Biodiversity Net Gain Management Plan

Premier inn Manchester (West Didsbury) Christie Fields Business Park, Derwent Avenue, Manchester M21 7QS

Whitbread Group PLC

Status	Issue	Name	Date
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Guidelines

This assessment has been designed to meet:

- British Standard 42020 (2013) 'Biodiversity – Code of Practice for Planning and Development'.

Proportionality

> 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. Consequently, the decision-maker should only request supporting information and conservation measures that are relevant, necessary and material to the application in question. Similarly, the decision-maker and their consultees should ensure that any comments and advice made over an application are also proportionate.
>
> This approach is enshrined in Government planning guidance, for example, paragraph 174 of the National Planning Policy Framework for England.
>
> The desk studies and field surveys undertaken to provide a preliminary ecological appraisal (PEA) might in some cases be all that is necessary.
>
> (BS 42020, 2013)

In consequence of the scale and intensity of the proposed development, this plan-led report is considered adequate and proportionate. It communicates all relevant information necessary to determine a planning application or support the recommendations for further surveys.

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1.0 Introduction and Context

1.1 Background

Arbtech Consulting Limited was commissioned by Whitbread Group PLC to produce a Biodiversity Net Gain Management Plan (BNG MP) for the proposed development Premier inn Manchester (West Didsbury) Christie Fields Business Park, Derwent Avenue, Manchester M21 7QS (hereafter referred to as the site).

The site has been subject to the following previous ecological assessment of relevance to this report:

- Preliminary Ecological Appraisal and Preliminary Roost Assessment (Arbtech Consulting Ltd., 2024); and
- Biodiversity Net Gain Assessment (Arbtech Consulting Ltd, 2024).

1.2 Project Description

The planning application pertaining to the site (Manchester City Council Reference: PA24/04796) describes the development as: Erection of a two storey annexe building, following demolition of existing restaurant building, to form an additional 30 hotel bedrooms and breakfast room, together with alterations to the car park and proposed landscaping works. A proposed development plan is provided in **Appendix 1.**

1.3 Site Context

The site is centred on National Grid Reference SJ 82963 92139 and has an area of approximately 0.7ha.

The site comprises two buildings including a hotel and a public house, with significant areas of hardstanding, along with sections of ornamental planting and modified grassland, that border the site. The site is surrounded by residential development to the east, south and west, and a cemetery to the north. Major commuter roads are also adjacent to the site on the northern and eastern boundaries. A site location plan is provided in **Appendix 2**.

1.4 Scope of This Report

Following the submission of planning application 140916/FO/2024, the proposals were conditionally approved.
Of relevance to this report, planning condition 17 states:

The development shall not commence until a Habitat Management and Monitoring Plan (the HMMP)], prepared in accordance with the approved Biodiversity Gain Plan referenced in condition no. 16, and including:

a) a non-technical summary;

b) the roles and responsibilities of the people or organisation(s) delivering the HMMP;

c) the planned habitat creation and enhancement works to create or improve habitat to achieve the biodiversity net gain in accordance with the approved Biodiversity Gain Plan [BNG Assessment, Arbtech 2024];

d) the management measures to maintain habitat in accordance with the approved Biodiversity Gain Plan for a period of 30 years from the completion of development; and

e) the monitoring methodology and frequency in respect of the created or enhanced habitat to be submitted to the local planning authority, has been submitted to and been approved in writing by City Council as Local Planning Authority.

The aims of this BNG MP are to provide ecological enhancement and management prescriptions to ensure the anticipated BNG is achieved in accordance with previous ecological assessments undertaken at the site. Specifically, this report aims to provide definitive detail with regards to a 30-year management plan to ensure the effective installation and long-term success of proposed habitat creation. As such, this report aims to provide sufficient detail to support the discharge of planning condition 17.

2.0 Ecological Baseline Conditions Relevant to This Report

The baseline ecological conditions of relevance to this report were determined as a result of the PEA/PRA (Arbtech, 2024).

2.1 Habitats Recorded on Site

The site is characterised by modified grassland, developed sealed surface, introduced shrub, ornamental hedgerow and scattered trees.

For details of the protected species appraisal, please refer to the PEA/PRA report.

2.2 BNG and Proposed Habitat Creation

Proposals for the site comprise the removal of modified grassland, introduced shrub and developed sealed surface. Ornamental hedgerow, introduced shrub and urban trees will be retained, and new trees, mixed scrub, neutral grassland and ornamental hedgerow will be planted.

Proposed habitats can be seen on the plan at **Appendix 4**.

2.3 Scope for Mitigation and Management

Habitat creation

Through the proposed delivery of habitats detailed above, the development will generate 0.27 area-based habitat units and 0.2 hedgerow units, which will result in a 26% net gain for area-based habitat units and a 17.3% net gain for linear-based hedgerow units.

Section 3 of this report details specific creation / installation and management measures to ensure that the retained and proposed new landscaping is appropriately retained / created / maintained and species-specific enhancement measures are secured for the 30-year management term. Where conditions are applicable to proposed habitats, details on compliance with BNG condition criteria are provided.

3.0 Biodiversity Net Gain Management Plan

3.1 Persons Responsible

Persons responsible, lines of communication, and remediation implementation detail is provided below in **Table 1**.

Table 1: Persons responsible, lines of communication, and remediation

Mitigation	Specification
Persons Responsible and Lines of Communication	A Development Biodiversity Champion will be selected for the construction phase of the development. The Development Biodiversity Champion will be someone with significant influence during construction, such as the contract/project manager or landowner. The Development Biodiversity Champion will be responsible for ensuring all actions outlined in this document are implemented. Any queries with regards to the mitigation and enhancement prescriptions will be addressed to the project ecologist and communication will be retained between the Development Biodiversity Champion and project ecologist throughout the project. The project ecologist's contact details are located on the title page of this report. The Development Biodiversity Champion will inform the project ecologist of the commencement of enhancement installation works and provide updates where necessary. Once the ecological enhancements have been installed/created, a Post-Development Biodiversity Champion will be allocated who has influence on site once the development is complete. The Post-Development Biodiversity Champion role will be assigned to the Regional Maintenance Manager, who will be responsible for ensuring all recommended management is undertaken and any associated remedial measures are completed where necessary.
Post-Development Site Visits	A post-development site visit by a Suitably Qualified Ecologist (SQE) will be undertaken to confirm the successful installation/creation of the biodiversity enhancements no more than one year following installation/creation. A report will be produced by the SQE detailing the results of the site visit and any remediation requirements. Where remediation is necessary, i.e. if the biodiversity enhancements have not been installed to a satisfactory standard, further evidence will need to be provided proving implementation. Depending on the scale of the remediation requirements, this will require an additional site visit by an SQE or photographic evidence to be provided by the Post-Development Biodiversity Champion. This requirement will be defined based on the results of the first site visit by the SQE. Ongoing assessment of the habitat creation and management measures will be undertaken, whereby the site will be subject to an inspection by a SQE at years 2, 5, 10, 20 and 30. The inspections should be undertaken during the optimal botanical survey window (May - August) to provide the best assessment of habitat types and conditions. A report will be produced by the SQE after every inspection, detailing the results of the survey and any remediation requirements necessary. The Post-Development Biodiversity Champion will be responsible for ensuring that the site is inspected by a SQE at the appropriate timings set out above and will also be responsible for implementing any remediation measures identified by the SQE.

3.2 Habitat Creation and Management within Site Boundary

Best practice habitat creation and management over a 30-year term to ensure a BNG consistent with that reported within the BNG Assessment is provided in **Table 2** below.

Table 2: Habitat Creation and Management Prescriptions

Ecological receptor	Specification
Waste Disposal and Materials Storage	A secure area for waste storage should be proposed on site within areas of hardstanding or buildings. Storage of waste in such areas will not impact any retained or newly created habitats during the operational phase. All future materials storage will be over areas of hardstanding located within the north of the site. No materials will be stored over areas of soft landscaping at any time.
Retained and Created Ornamental Hedgerow	***Overview:*** New native hedgerows will be planted on site. All existing hedgerow will be retained. ***Objectives:*** • To undertake landscaping works in compliance with BS 4428:1989 – The Code of Practice for General Landscape Operation. • To create new ornamental hedgerows. ***Creation Method:*** • **Ground preparation** The location for hedgerow planting will be cleared and reduced to compacted permeable bare ground in preparation for planting. Planting substrate must comprise site won material with any deficiencies made up with imported topsoil compliant with BS 3883:2015. Prepare the ground by digging over a strip approximately 60-90cm (2-3ft) wide and one spit (or spade blade) deep. Soils that become waterlogged in winter may require a permanent drainage system. Alternatively, form the soil into a ridge about 15-20cm (6-8in) high and 50-70cm (20-28in) across to plant into. • **Planting** Plants will be positioned set back from hardscaped boundaries to allow space for the hedgerow to develop and mature prior to

requiring any significant management/ cutting back. Plant density will focus on achieving a hedgerow width of privately 1m; as such, plants will be planted in a staggered double row approximately 45-60cm apart, where individual plants are planted 90cm apart within each row. The notches must be vertical and deep enough for the roots to hang freely, with the transplant being planted so that the root collar is exactly level with the ground surface. All bare-root hedge planting stock will be protected from rabbit damage using approved proprietary 600mm plastic-free shrub guards (e.g. Greentech Bio-Earth Biodegradable Plastic-Free Shelter), supported with 0.9m 12/14lb canes as advised by the manufacturer

- **Timing**

  It is best to prepare the land during the summer ready for planting between November and March. Planting before the new year helps ensure better rooting and subsequent establishment including faster growth.

Management prescriptions covering a 30-year term:

Table 2.1: New and Retained Hedgerow Management Prescriptions. Condition Criteria N/A.

Management	When	Rationale
Prepare planting area in summer, in preparation for autumn/winter planting	June – August	To ensure the ground is dry and workable.
Plant hedgerows within proposed areas in Autumn	September – November	Helps shrubs take roost and establish prior to the first growing phase the following spring.
Removal of spent flowers to be removed through 'deadheading'	Twice annually, late spring and in the Autumn	Allows plants to place more energy into re-growth.
At the end of each growing	When required;	To maintain amenity and

		season all plant failures are to be 100% replaced	checked annually in Autumn.	wildlife value.
		Application of bark mulch at a depth of 50 mm	Immediately after planting and then when required; checked annually in Autumn.	Reduce competition for resources nutrients etc.by weeds
		Do not apply chemical fertilisers	At all times.	The use of chemical fertilisers will encourage vigorous grasses and weeds to grow
		Watering will be undertaken before and after planting and as necessary for the continued thriving of all planting	Annually for the 30-year term when required following prolonged periods of draught.	Ensures plants do not dry out and subsequently fail.
		Once the hedgerow reaches an average height of 1m along the hedgerow length, this height or above must be retained	Likely to represent a dense hedgerow 1m in height between years 3 and 5 – to be checked annually for the 30-year period.	To ensure the hedgerow is not maintained at a low level of worse value to biodiversity.
		Once the hedgerow reaches an average width of 1m, this	Likely to represent a dense hedgerow 1m	To ensure the hedgerow is not maintained at a thin

		width must be retained	in width between years 3 and 5 – to be checked annually for the 30-year period.	density of worse value to biodiversity.
		Undertake any pruning requirements outside of the nesting bird season, which is between March and September inclusive.	At all times.	Ensure no active bird nests are impacted by maintenance works.
Retained Introduced Shrub and Created Mixed Scrub	**Overview:** The vast majority of the existing introduced shrub is to be retained as part of the proposed development. Areas of new scrub planting are also proposed (classified as mixed scrub within the BNG assessment). ***Objectives:*** • To retain introduced shrub that provides some foraging, commuting, and refugia opportunities for notable species groups including bats, birds, badgers, and hedgehogs. • To create areas of mixed scrub that will provide foraging, commuting, and refugia opportunities for notable species groups. • Ensure cultural techniques are employed which use a variety of mulches and organic fertilisers and which minimise the use of chemicals and peat wherever possible. ***Creation Method (Mixed Scrub):*** • **Ground preparation and planting** Planting will be completed between November and March. The soil preparation will include the removal of any weeds or stones in and to rotovate the soil and incorporate organic matter. The ground will not be frozen or waterlogged. In heavy clay or other difficult soils, a trench may need to be dug for planting. Each shrub will be planted within a hole three times as wide of the supplied pot and of a similar depth. Root balls will be soaked			

thoroughly in water before planting and root balls will be loosened to expose restricted roots before planting. The planted shrubs will then be backfilled ensuring there are no air pockets around roots or any roosts protruding out of the ground.

Shrubs will be planted with open areas (clearings) to provide ecological diversity and to increase the habitat value of this site for a broad range of taxa.

Management prescriptions covering a 30-year term:

Table 2.2: Introduced Shrub and Mixed Scrub Management Prescriptions.

Management	When	Rationale	BNG Condition Criteria (mixed scrub only)
At the end of each growing season all plant failures are to be 100% replaced	When required; checked annually in Autumn.	To maintain amenity and wildlife value.	n/a
If required, provision of stakes and guards for any newly planted sections.	N/A	Protect from damage	n/a
Stakes should be checked and any broken or damaged stakes during this time would be removed (as above) and replaced with ties re-fixed	When required; checked annually in Autumn.	Maintain protection	n/a
Remove weeds	When required; checked in March, April, June, August and October.	Reduce competition for resources nutrients etc.by weeds	C
Application of bark mulch at a depth of 50 mm	As required; checked annually in September / October.	Reduce competition for resources nutrients etc.by weeds	B
Do not apply chemical fertilisers	At all times.	The use of chemical fertilisers will encourage vigorous grasses and weeds to grow	n/a
Watering should be undertaken for the continued	When required during growing season; April –	Ensures plants do not dry out and subsequently fail.	n/a

	thriving of shrubs.	October. Provide more water during periods of draught and less water during times of prolonged rain.		
	Removal of spent flowers from perennial plants should be removed through 'deadheading'	Twice annually, late spring and in the Autumn.	Allows plants to place more energy into re-growth.	B
	Cutting of scrub to ensure well-developed edges and to create clearings.	Between September – February inclusive (outside of bird nesting season)	To ensure a well-developed edge and the presence of open areas.	D, E
	Pruning and cutting of the shrubs to be undertaken annually as necessary	Between September – February inclusive (outside of bird nesting season)	To maintain amenity value, avoid encroachment into usable space and prevent health and safety issues such as visibility of vehicles / pedestrians / signage. Ensure no active bird nests are impacted by maintenance works.	B
Created Neutral/ Wildflower Grassland	***Overview:*** A new areas of species-rich wildflower grassland is to be created to replace the existing modified grassland. The proposed location of grassland enhancement is shown on the plan in **Appendix 4**. ***Objectives:*** • To create a successful and species rich wildflower grassland that will provide habitat for pollinating invertebrate species, that will in turn, provide foraging opportunities for notable species groups including amphibians, bats, birds, badgers, hedgehogs, and reptiles. • Ensure a healthy species diverse sward is maintained; • Ensure that a natural appearance is retained by utilising a seed mix alongside allowing native species of local prevenance to recolonise from the seedbank; • Employ techniques that minimise the use of chemicals wherever possible. ***Creation Method:***			

- **Ground preparation**
  It is recommended that the existing turfs (c5cm depth) of the existing modified grassland is removed to remove undesirable botanical species, as well as the top layer of soil with a likely high nutrient content. The exposed earth should then be harrowed or raked to provide a bare soil substrate suitable for sowing a wildflower seed mix.
- **Seeding**
  To be undertaken in spring or autumn. The following seed rates are recommended:

  40kg/ha or 4g/m^2 of a wildflower and grass seed mix.

  Inclusion of yellow rattle in the seed mix will help suppress vigorous grass growth that may suppress the success of wildflowers within the sward.
- **Bedding in of seed:**
  After sowing, seeds will be 'bedded' in by trampling or light rolling.
- **Recommended seed mix:**
  It is recommended that Emorsgate's EM4 Meadow Mixture for Clay Soils is used at the site. This seed mix includes 21no. wildflower species suitable for neutral soils. Notably, the species mix includes yellow rattle which is known to suppress dominant grass species which will allow existing grasses within the seed bank to colonise whilst preventing dominance and thus increasing species and structural diversity. For exact specifications, please refer to: https://wildseed.co.uk/about-us/.

Management prescriptions covering a 30-year term:

Table 2.3: Wildflower Meadow Management Prescriptions

Management	When	Rationale	BNG Condition Criteria Compliance (Medium Distinctiveness Grassland)
Cut meadow once first year after sowing	First August after sowing	The seeds will germinate and left to grow freely over the year until late summer, when a cut will be undertaken once initial seeds have established.	A
Cut meadow twice annually	Annually (>1 year after sowing) Late March / early April and late August/ early Sept	This ensures the meadow does not grow excessively long and become rank but allows wildflowers to set seed and	A, B, C, D, E, F

			invertebrates to breed. This will also allow a diverse sward of varying lengths to naturally occur in accordance with growth characteristics of each species. Cutting twice annually will also prevent encroachment of scrub and bracken.	
	Cut grass as to provide a heterogeneous habitat structure aiming to maintain at least 20% of grass <7cm and 20% >7cm. As such, each cutting phase must cut 20% of the area to ground level, 60% of the area to 15cm, and the remainder to 30cm. These areas must be rotated each year to maintain a diverse sward.	Late March / early April and– late August/ early Sept	To retain a diverse sward whilst limiting impacts to protected species potentially present at ground level and ensuring the natural germination of seeds.	B, C, E, F
	Arisings will be removed from the Site	Post cut	Removing the arisings is essential to prevent the grass decaying into the soil homogenising nutrient availability.	A
	Do not apply chemical fertilisers	At all times.	The use of chemical fertilisers will encourage vigorous grasses and weeds to grow or cause large areas of bare ground due to inhospitable growing conditions	A, D, E

Created / Retained Trees

Overview:

Existing trees are to be retained and new trees are proposed to be planted throughout the site, as illustrated on the plan in **Appendix 4.**

Objectives:

- To plant trees that will provide pollinating, foraging, and refuge opportunities for protected and/ or notable species groups including bats, birds, hedgehogs, and invertebrates.
- Ensure that good horticultural practice is employed to encourage long-term health and vitality of all trees.
- Ensure well-balanced crowns and/ or natural shape by preventing over competition.

Creation Method:

- **Ground preparation and planting**

  Each tree should be panted within a hole three times as wide of the supplied pot and of a similar depth. Root balls should be soaked thoroughly in water before planting and root balls should be loosened to expose restricted roots before planting. The planted trees and shrubs should then be backfilled ensuring there are no air pockets around roots or any roosts protruding out of the ground.
- **Timing**

  It is best to prepare the land during the summer ready for planting between November and March. Planting trees before the new year helps ensure better rooting and subsequent establishment including faster growth during the first growing season.

Management prescriptions over a minimum 30-year term:

Table 3.4: Retained and proposed tree management prescriptions.

Management	When	Rationale	BNG Condition Criteria Compliance (Individual Trees)
At the end of each growing season any plant failures are to be 100% replaced	When required; checked annually in Autumn.	To maintain amenity and wildlife value.	B, D
If required, provision of stakes and guards. Guards to be left on for a minimum of 5 years	N/A	Protect from damage	D

Stakes should be checked and any broken or damaged stakes during this time would be removed (as above) and replaced with ties re-fixed	When required; checked annually in Autumn.	Maintain protection	D
Remove weeds	When required; checked in March, April, June, August and October.	Reduce competition for resources; nutrients etc. by weeds	D
Application of bark mulch at a depth of 50 mm	Immediately after planting and then when required; checked annually in Autumn.	Reduce competition for resources; nutrients etc. by weeds	D
Do not apply chemical fertilisers	At all times.	The use of chemical fertilisers will encourage vigorous grasses and weeds to grow	D
Watering should be undertaken before and after planting out and as necessary for the continued thriving of all planting.	When required; provide more water during periods of draught and less water during times of prolonged rain.	Ensures plants do not dry out and subsequently fail.	D
Pruning and cutting of trees to be undertaken annually as necessary	Between September – February inclusive (outside of bird nesting season)	To maintain good structure, health and canopy amenity value, avoid encroachment into usable space and prevent health and safety issues such as visibility of vehicles / pedestrians / signage. Ensure no active bird nests are impacted by maintenance works.	B

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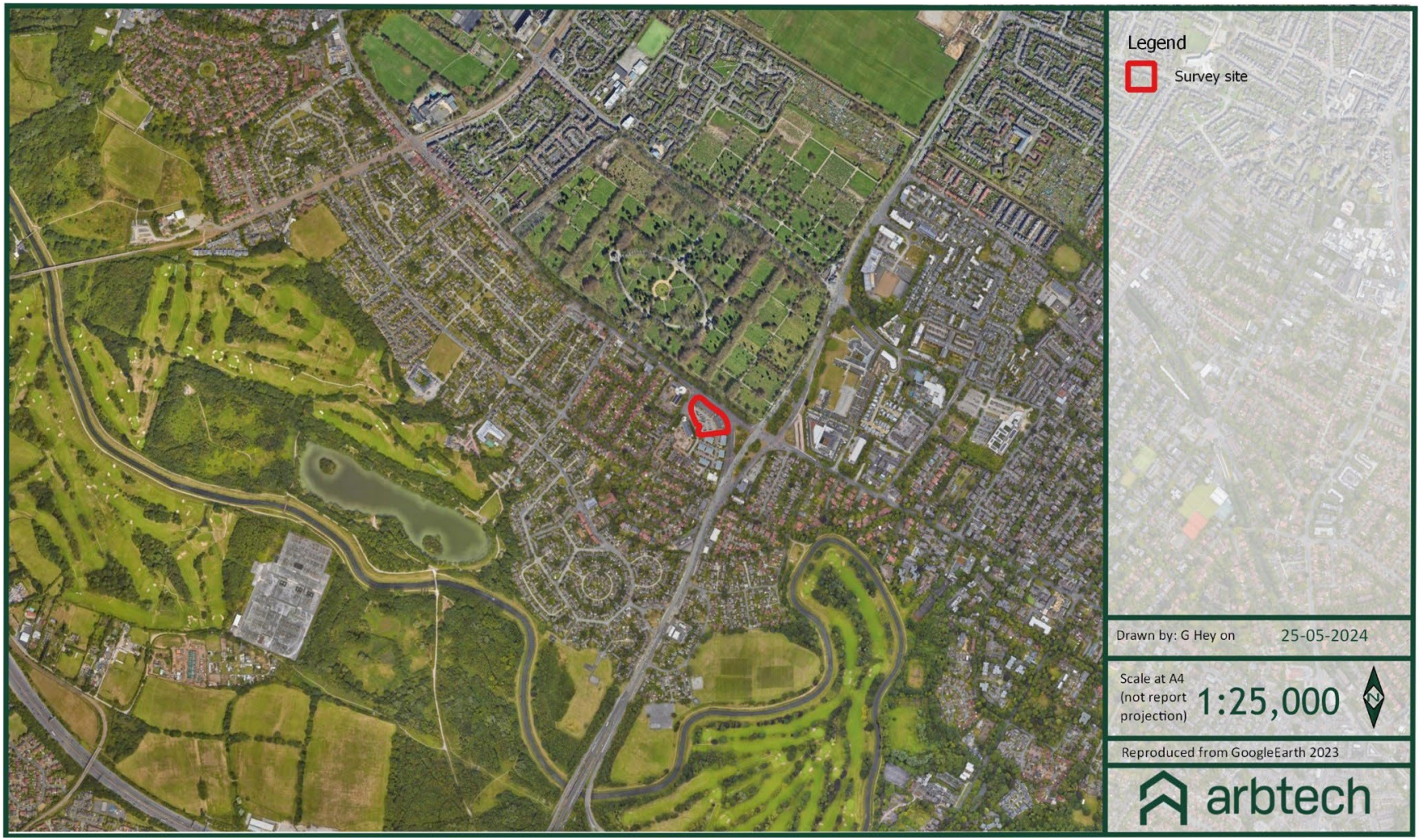
Appendix 1: Proposed Development Plan

Appendix 2: Site Location Plan



Appendix 3: Baseline Habitat Plan

Appendix 4: Post-development Habitats Plan

Appendix 5: Legislation and Planning Policy

LEGAL PROTECTION

National and European Legislation Afforded to Habitats

International Statutory Designations

Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) are sites of European importance and are designated under the EC Habitats Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora (the Habitats Directive) and the EC Birds Directive 2009/147/EC on the conservation of wild birds respectively. Both form part of the wider Natura 2000 network across Europe.

Under the Habitats Directive the, Article 3 requires the establishment of a network of important conservation sites (SACs) across Europe in order to conserve the 189 habitats and 788 species (non- bird) identified in Annexes I and II of the Directive (as amended).

SPAs are classified under Article 2 of the EC Birds Directive both for rare bird species (as listed on Annex I) and for important migratory species.
SACs and SPAs up to 12 nautical miles (nm) from the coast are afforded protection in the UK under the Conservation of Habitats and Species Regulations 2010 which consolidate all amendments made to the Conservation (Natural Habitats, &c.) Regulations 1994. In Scotland, the requirements of Habitats Directive are implemented through a combination of the 1994 and the 2010 (reserved matters) Regulations. The Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (as amended) provide a means for designating and protecting SACs in UK offshore waters (from 12-200 nm).

Ramsar sites are designated under the Convention on Wetlands of International Importance, agreed in Ramsar, Iran, in 1971. The Convention covers all aspects of wetland conservation and recognises the importance of wetland ecosystems in relation to global biodiversity conservation. The Convention refers to wetlands as "areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres" however they may also include riparian and coastal zones. Ramsar sites are statutorily protected under the Wildlife & Countryside Act 1981 (as amended) with further protection provided by the Countryside and Rights of Way (CRoW) Act 2000. Policy statements have been issued by the Government in England and Wales highlighting the special status of Ramsar sites. The Government in England and Wales has issued policy statements which ensure that Ramsar sites are afforded the same protection as areas designated under the EC Birds and Habitats Directives as part of the Natura 2000 network (e.g. SACs & SPAs).

National Statutory Designations

Sites of Special Scientific Interest (SSSI) are designated by nature conservation agencies in order to conserve key flora, fauna, geological or physio-geographical features within the UK. The original designations were under the National Parks and Access to the Countryside Act 1949 but SSSIs were then re-designated under the Wildlife & Countryside Act 1981 (as amended). As well as reinforcing other national designations (including National Nature Reserves), the system also provides statutory protection for terrestrial and coastal sites which are important within the European Natura 2000 network and globally. Further provisions for the protection

and management of SSSIs have been introduced by the Countryside and Rights of Way Act 2000 (in England and Wales) and the Nature Conservation (Scotland) Act 2004.

Local Statutory Designations

Local authorities in consultation with the relevant nature conservation agency can declare Local Nature Reserves (LNRs) under the National Parks and Access to the Countryside Act 1949. LNRs are designated for flora, fauna or geological interest and are managed locally to retain these features and provide research, education and recreational opportunities.

Non- Statutory Designations

All non-statutorily designated sites are referred to as Local Wildlife Sites (LWS) and can be designated by the local authority for supporting local conservation interest. Combined with statutory designation, these sites are considered within Local Development Frameworks under the Town and Country Planning system and are a material consideration during the determination of planning applications. The protection afforded to these sites varies depending on the local authority involved. Regionally Important Geological Sites (RIGs) are the most important geological and geomorphological areas outside of statutory designations. These sites are also a material consideration during the determination of planning applications.

The Hedgerow Regulations 1997

The Hedgerow Regulations 1997 are designed to protect 'important' countryside hedgerows. Importance is defined by whether the hedgerow (a) has existed for 30 years or more; or (b) satisfies at least one of the criteria listed in Part II of Schedule 1 of the Regulations.
Under the Regulations, it is against the law to remove or destroy hedgerows on or adjacent to common land, village greens, SSSIs (including all terrestrial SACs, NNRs and SPAs), LNRs, land used for agriculture or forestry and land used for the keeping or breeding of horses, ponies or donkeys without the permission of the local authority. Hedgerows 'within or marking the boundary of the curtilage of a dwelling-house' are excluded.

National and European Legislation Afforded to Species

The Habitats Directive

The EC Habitats Directive aims to promote the maintenance of biodiversity by requiring Member States to take measures to maintain or restore wild species listed on the Annexes to the Directive at a favourable conservation status, introducing robust protection for those species of European importance. The Directive is transposed into UK law by The Conservation of Habitats and Species Regulations 2010 (the Conservation Regulations) and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (as amended). The following notes are relevant for all species protected under the EC Habitats Directive:
In the Directive, the term 'deliberate' is interpreted as being somewhat wider than intentional and may be thought of as including an element of recklessness.
The Habitats Regulations do not define the act of 'migration' and, therefore, as a precaution, it is recommended that short distance movement of animals for e.g. foraging, breeding or dispersal purposes are also considered.
In order to obtain a European Protected Species Mitigation (EPSM) licence, the application must demonstrate that it meets all of the following three 'tests':

the action(s) are necessary for the purpose of preserving public health or safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequence of primary importance for the environment;

- There is no satisfactory alternative; and
- The action authorised will not be detrimental to the maintenance of the species concerned at a favourable conservation status in their natural range.
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The Wildlife and Countryside Act (WCA) 1981 (as amended)

The Wildlife and Countryside Act (WCA) 1981 (as amended) implements the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention) and implements the species protection requirements of EC Birds Directive 2009/147/EC on the conservation of wild birds in Great Britain (the birds Directive). The WCA 1981 has been subject to a number of amendments, the most important of which are through the Countryside and Rights of Way (CRoW) Act (2000) and Nature Conservation (Scotland) Act 2004.

Other legislative Acts affording protection to wildlife and their habitats include:

- Deer Act 1991
- Natural Environment & Rural Communities (NERC) Act 2006
- Protection of Badgers Act 1992
- Wild Mammals (Protection) Act 1996

Badgers

Badgers Meles meles are protected under The Protection of Badgers Act which makes it an offence to:

- Wilfully kill, injure, take, or attempt to kill, injure or take a badger
- Cruelly ill-treat a badger, including use of tongs and digging
- Possess or control a dead badger or any part thereof
- Intentionally or recklessly damage, destroy or obstruct access to a badger sett or any part thereof
- Intentionally or recklessly disturb a badger when it is occupying a badger sett
- Intentionally or recklessly cause a dog to enter a badger sett
- Sell or offers for sale, possesses or has under his control, a live badger

Effects on development works:

A development licence will be required from the relevant countryside agency for any development works liable to affect an active badge sett, or to disturb badgers whilst they occupy a sett. Guidance has been issued by the countryside agency's to define what would constitute a licensable activity. It is no possible to obtain a licence to translocate badgers.

Birds

With certain exceptions, all birds, their nests and eggs are protected under Sections 1-8 of the WCA. Among other things, this makes it an offence to:

- Intentionally (or recklessly in Scotland) kill, injure or take any wild bird
- Intentionally (or recklessly in Scotland) take, damage or destroy (or, in Scotland, otherwise interfere with) the nest of any wild bird while it is in use or being built
- Intentionally take or destroy an egg of any wild bird
- Sell, offer or expose for sale, have in his possession or transport for the purpose of sale any wild bird (dead or alive) or bird egg or part thereof.
- Intentionally or recklessly obstruct or prevent any wild bird from using its nest (Scotland only)

Certain species of bird, for example the barn owl, bittern and kingfisher receive additional protection under Schedule 1 of the WCA and Annex 1 of the European Community Directive on the Conservation of Wild Birds (2009/147/EC) and are commonly referred to as "Schedule 1" birds.
This affords them protection against:

- Intentional or reckless disturbance while it is building a nest or is in, on or near a nest containing eggs or young
- Intentional or reckless disturbance of dependent young of such a bird
- In Scotland only, intentional or reckless disturbance whilst lekking
- In Scotland only, intentional or reckless harassment

<u>Effects on development works:</u>
Works should be planned to avoid the possibility of killing or injuring any wild bird, or damaging or destroying their nests. The most effective way to reduce the likelihood of nest destruction in particular is to undertake work outside the main bird nesting season which typically runs from March to August. Where this is not feasible, it will be necessary to have any areas of suitable habitat thoroughly checked for nests prior to vegetation clearance.
Schedule 1 birds are additionally protected against disturbance during the nesting season. Thus, it will be necessary to ensure that no potentially disturbing works are undertaken in the vicinity of the nest. The most effective way to avoid disturbance is to postpone works until the young have fledged. If this is not feasible, it may be possible to maintain an appropriate buffer zone or standoff around the nest.

Herpetofauna (Amphibians and reptiles)
The sand lizard Lacerta agilis, smooth snake Coronella austriaca, natterjack toad Epidalea calamita, pool frog Pelophylax lessonae and great crested newt Triturus cristatus receive full protection under Habitats Regulations through their inclusion on Schedule 2. Regulation 41 prohibits:

- Deliberate killing, injuring or capturing of Schedule 2 species
- Deliberate disturbance of species in such a way as:
- To impair their ability to survive, breed, or reproduce, or to rear or nurture young;
- To impair their ability to hibernate or migrate
- To affect significantly the local distribution or abundance of the species
- Damage or destruction of a breeding site or resting place

With the exception of the pool frog, these species are also listed on Schedule 5 of the WCA and they are additionally protected from:

- Intentional or reckless disturbance (at any level)
- Intentional or reckless obstruction of access to any place of shelter or protection
- Selling, offering or exposing for sale, possession or transporting for purpose of sale.

Other native species of herpetofauna are protected solely under Schedule 5, Section 9(1) & (5) of the WCA, i.e. the adder Vipera berus, grass snake Natrix natrix, common lizard Zootoca vivipara and slow-worm Anguis fragilis. It is prohibited to:

- Intentionally or recklessly kill or injure these species.

Effects on development works:

A European Protected Species Mitigation (EPSM) Licence issued by the relevant countryside agency (e.g. Natural England) will be required for works liable to affect the breeding sites or resting places amphibian and reptile species protected under Habitats Regulations. A licence will also be required for operations liable to result in a level of disturbance which might impair their ability to undertake those activities mentioned above (e.g. survive, breed, rear young and hibernate). The licences are to allow derogation from the relevant legislation, but also to enable appropriate mitigation measures to be put in place and their efficacy to be monitored.
Although not licensable, appropriate mitigation measures may also be required to prevent the intentional killing or injury of adder, grass snake, common lizard and slow worm, thus avoiding contravention of the WCA.

Water voles

The water vole Arvicola terrestris is fully protected under Schedule 5 of the WCA. This makes it an offence to:

- Intentionally kill, injure or take (capture) water voles
- Intentionally or recklessly damage, destroy or obstruct access to any structure or place used for shelter or protection
- Intentionally or recklessly disturb water voles while they are occupying a structure or place used for shelter or protection

Effects on development works:

If development works are liable to affect habitats known to support water voles, the relevant countryside agency must be consulted. It must be shown that means by which the proposal can be re-designed to avoid contravening the legislation have been fully explored e.g. the use of alternative sites, appropriate timing of works to avoid times of the year in which water voles are most vulnerable, and measures to ensure minimal habitat loss. Conservation licences for the capture and translocation of water voles may be issued by the relevant countryside agency (e.g. Natural England) for the purpose of development activities if it can be shown that the activity has been properly planned and executed and thereby contributes to the conservation of the population. The licence will then only be granted to a suitably experienced person if it can be shown that adequate surveys have been undertaken to inform appropriate mitigation measures. Identification and preparation of a suitable receptor site will be necessary prior to the commencement of works.

Otters

Otters Lutra lutra are fully protected under the Conservation Regulations through their inclusion on Schedule 2. Regulation 41 prohibits:

- Deliberate killing, injuring or capturing of Schedule 2 species
- Deliberate disturbance of species in such a way as:
- To impair their ability to survive, breed, or reproduce, or to rear or nurture young;
- To impair their ability to hibernate or migrate
- To affect significantly the local distribution or abundance of the species
- Damage or destruction of a breeding site or resting place

Otters are also currently protected under the WCA through their inclusion on Schedule 5. Under this Act, they are additionally protected from:

- Intentional or reckless disturbance (at any level)
- Intentional or reckless obstruction of access to any place of shelter or protection

Effects on development works:

An EPSM Licence issued by the relevant countryside agency (e.g. Natural England) will be required for works liable to affect otter breeding or resting places (often referred to as holts, couches or dens) or for operations likely to result in a level of disturbance which might impair their ability to undertake those activities mentioned above (e.g. survive, breed, and rear young). The licence is to allow derogation from the relevant legislation but also to enable appropriate mitigation measures to be put in place and their efficacy to be monitored

Bats

All species are fully protected by Habitats Regulations 2010 as they are listed on Schedule 2. Regulation 41 prohibits:

- Deliberate killing, injuring or capturing of Schedule 2 species (e.g. All bats)
- Deliberate disturbance of bat species in such a way as:
- To impair their ability to survive, breed, or reproduce, or to rear or nurture young;
- To impair their ability to hibernate or migrate
- To affect significantly the local distribution or abundance of the species
- Damage or destruction of a breeding site or resting place

Bats are afforded the following additional protection through the WCA as they are included on Schedule 5:

- Intentional or reckless disturbance (at any level)
- Intentional or reckless obstruction of access to any place of shelter or protection
-

Effects on development works:

Works which are liable to affect a bat roost or an operation which are likely to result in an illegal level of disturbance to the species will require an EPSM licence. The licence is to allow derogation from the legislation through the application of appropriate mitigation measures and monitoring.

Dormice

Dormice Muscardinus avellanarius are fully protected under Habitats Regulations through their inclusion on Schedule 2. Regulation 41 prohibits:

- Deliberate killing, injuring or capturing of Schedule 2 species
- Deliberate disturbance of species in such a way as:
- To impair their ability to survive, breed, or reproduce, or to rear or nurture young;
- To impair their ability to hibernate or migrate
- To affect significantly the local distribution or abundance of the species
- Damage or destruction of a breeding site or resting place

Dormice are also protected under the WCA through their inclusion on Schedule 5. Under this Act, they are additionally protected from:

- Intentional or reckless disturbance (at any level)
- Intentional or reckless obstruction of access to any place of shelter or protection

Effects on development works:

Works which are liable to affect a dormice habitat or an operation which are likely to result in an illegal level of disturbance to the species will require an EPSM licence. The licence is to allow derogation from the legislation through the application of appropriate mitigation measures and monitoring.

White clawed crayfish

The white clawed crayfish Austropotamobius pallipes receives partial protection under Schedule 5 of the WCA in respect of Sections 9(1) and 9(5). This makes it an offence to:

- Intentionally take (capture) white-clawed crayfish.

Effects on development works:

The relevant countryside agency will need to be consulted about development which could impact on a watercourse or wetland known to support white clawed crayfish. Conservation licences for the capture and translocation of crayfish can be issued if it can be shown that the activity has been properly planned and executed and thereby contributes to the conservation of the population. The licence will only be granted to a suitably experienced person if it can be shown that adequate surveys have been undertaken to inform appropriate mitigation measures. Identification and preparation of a suitable receptor site will be necessary prior to the commencement of the works.

Wild Mammals (Protection Act) 1996

All wild mammals are protected against intentional acts of cruelty under the above legislation. This makes it an offence to mutilate, kick, beat, nail or otherwise impale, stab, burn, stone, crush, drown, drag or asphyxiate any wild mammal with intent to inflict unnecessary suffering.

To avoid possible contravention, due care and attention should be taken when carrying out works (for example operations near burrows or nests) with the potential to affect any wild mammal in this way, regardless of whether they are legally protected through other conservation legislation or not.

Legislation afforded to Plants

With certain exceptions, all wild plants are protected under the WCA. This makes it an offence for an 'unauthorised' person to intentionally (or recklessly in Scotland) uproot wild plants. An authorised person can be the owner of the land on which the action is taken, or anybody authorised by them.

Certain rare species of plant, for example some species of orchid, are also fully protected under Schedule 8 of the Wildlife and Countryside Act 1981 (as amended). This prohibits any person from:

- Intentionally (or recklessly in Scotland) picking, uprooting or destruction of any wild Schedule 8 species (or seed or spore attached to any such wild plant in Scotland only)
- Selling, offering or exposing for sale, or possessing or transporting for the purpose of sale, any wild live or dead Schedule 8 plant species or part thereof
- In addition to the UK legislation outlined above, several plant species are fully protected under Schedule 5 of The Conservation of Habitats and Species Regulations 2010. These are species of European importance. Regulation 45 makes it an offence to:
- Deliberately pick, collect, cut, uproot or destroy a wild Schedule 5 species
- Be in possession of, or control, transport, sell or exchange, or offer for sale or exchange any wild live or dead Schedule 5 species or anything derived from such a plant.

Effects on development works:

An EPSM licence will be required from the relevant countryside agency for works which are liable to affect species of planted listed on Schedule 5 of the Conservation or Habitats and Species Regulations 2010. The licence is to allow derogation from the legislation through the application of appropriate mitigation measures and monitoring.

Invasive Species

Part II of Schedule 9 of the WCA lists non-native invasive plant species for which it is a criminal offence in England and Wales to plant or cause to grow in the wild due to their impact on native wildlife. Species included (but not limited to):

- Japanese knotweed *Fallopia japonica*
- Giant hogweed *Heracleum mantegazzianum*
- Himalayan balsam *Impatiens glandulifera*

Effects on development works:

It is not an offence for plants listed in Part II of Schedule 9 of the WCA 1981 to be present on the development site however it is an offence to cause them to spread. Therefore, if any of the species are present on site and construction activities may result in further spread (e.g. earthworks, vehicle movements) then it will be necessary to design and implement appropriate mitigation prior to construction commencing.

Injurious weeds

Under the Weeds Act 1959 any land owner or occupier may be required prevent the spread of certain 'injurious weeds' including (but not limited to):

- Spear thistle Cirsium vulgare
- Creeping thistle Cirsium arvense
- Curled dock Rumex crispus
- Broad-leaved dock Rumex obtusifolius
- Common ragwort Senecio jacobaea

It is a criminal offence to fail to comply with a notice requiring such action to be taken. The Ragwort Control Act 2003 establishes a ragwort control code of practice as common ragwort is poisonous to horses and other livestock. This code provides best practice guidelines and is not legally binding.

NATIONAL PLANNING POLICY (ENGLAND)

National Planning Policy Framework

The National Planning Policy Framework promotes sustainable development. The Framework specifies the need for protection of designated sites and priority habitats and species. An emphasis is also made on the need for ecological infrastructure through protection, restoration and re-creation. The protection and recovery of priority species (considered likely to be those listed as UK Biodiversity Action Plan priority species) is also listed as a requirement of planning policy.

In determining a planning application, planning authorities should aim to conserve and enhance biodiversity by ensuring that: designated sites are protected from harm; there is appropriate mitigation or compensation where significant harm cannot be avoided; opportunities to incorporate biodiversity in and around developments are encouraged; and planning permission is refused for development resulting in the loss or deterioration of irreplaceable habitats including aged or veteran trees and also ancient woodland.

The Natural Environment and Rural Communities Act 2006 and the Biodiversity Duty

Section 40 of the Natural Environment and Rural Communities (NERC) Act, 2006, requires all public bodies to have regard to biodiversity conservation when carrying out their functions. This is commonly referred to as the 'biodiversity duty'.

Section 41 of the Act (Section 42 in Wales) requires the Secretary of State to publish a list of habitats and species which are of 'principal importance for the conservation of biodiversity.' This list is intended to assist decision makers such as public bodies in implementing their duty under Section 40 of the Act. Under the Act these habitats and species are regarded as a material consideration in determining planning applications. A developer must show that their protection has been adequately addressed within a development proposal.

EFFECT OF LEGISLATION AND POLICY ON DEVELOPMENT WORKS

A European Protected Species Licence (EPSL) issued by Natural England will be required for works likely to affect a bat roost or for operations likely to result in a level of disturbance which might impair their ability to undertake those activities mentioned above (e.g. survive, breed, rear young and hibernate). The licence is to allow derogation from the relevant legislation but also to enable appropriate mitigation measures to be put in place and their efficiency/success to be monitored. The legislation may also be interpreted such that, in certain circumstances, important foraging areas and/or commuting routes can be regarded as being afforded *de facto*

protection, for example, where it can be proven that the continued usage of such areas is crucial to maintaining the integrity and long-term viability of a bat roost (Garland & Markham, 2008).

There are 17 species of bat breeding in England and Natural England issues licences under Regulation 55 of the Habitats Regulations to allow you to work within the law.

Licences are issued for specific purposes stated in the Regulations, if the following three tests are met:

- The purpose of the work meets one of those listed in the Habitats Regulations (see below);
- That there is no satisfactory alternative;
- That the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status (FCS) in their natural range

The Habitats Regulations permits licences to be issued for a specific set of purposes including:

1. preserving public health or public safety or other imperative reasons of over-riding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment;
2. scientific and educational purposes,
3. ringing or marking
4. conserving wild animals

Development works fall under the first purpose and Natural England issues bat mitigation licences for developments.

EUROPEAN PROTECTED SPECIES POLICIES

In December 2016 Natural England officially introduced the four licensing policies throughout England. The four policies seek to achieve better outcomes for European Protected Species (EPS) and reduce unnecessary costs, delays and uncertainty that can be inherent in the current standard EPS licensing system. The policies are summarised as follows:

- Policy 1; provides greater flexibility in exclusion and relocation activities, where there is investment in habitat provision;
- Policy 2; provides greater flexibility in the location of compensatory habitat;
- Policy 3; provides greater flexibility on exclusion measures where this will allow EPS to use temporary habitat; and,
- Policy 4; provides a reduced survey effort in circumstances where the impacts of development can be confidently predicted.

The four policies have been designed to have a net benefit for EPS by improving populations overall and not just protecting individuals within development sites. Most notably Natural England now recognises that the Habitats Regulations legal framework now applies to ‘local populations’ of EPS and not individuals/site populations.