records of great crested newt were provided for the search area. No suitable breeding habitat for great crested newt is present within the site. Potentially suitable terrestrial habitat for great crested newt is present within the site. The drain to the west of the Site could potentially be used by amphibians, including great crested newt if they are present in the local area. The nearest pond is located over 800m to the north east of the Site and is separated by arable fields housing free range pigs which are highly disturbed with no vegetation. It is unlikely that newts will cross this habitat to access the Site. The pond is connected by a ditch to the ditch bordering the western edge of the Site. However newts would have to travel over 1km to reach the Site via the ditch network. There are suitable terrestrial habitats (plantation and scrub on ditch banks) close to the pond and it is considered likely that even if newts are present in this pond they are likely to use this nearby habitats.

#### Reptiles

- 3.19 Forty four historical records were provided for grass snake *Natrix natrix*, adder *Vipera berus* and common lizard *Zootoca vivipara* for the search area. The majority of records relate to Epworth Turbary SSSI and Hepworth Turbary SSSI which are located 857m and 937m from the Site respectively. Grass snake are also recorded from Skyers Main Drain and Scawcett's Drain both over 1km from the Site.
- 3.20 No signs of reptiles were located during the survey and the majority of the Site is bare ground and ruderal vegetation and woodland. It is possible that the large stacks of straw bales could be used by breeding or hibernating grass snake.

#### Nesting Birds

- 3.21 In total 391 records of birds were provided for the search area, none of which are for the Site or adjacent habitats. Thirteen records of barn owl were provided, none for the Site itself. The location of the records is confidential at the request of the data provider. In addition, confidential records of peregrine, hobby and osprey were provided, the majority of which relate to sites over 1km from the Site.
- 3.22 The site supports habitats which could potentially be used by nesting birds, within the scrub, woodland and ruderal vegetation and possibly within the buildings within the Site. Fourteen species of bird were recorded during the survey; these are listed in Table 3. None of the species recorded is species of conservation concern (Eaton et al, 2009) or listed as species of principal importance under the provisions of the NERC Act 2006.

**Table 3: Birds recorded during the survey**

Common name	Scientific name
Blackcap	<i>Sylvia communis</i>
Blackbird	<i>Turdus merula</i>
Blue tit	<i>Cyanistes caeruleus</i>
Buzzard	<i>Buteo buteo</i>
Chaffinch	<i>Fringilla coelebs</i>
Goldfinch	<i>Carduelis carduelis</i>
Great tit	<i>Parus major</i>
Pied wagtail	<i>Motacilla alba</i>
Mistle thrush	<i>Turdus viscivorus</i>
Pheasant	<i>Phasianus colchicus</i>
Robin	<i>Erithacus rubecula</i>
Wood pigeon	<i>Columba palumbus</i>
Wren	<i>Troglodytes troglodytes</i>

**Water vole**

- 3.23 Eighty seven records of water vole were provided for the search area for the period 1977 - 2013. Sixteen of these records are for the Greenholme Lane Drain which is 0.21km from the Site and borders the proposed access route to the development. The drain to the immediate west of the Site is hydrologically linked with the Greenholme Lane Drain and it is possible that water vole may also occur on this smaller drain. Detailed inspection of the banks was not possible due to the steepness of the bank gradient and density of vegetation. The banks were viewed where possible from the bank top within the Site. No signs of water vole activity such as burrows or latrines were located during the survey.

## 4 Potential Impacts and Recommendations

### Designated Sites

- 4.1 The development is located 2.3km from Thorne and Hatfield Moors SPA and Hatfield Moors SAC (and constituent SSSI). Due to the geographical distance and nature of the development it is considered that there will be no effect on these Natura 2000 sites.
- 4.2 Greenholme Lane Drain LWS runs alongside the proposed access track to the development. If any upgrading is proposed to Greenholme Lane or the access track to Harvester Farm, then these works will need to be designed to avoid any impact on the adjacent drains and associated wildlife.

### Habitats

- 4.3 The impacts described below are based on the development footprint shown on the Proposed Siteplan (Biogest, 6 July 2015).
- 4.4 The proposed development will result in the loss of the open areas of the Site which are dominated by bare ground and ruderal habitats (species-poor grassland, dense stands of common nettle), the stacks of straw bales together with the two farm buildings. In addition, the silage clamps are to be located on the arable field beyond the southern Site boundary. These habitats are considered to be of low ecological value.
- 4.5 The broadleaved plantation woodlands are beyond the development footprint and will be retained within the Site.

### Protected Species

#### Bats

- 4.6 Bats and their habitats are protected under the Wildlife and Countryside Act 1981 (as amended), and by the Conservation of Habitats and Species Regulations 2010. In summary, these make it an offence to damage, destroy or obstruct any place used by bats for breeding and shelter, disturb a bat, or kill, injure or take any bat. Further details with regards to protected species legislation and policy are set out in Appendix 3.

#### Roosts

- 4.7 Several trees, including four within the broadleaved woodland plantation on the eastern edge of the Site are identified to have features with some potential to support roosting bats. If any mature trees are to be affected by the proposals then it is recommended, in the first instance, that an aerial survey of the trees is undertaken to closely inspect the features to check for any signs of roosting bats. If a bat roost is located or the results are inconclusive, additional survey work (i.e. dusk emergence and dawn re-entry) surveys would be required to confirm presence/absence of a bat roost.

#### Foraging and Commuting

- 4.8 The Site forms part of a wider landscape composed of arable farmland and associated drain network with small blocks of woodland which may provide suitable habitat for foraging or commuting bats. The Site itself is surrounded by woodland which is to be retained and will continue to provide foraging and commuting habitat. The development of an AD plant will not involve any external lighting at night and therefore it is considered unlikely to lead to a negative impact on foraging or commuting bats and therefore no further survey work is considered to be necessary.

***Badger***

- 4.9 Due to the presence of dense undergrowth and nettle, it was not possible to thoroughly search the woodlands for the presence of badger setts or signs of badger activity. However these areas will remain unaffected by the development and no impact on badger is considered likely.

***Great Crested Newt***

- 4.10 There are no historical records of great crested newt in the local area. Adjacent to the western boundary of the Site there is a drain which could provide a suitable breeding habitat for newts and other amphibians. The Site is isolated within intensively farmed arable land and the habitats within the Site are considered unlikely to support great crested newt. Taken together with the lack of any historical records in the local area, it is considered unlikely that there will be an impact on great crested newt and mitigation is not therefore required.

***Reptiles***

- 4.11 All British reptiles are protected under the Wildlife and Countryside Act 1981 (as amended) against intentional killing or injury and against sale. In addition, all British reptiles are Species of Principal Importance under the provisions of the NERC Act 2006.
- 4.12 The suitability of the habitats to support reptiles varies across the Site. The areas of unvegetated bare ground and the buildings are of low suitability for reptiles. The more optimal habitat for reptiles within the Site includes the more vegetated areas of the Site, and the straw bales within the Site which could potentially be used by breeding or hibernating grass snake, if present.
- 4.13 In order to reduce the risk of killing or injuring grass snake during site clearance work (i.e. committing an offence) it is proposed that the two large piles of straw bales are cleared outside of the hibernation period, under a method statement removal of vegetation to displace any grass snake present into neighbouring suitable habitat. The implementation of this process will require the supervision of a suitably qualified ecologist.

***Nesting Birds***

- 4.14 All nesting birds are protected under Section 1 of the Wildlife and Countryside Act 1981 (as amended) which makes it an offence to intentionally kill, injure or take any wild bird or take, damage or destroy its nest whilst in use or being built, or take or destroy its eggs. In addition to this, for some rarer species (listed on Schedule 1 of the Act), it is an offence to disturb them whilst they are nest building or at or near a nest with eggs or young, or to disturb the dependent young of such a bird.
- 4.15 The proposals will require the removal of the buildings and scrub/ruderal habitats. The buildings and scrub habitat have the potential to support breeding birds. The removal of these habitats will be carried out outside of the bird breeding season in order to avoid committing an offence under The Wildlife and Countryside Act 1981 (as amended). As a guide, the bird nesting season is between February and August inclusive; dates vary by species and can be affected by prevailing weather conditions. The majority of species do not start nesting until March and April. If any clearance work has to take place during the bird breeding season, then the habitats will be surveyed for active bird nests by a suitably qualified ecologist before the proposed work is carried out. If active bird nests are present, then work would have to be delayed until nesting activity ceases.

***Water vole***

- 4.16 Water vole is protected under the Wildlife and Countryside Act 1981 (as amended). This makes it an offence to kill, injure or take any water vole, damage, destroy or obstruct access to any place of shelter or protection that the animals are using, or disturb voles while they are using such a place. Water vole is listed as a Species of Principal Importance under the provisions of the NERC Act 2006.

The drain adjacent to the western boundary of the Site could provide suitable habitat for water vole which are known to present in the local area. In addition, water vole are recorded for Greenholme Lane Drain LWS which runs alongside the proposed access track to the development.

If any upgrading is proposed to Greenholme Lane or the access track to Harvester Farm, then these works will need to be designed to avoid any impact on the adjacent drains and associated wildlife.

It is recommended that during construction and operation, that pollution control measures are put in place to ensure there is no indirect impact on the water quality of the drain. If for any reason works are required to the drain, then a water vole survey is recommended of the drains to be affected during the spring and autumn months to inform the need for any mitigation measures.

## 5 References

JNCC (2010). *Handbook for Phase 1 habitat survey - a technique for environmental audit*. JNCC, Peterborough.

Eaton M.A., Brown, A.F., Noble, D.G., Musgrove, A.J., Hearn, R., Aebischer, N.J., Gibbons, D.W., Evans, A & Gregory, R.D. (2009). *Birds of Conservation Concern 3: the population status of birds in the United Kingdom, Channel Islands and the Isle of Man*. *British Birds* 102, pp296-341.

Hundt, L. (2012) *Bat Surveys Good Practice Trust* 2<sup>nd</sup> edition. Bat Conservation Trust.

## **6**      **Figures**



- 1) SILAGE CLAMPS
- 2) MULTIFUNCTIONAL TANK  
(RECEPTION PIT/DIGESTION PIT/SEPARATION LIQUID PIT)  
 $\phi 10,00\text{m}$ ;  $h=4,00\text{m}$ ;  $V=314\text{m}^3$
- 3) SUBSTRATE FEEDING SYSTEM BIOG 55 $\text{m}^3$
- 4) CENTRAL PUMPING STATION (CONTAINER)
- 5) DIGESTER - POWER RING  $\phi 32,00\text{m}/\phi 23,00\text{m}/h=6,00\text{m}$   
primary digester  $V_{\text{substrate}}=2.038\text{m}^3$   
secondary digester  $V_{\text{substrate}}=2.285\text{m}^3$
- 6) DIGESTATE TANK  
 $\phi 29,00\text{m}/h=6,00\text{m}$ ;  $V=3.963\text{m}^3$
- 7) GASHOLDER  $\phi 9,50\text{m}/h=10,00\text{m}$ ;  $V_{\text{gas}}=400\text{m}^3$
- 8) SEPARATOR
- 9a) OFFICE & SWITCHBOARDS IN CONTAINER
- 9b) HEATING EQUIPMENT IN CONTAINER
- 10) GASFLARE
- 12) CHP CONTAINER (500kW)
- 13) PASTEURIZATION UNIT

KEY:

- proposed development
- paved area
- trees

MODIFICATIONS

NO.	DATE	MODIFICATION(S)	DONE BY	CHECKED BY
01	July 15, 2015	Topographic data, DNO units according '2011-004, DNO Pflanzung Planne 23771-E'	LEH	
02	July 17, 2015	Remove topographic data	LEH	

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PROJECT-LOCATION: United Kingdom











PROJECT-NAME: UK-2014-01-077-Pollybell Farm

PLANNED CONSTRUCTION: **NEW BUILDING OF A BIOGAS PLANT**      CONTENT: **PLANNING PACKAGE PROPOSED SITEPLAN**

PROJECT-ENGINEER: Michael Wippol	SCALE: 1:500	DRAWING-NO: UK-2014-01-077-PP-A-121	INDEX: 02
DESIGNED BY: Michael Lemus July 06, 2015		DATE DRAWING NO: UK-2014-01-077-Pollybell Farm_planning-package-02.dwg	DATE: A1
VERIFIED BY: Michael Wippol			

N:\Common\Corrections\Bare\Comms\8111 - 8200180 Isle of Axholme\Map\8180\_C\_Phase1\_11\_010615.mxd



- LEGEND**
-  Broadleaved plantation woodland
  -  Tall ruderal herb
  -  Bare ground
  -  Semi-improved grassland
  -  Straw bales
  -  Arable
  -  Building and building number
  -  Tree with bat potential
  -  Scattered scrub
  -  Site boundary

**BSG** ecology

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PROJECT TITLE  
ISLE OF AXHOLME

DRAWING TITLE  
Extended Phase 1 Habitat Survey Results

DATE: 16.07.2015    CHECKED: PH    SCALE: NTS  
DRAWN: JJRSC    APPROVED: PH    STATUS: FINAL

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## 7 Photographs

**Photograph 1:** View across the Site- north east corner showing dense nettle and woodland beyond



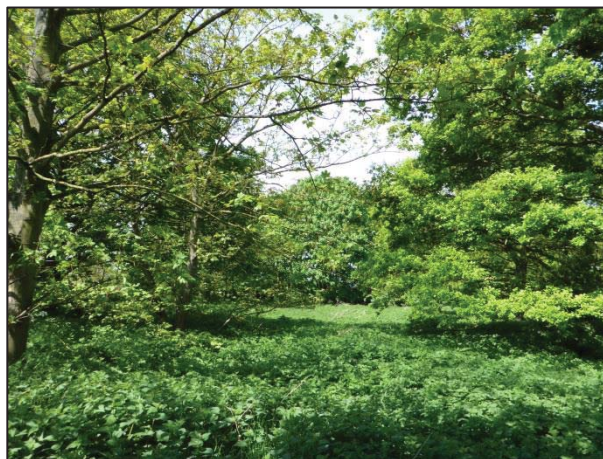
**Photograph 2:** View across the Site –showing bare ground and ruderal vegetation



**Photograph 3:** Straw bales in the eastern part of the Site



**Photograph 4:** Common nettle stands extending into the woodland areas



**Photograph 5:** Broadleaved plantation woodland in northeast corner of the Site



**Photograph 6:** Broadleaved plantation woodland on the northern edge of the Site showing younger trees and dense nettle



**Photograph 7:** Drain to the west of the Site



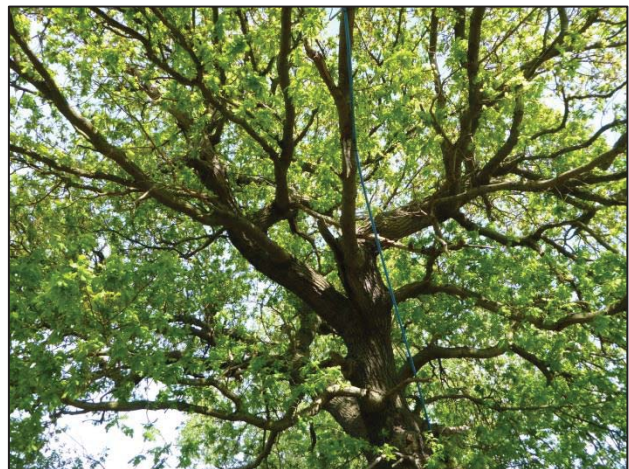
**Photograph 8:** Building B1



**Photograph 9:** Building B2



**Photograph 10:** Oak tree on edge of the entrance track



**Photograph 11:** Sweet chestnut tree in broadleaved plantation with bat potential – dead wood and loose bark



## Appendix 3: Summaries of Relevant Policy, Legislation and Other Instruments

### National Planning Policy Framework (England)

- 7.1 The Government published the National Planning Policy Framework (NPPF) on 27th March 2012. Text excerpts from the NPPF are shown where they may be relevant to planning applications and biodiversity including protected sites, habitats and species.
- 7.2 In conserving and enhancing the natural environment, the NPPF (Paragraph 109) states that ‘the planning system should contribute to and enhance the natural and local environment’ by:
- a. Recognising the wider benefits of ecosystem services;
  - b. Minimising impacts on biodiversity and providing net gains in biodiversity, where possible contributing to the Government’s commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;
  - c. Preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability.
- 7.3 In paragraph 111, the NPPF refers to brownfield land as follows: ‘planning policies and decisions should encourage the effective use of land by re-using land that has been previously developed (brownfield land), provided that it is not of high environmental value.’
- 7.4 Paragraph 117 refers to how planning policies should aim to minimise impacts on biodiversity, to: ‘identify and map components of the local 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 local partnerships for habitat restoration or creation;’ and to ‘promote the preservation, restoration and re-creation of priority habitats, ecological networks and the protection and recovery of priority species populations, linked to national and local targets, and identify suitable indicators for monitoring biodiversity in the plan.’
- 7.5 Paragraph 118 of the National Planning Policy Framework advises how, when determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the mitigation hierarchy. The mitigation hierarchy advises that if significant harm 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.
- 7.6 Where proposals or activities require planning permission, the NPPF states that ‘...local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:
- d. Proposed development on land within or outside a Site of Special Scientific Interest likely to have an adverse effect on a Site of Special Scientific Interest (either individually or in combination with other developments) should not normally be permitted. Where an adverse effect on the site’s notified special interest features is likely, an exception should only be made where the benefits of the development, at this site, clearly outweigh both the impacts that it is likely to have 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;
  - e. Development proposals where the primary objective is to conserve or enhance biodiversity should be permitted;
  - f. Opportunities to incorporate biodiversity in and around developments should be encouraged;
  - g. Planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats, including ancient woodland and the loss of aged or veteran trees found

outside ancient woodland, unless the need for, and benefits of, the development in that location clearly outweigh the loss; and

- h. The following wildlife sites should be given the same protection as European sites:
  - i. potential Special Protection Areas and possible Special Areas of Conservation
  - ii. listed or proposed Ramsar sites; and
  - iii. sites identified, or required, as compensatory measures for adverse effects on European sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.'

7.7 In respect of protected sites, the NPPF requires local planning authorities to make 'distinctions...between the hierarchy of international, national and locally designated sites so that protection is commensurate with their status and gives appropriate weight to their importance and the contribution that they make to wider ecological networks.'

7.8 In paragraph 125 the NPPF states that 'by encouraging good design, planning policies and decisions should limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.' This applies to protected species that are a material consideration in the planning process including bats and may also apply to other light sensitive species.

#### **Government Circular ODPM 06/2005 Biodiversity and Geological Conservation (England only)**

7.9 Paragraph 98 of Government Circular 06/2005 advises that "the presence of a protected species is a material consideration when a planning authority is considering a development proposal that, if carried out, would be likely to result in harm to the species or its habitat. Local authorities should consult Natural England before granting planning permission. They should consider attaching appropriate planning conditions or entering into planning obligations under which the developer would take steps to secure the long-term protection of the species. They should also advise developers that they must comply with any statutory species' protection provisions affecting the site concerned..."

7.10 Paragraph 99 of Government Circular 06/2005<sup>2</sup> advises that "it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted".

7.11 "However, bearing in mind the delay and cost that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development."

#### **Standing Advice GOV.UK (England only)**

7.12 The GOV.UK website provides information regarding protected species and sites in relation to development proposals: 'Local planning authorities should take advice from Natural England or the Environment Agency about planning applications for developments that may affect protected species.' GOV.UK advises that 'some species have standing advice which you can use to help with planning decisions. For others you should contact Natural England or the Environment Agency for an individual response.'

<sup>2</sup> ODPM Circular 06/2005. *Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impacts within the Planning System* (2005). HMSO Norwich.

- 7.13 The standing advice (originally from Natural England and now held and updated on GOV.UK<sup>3</sup>) provides advice to planners on deciding if there is a 'reasonable likelihood' of protected species being present. It also provides advice on survey and mitigation requirements.
- 7.14 When determining an application for development that is covered by standing advice, in accordance with guidance in Government Circular 06/2005, Local planning authorities are required to take the standing advice into account. In paragraph 82 of the aforementioned Circular, it is stated that: 'The standing advice will be a material consideration in the determination of the planning application in the same way as any advice received from a statutory consultee...it is up to the planning authority to decide the weight to be attached to the standing advice, in the same way as it would decide the weight to be attached to a response from a statutory consultee.'

#### **European Protected Species– great crested newt, bats and otter**

- 7.15 The Conservation of Habitats and Species Regulations 2010 (as amended) consolidates the various amendments that have been made to the original (1994) Regulations which transposed the EC Habitats Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora (Council Directive 92/43/EEC) into national law.
- 7.16 "European protected species" (EPS) of animal are those which are present on Schedule 2 of the Conservation of Habitats and Species Regulations 2010 (as amended). They are subject to the provisions of Regulation 41 of those Regulations. All EPS are also protected under the Wildlife and Countryside Act 1981 (as amended). Taken together, these pieces of legislation make it an offence to:
- a. Intentionally or deliberately capture, injure or kill any wild animal included amongst these species
  - b. Possess or control any live or dead specimens or any part of, or anything derived from a these species
  - c. deliberately disturb wild animals of any such species
  - d. deliberately take or destroy the eggs of such an animal, or
  - e. intentionally, deliberately or recklessly damage or destroy a breeding site or resting place of such an animal, or obstruct access to such a place
- 7.17 For the purposes of paragraph (c), disturbance of animals includes in particular any disturbance which is likely—
- a. to impair their ability—
    - i. to survive, to breed or reproduce, or to rear or nurture their young, or
    - ii. in the case of animals of a hibernating or migratory species, to hibernate or migrate; or
  - b. to affect significantly the local distribution or abundance of the species to which they belong.
- 7.18 Although the law provides strict protection to these species, it also allows this protection to be set aside (derogated) through the issuing of licences. The licences in England are currently determined by Natural England (NE) for development works and by Natural Resources Wales in Wales. In accordance with the requirements of the Regulations (2010), a licence can only be issued where the following requirements are satisfied:
- a. The proposal is necessary 'to preserve public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment'
  - b. 'There is no satisfactory alternative'
  - c. The proposals 'will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

<sup>3</sup> <https://www.gov.uk/protected-species-and-sites-how-to-review-planning-proposals#standing-advice-for-protected-species>

### **Definition of breeding sites and resting places**

- 7.19 Guidance for all European Protected Species of animal, including bats and great crested newt, regarding the definition of breeding and of breeding and resting places is provided by The European Council (EC) which has prepared specific guidance in respect of the interpretation of various Articles of the EC Habitats Directive.<sup>4</sup> Section II.3.4.b) provides definitions and examples of both breeding and resting places at paragraphs 57 and 59 respectively. This guidance states that ‘The provision in Article 12(1)(d) [of the EC Habitats Directive] should therefore be understood as aiming to safeguard the ecological functionality of breeding sites and resting places.’ Further the guidance states: ‘It thus follows from Article 12(1)(d) that such breeding sites and resting places also need to be protected when they are not being used, but where there is a reasonably high probability that the species concerned will return to these sites and places. If for example a certain cave is used every year by a number of bats for hibernation (because the species has the habit of returning to the same winter roost every year), the functionality of this cave as a hibernating site should be protected in summer as well so that the bats can re-use it in winter. On the other hand, if a certain cave is used only occasionally for breeding or resting purposes, it is very likely that the site does not qualify as a breeding site or resting place.’

### **Birds**

- 7.20 All nesting birds are protected under Section 1 of the Wildlife and Countryside Act 1981 (as amended) which makes it an offence to intentionally kill, injure or take any wild bird or take, damage or destroy its nest whilst in use or being built, or take or destroy its eggs. In addition to this, for some rarer species (listed on Schedule 1 of the Act), it is an offence to disturb them whilst they are nest building or at or near a nest with eggs or young, or to disturb the dependent young of such a bird.
- 7.21 The Conservation of Habitats and Species (Amendment) Regulations 2012 has placed new duties on competent authorities (including Local Authorities and National Park Authorities) in relation to wild bird habitat. These provisions relate back to Articles 1, 2 and 3 of the EC Directive on the conservation of wild birds (2009/147/EC, ‘Birds Directive’<sup>5</sup>) (Regulation 9A(2) & (3) require that ‘in the exercise of their functions as they consider appropriate’ these authorities must take steps to contribute to the ‘preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in the United Kingdom, including by means of upkeep, management and creation of such habitat...’
- 7.22 In relation to the duties placed on competent authorities under the 2012 amendment Regulation 9A (8) states: ‘So far as lies within their powers, a competent authority in exercising any function [including in relation to town and country planning] in or in relation to the United Kingdom must use all reasonable endeavours to avoid any pollution or deterioration of habitats of wild birds (except habitats beyond the outer limits of the area to which the new Wild Birds Directive applies).’

### **Badger**

- 7.23 Badger is protected under the Protection of Badgers Act 1992. This makes it an offence to wilfully kill, injure, take, possess or cruelly ill-treat a badger, or to attempt to do so; or to intentionally or recklessly interfere with a sett. Sett interference includes disturbing badgers whilst they are occupying a sett, as well as damaging or destroying a sett or obstructing access to it. A badger sett is defined in the legislation as “a structure or place, which displays signs indicating current use by a badger”.
- 7.24 ODPM Circular 06/2005<sup>6</sup> provides further guidance on statutory obligations towards badger within the planning system. Of particular note is paragraph 124, which states that “The likelihood of disturbing a badger sett, or adversely affecting badgers’ foraging territory, or links between them, or

<sup>4</sup> Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC. (February 2007), EC.

<sup>5</sup> 2009/147/EC Birds Directive (30 November 2009. European Parliament and the Council of the European Union.

<sup>6</sup> ODPM Circular 06/2005. *Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impacts within the Planning System* (2005). HMSO Norwich.

significantly increasing the likelihood of road or rail casualties amongst badger populations, are capable of being material considerations in planning decisions.”

- 7.25 Natural England provides Standing Advice<sup>7</sup>, which is capable of being a material consideration in planning decisions. Natural England recommends mitigation to avoid impacts on badger setts, which includes maintaining or creating new foraging areas and maintaining or creating access (commuting routes) between setts and foraging/watering areas.

#### **Water Vole**

- 7.26 Water vole is protected under the Wildlife and Countryside Act 1981 (as amended). This makes it an offence to kill, injure or take any water vole, damage, destroy or obstruct access to any place of shelter or protection that the animals are using, or disturb voles while they are using such a place. Water vole is listed as a Species of Principal Importance under the provisions of the NERC Act 2006.

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<sup>7</sup> <http://www.naturalengland.org.uk/ourwork/planningdevelopment/spatialplanning/standingadvice/specieslinks.aspx>