

Elmsbrook, Bicester
(Phase 3 and 4)

**Construction Environmental
Management Plan
(Ecological Protection)**
(to address Condition 83 of planning permission
Ref: 10/01780/HYBRID)

November 2017

Quality Management	
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Project:	Elmsbrook, Bicester
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1 Introduction

1.1 Background & Proposals

1.1.1 Aspect Ecology has been appointed by Crest Nicholson Regeneration in respect of ecological matters relating to land at Elmsbrook, Bicester. The site, which forms Phase 3 and 4 of the Exemplar Phase of the north-west Bicester Eco Town development, is in receipt of full planning permission for residential development (ref: 10/01780/HYBRID).

1.1.2 The permission is subject to a number of planning conditions of which this report is concerned with Condition 83, which states:

“Prior to the commencement of development, an Ecological Construction Method Statement shall be submitted to the local planning authority and approved in writing. The method statement shall address potential impacts of development on biodiversity, including the protection of badger set, badger habitat and bat roosts, to ensure no net loss and ensure the net biodiversity gain identified is delivered. The approved Ecological Construction Method Statement shall thereafter be implemented in accordance with the approved details.”

1.2 Site Overview

1.2.1 The site is located north of Bicester, Oxfordshire, and is set within largely open farmland, along with grassland pasture and scattered woodland parcels. Phase 1 and 2 of the Exemplar Phase of the north-west Bicester Eco Town development are located to the south of the site, whilst an access road linking the site to the wider development has already been constructed.

1.2.2 The site comprises two grassland fields dominated by long-sward recolonising grassland, with associated hedgerows, trees, scrub and tall ruderal vegetation. Part of the eastern field has been subject to recent disturbance as a result of the access road construction, such that a number of spoil heaps, some of which support recolonising vegetation, are present.

1.2.3 The area proposed for built development comprises the entirety of the site, however, the boundary features and hedgerow which runs through the centre of the site will be largely retained within the scheme.

1.3 Purpose of the Report

1.3.1 This report provides mitigation measures to be implemented prior to, and during, construction in order to safeguard protected species and habitats, whilst ensuring that no net loss of biodiversity occurs, as required to address the requirements of Condition 83 of planning permission 10/01780/HYBRID.

2 Strategy Framework

2.1 Site Description and Ecological Features

2.1.1 The site is located in the north-western portion of the wider Exemplar phase of the north-west Bicester Eco Town development.

2.1.2 A suite of survey work was carried out for the wider NW Bicester Eco Town site in 2010 by a third-party consultancy. During these surveys, habitats within the Exemplar site were identified as supporting opportunities for bats, Badgers *Meles meles*, breeding birds, reptiles and amphibians. Accordingly, further Phase 2 surveys were carried out, the results of which relating to Phases 3 and 4 are described below:

- **Bats.** No confirmed roosts were recorded within Phases 3 and 4, but a tree with features that had potential to support roosting bats was noted in the wooded copse in the western-most part of the site, while the southern boundary hedgerow of the eastern field was noted as a key activity corridor for Common Pipistrelle *Pipistrellus pipistrellus*;
- **Badgers.** During a field survey and bait marking survey, two large active badger setts were identified within the wider Exemplar site. However, no entrances or activity were noted within Phases 3 and 4;
- **Breeding Birds.** Bird activity was restricted to the boundary hedgerows. Two Yellowhammer *Emeriza citrinella* and one Song Thrush *Turdus philomelos* territories were recorded, both of which are RSBP red listed species, as well as two Dunnock *Prunella modularis* territories, an amber listed species;
- **Reptiles.** No reptiles were recorded within Phases 3 or 4, however small populations of Grass Snake *Natrix natrix* and Common Lizard *Zootoca vivipara*, with peak counts of two and one respectively, were recorded within the field adjacent to the southern boundary; and
- **Amphibians.** Four ponds were identified within 500m of the site boundary, however all were assessed as being of below average / poor likelihood of supporting Great Crested Newts *Triturus cristatus*, whilst further surveys recorded no evidence of their presence. It was therefore deemed unlikely that Great Crested Newt are present within the area surrounding the site.

2.1.3 Further survey work, relating to Phase 3 and 4 exclusively, was conducted in November 2016 by a third-party consultancy as part of a pre-construction check survey. During this survey, the site, which had previously consisted of arable land, was found to support small areas of suitable reptile habitat in the form of recolonising grassland associated with boundary features. An additional tree with features that had the potential to support roosting bats was recorded along the south-western boundary of the site, while a potential 2-entrance outlier Badger sett was identified within the south-eastern boundary hedgerow.

2.1.4 Update survey work undertaken by Aspect Ecology in June 2017 recorded a further increase in recolonising grassland, largely associated with the western part of the site, and confirmed the continued presence of bat roosting features associated with the trees previously identified, as shown on Plan 5192/CEMP1. A survey and monitoring

exercise was also undertaken of the potential outlier Badger sett, during which no evidence to suggest the use of the mammal entrances by Badger was recorded. Indeed, 2-3 smaller burrows were observed in the offsite grassland field in very close proximity which were of a size likely attributable to Rabbit. As such, it was concluded that the aforementioned mammal entrances formed part of a wider Rabbit warren, rather than a Badger sett. Further information on the update survey work is provided in Aspect Ecology's 'Ecology Pre-construction Survey and Mitigation Scheme', produced to address the requirements of Condition 81 of the planning permission for the site (dated November 2017).

2.2 Aims and Objectives

2.2.1 The aim of this CEMP is to detail measures which will be implemented during construction of Phase 3 and 4 to safeguard ecological features. The ecological features identified as requiring protection measures include:

- Foraging and commuting bats – lighting design and usage;
- Roosting bats – tree protection fencing;
- Badger – pre-commencement checks and construction safeguards;
- Other mammals – construction safeguards;
- Breeding birds – pre-commencement checks; and
- Reptiles – precautionary mitigation during vegetation clearance.

2.3 Areas Covered by the CEMP

2.3.1 The area covered by the report is Phases 3 and 4 for the Exemplar site. Other phases within the Exemplar site or within the wider NW Bicester Eco Town site may require additional/different mitigation measures which are not covered in this report.

2.4 Tenure and Responsibility

2.4.1 The site (including the entirety of the land covered by this strategy) is owned Crest Nicholson Regeneration. Crest Nicholson Regeneration will therefore be responsible for the implementation of the protection measures set out within this strategy. The site will be overseen by a Technical Manager throughout the duration of the build. Should there be any queries regarding the programme or efficiency of work, please contact the Technical Manager below:

- Name: Chris Gardiner
- Telephone: 01932 580448
- Email: chris.gardiner@crestnicholson.com

3 Protection of Ecological Features

3.1 Overview

- 3.1.1 The development works are subject to a number of potential ecological constraints in respect of foraging and commuting bats, roosting bats, Badger, reptiles and nesting birds.
- 3.1.2 Accordingly, prior to the commencement of works and throughout the duration of construction activities, measures are set out to ensure protected species will be adequately safeguarded. The approach to the implementation of these measures will be flexible and responsive to progress and conditions on site during construction. The protection measures will be incorporated into construction risk registers and, as such, will be implemented as appropriate when particular activities are carried out. An ecologist will be kept informed of progress during construction and will provide advice or make recommendations for additional protection measures if required.
- 3.1.3 With the measures below in place, it is anticipated that all ecological features and protected species will be fully safeguarded prior to and during construction.

3.2 Pre-commencement Checks / Safeguards During Site Clearance

Badger

- 3.2.1 No Badger setts are present within the site, although Badger are known to be present in the area. Given that Badgers are a highly mobile species and can rapidly establish new setts, a pre-commencement survey will be carried to ensure no new setts have been established since the previous survey work was undertaken. This will cover the site and its immediate surrounds (to a distance of 20m outside of the site boundary), whilst particular attention will be given to the mammal entrances recorded within the south-eastern boundary to ensure they are still not in use by Badger. An Ecologist will carry out the check no more than four weeks prior to any works commencing, to allow time for any additional mitigation measures or Natural England licensing to be designed and agreed, if necessary.

Breeding Birds

- 3.2.2 To avoid a potential offence under the Wildlife & Countryside Act, no vegetation clearance works should be undertaken during the bird-nesting season (1st March to 31st August inclusive). If this is not practicable, the site should first be checked by a competent ecologist in order to determine the location of any active nests. Any active nests identified would then need to be cordoned off (minimum 5m buffer) and protected until the end of the nesting season, or until the birds have fledged. These checking surveys would need to be carried out no more than three days in advance of ground works commencing and will be preceded by a toolbox talk.

Reptiles

- 3.2.3 The recolonising grassland and tall ruderal vegetation within the site have the potential to provide minor opportunities for reptiles, should they be present in the immediate surrounds of the site. As such, a precautionary approach will be taken to minimise potential adverse effects on reptiles during construction.

- 3.2.4 Given the grassland and tall ruderal vegetation is unlikely to offer hibernating opportunities for this species group, with opportunities largely restricted to the site boundary features, these habitats will be strimmed or cut short with a low-impact mower in winter (ideally December – February inclusive). This will reduce the sites suitability to support reptiles and likelihood of reptiles being present within the construction area when works begin in 2018. Should any potential hibernation features be identified, these will be retained in situ and subject to a destructive search in the reptile active season (March to October inclusive) under ecological supervision. Habitats will then continue to be maintained as unsuitable for reptiles until commencement of construction.
- 3.2.5 Subject to the implementation of these safeguarding measures, it is considered unlikely that reptiles, if present in low numbers, will be adversely affected by construction activities.
- 3.2.6 Should the above measures not be undertaken, and vegetation clearance works are carried out in March to October inclusive, the following safeguards will be implemented to avoid the risk of injury to any active reptiles which may be present:
- All site clearance will be undertaken under the supervision of a suitably qualified ecologist and preceded by a briefing of all contractors;
 - The working area will be marked out by the supervising ecologist and a hand search of the working area undertaken prior to works commencing;
 - Habitat will be cut in two stages, initially to a height of no less than 15cm, to encourage any reptiles to disperse naturally and allow a more detailed search, before then being cut to ground level;
 - Where necessary, a destructive search of the working area will be undertaken following habitat manipulation works to ensure no suitable opportunities for reptiles remain; and
 - In the event that reptiles are encountered during works on site, any individuals encountered will be moved by an Ecologist to an area of suitable habitat outside of the working area.
- 3.2.7 In the unlikely event that reptiles are encountered during any unsupervised works on site, all works in that area will cease and an Ecologist be contacted immediately to advise on actions required to proceed with works. Such actions would likely involve the implementation of measures in line with the safeguards set out above, where they are applicable.

3.3 Safeguards During Construction

Hedgerows and Trees

Two trees identified as having features with the potential to support roosting bats were recorded within hedgerows bounding the site. In order to minimise the likelihood of damage to these trees (as well as all boundary features) during construction, all hedgerows and trees to be retained within the proposed development will be protected during construction in line with standard arboriculturalist best practice (BS5837:2012) or as otherwise directed by a suitably

competent arboriculturalist. This will involve the use of protective fencing or other methods appropriate to safeguard the root protection areas of retained trees / hedgerows.

Mammals

3.3.1 In order to safeguard mammals should they enter the site during construction works, the following measures will be implemented:

- Any trenches or deep pits within the site that are to be left open overnight will be provided a roughened plank of wood placed in the trench as a ramp to the surface. This is particularly important if the trench fills with water;
- Any temporarily exposed open pipes (>150mm outside diameter) will be blanked off at the end of each working day by the relevant member of staff carrying out works to the pipe, so as to prevent mammals gaining access as may happen when contractors are off-site;
- Any trenches/pits will be inspected each morning by a member of staff appointed by the Technical Manager to ensure no mammals have become trapped overnight. Should a mammal such as a Badger become trapped in a trench it will likely attempt to dig itself into the side of the trench, forming a temporary sett. Should a trapped Badger be encountered a suitably qualified ecologist will be contacted immediately for further advice;
- The storage of topsoil or other 'soft' building materials in the site will be given careful consideration. Badgers will readily adopt such mounds as setts. So as to avoid the adoption of any mounds, these will be kept to a minimum and any essential mounds subject to daily inspections by a member of staff appointed by the Production Manager, with consideration given to temporarily fencing any such mounds to exclude Badgers;
- The storage of any chemicals at the site will be contained in such a way that they cannot be accessed or knocked over by any roaming mammals, in accordance with best practice detailed in the separate CMS;
- Unsecured food and litter will not be left within the working area overnight.

Bats and Lighting

3.3.2 The southern boundary of Phase 3 has, in previous survey work, been identified as a key commuting corridor for bats. Therefore, the potential exists for disturbance to foraging and commuting bats flying along this feature, or from poorly designed lighting to spill onto off-site habitats utilised by bats. Accordingly, in order to minimise any such potential disturbance, the following measures will be implemented at the site throughout the construction phase:

- Temporary lighting will only be operational during hours of poor/no natural light, within working hours (7.30am to 18.00pm on Monday to Friday and 8.00am to 13.00pm on Saturdays) and switched off outside these hours. Accordingly, for the majority of the year there will be no lighting required, as the working day will be within daylight hours. As such, the temporary lighting will only be required for short periods (likely 15:30 –18:00 depending on

sunset time) on weekdays during winter months. Bat activity is markedly reduced over winter months and as such it is anticipated that by restricting the use of lighting to these limited periods over winter, any potential effects on foraging bats will be minimised; and

- In addition, all temporary lighting will be carefully directed and orientated, so that any light spill is directed away from all linear habitats.

3.4 Schedule of Works

3.4.1 A schedule of works and identified responsibilities for the above measures are detailed in Table 3.1 below.

Table 3.1 Timetable for Implementation

Activity	Trigger Point	Time Restrictions	Responsibility
Pre-commencement checks/safeguards			
Badger check	Ecologist to carry out survey no more than four weeks prior to any works commencing	None	Ecological consultant (ECoW) under direction of Technical Manager
Nesting Bird checks prior to any ground clearance works	Ecologist to carry out checking survey no more than three days before any vegetation clearance works commence	Only required if vegetation clearance is carried out during the breeding season between March and August inclusive	Ecological consultant (ECoW) under direction of Technical Manager
Sensitive habitat clearance in the unlikely event reptiles are present	Technical Manager to ensure cutting of grassland undertaken over winter period.	Winter (ideally December – February inclusive).	Technical Manager
Removal of reptile hibernation features and/or phased clearance of vegetation	Ecologist to supervise removal of hibernation features and/or phased clearance of vegetation (if removal over winter not undertaken)	March to October inclusive	Ecological consultant (ECoW) under direction of Technical Manager
Safeguards During Construction			
Hedgerow and tree protection	To be implemented prior to commencement of construction works	Ongoing throughout construction	Technical Manager (or a member of staff appointed by them)

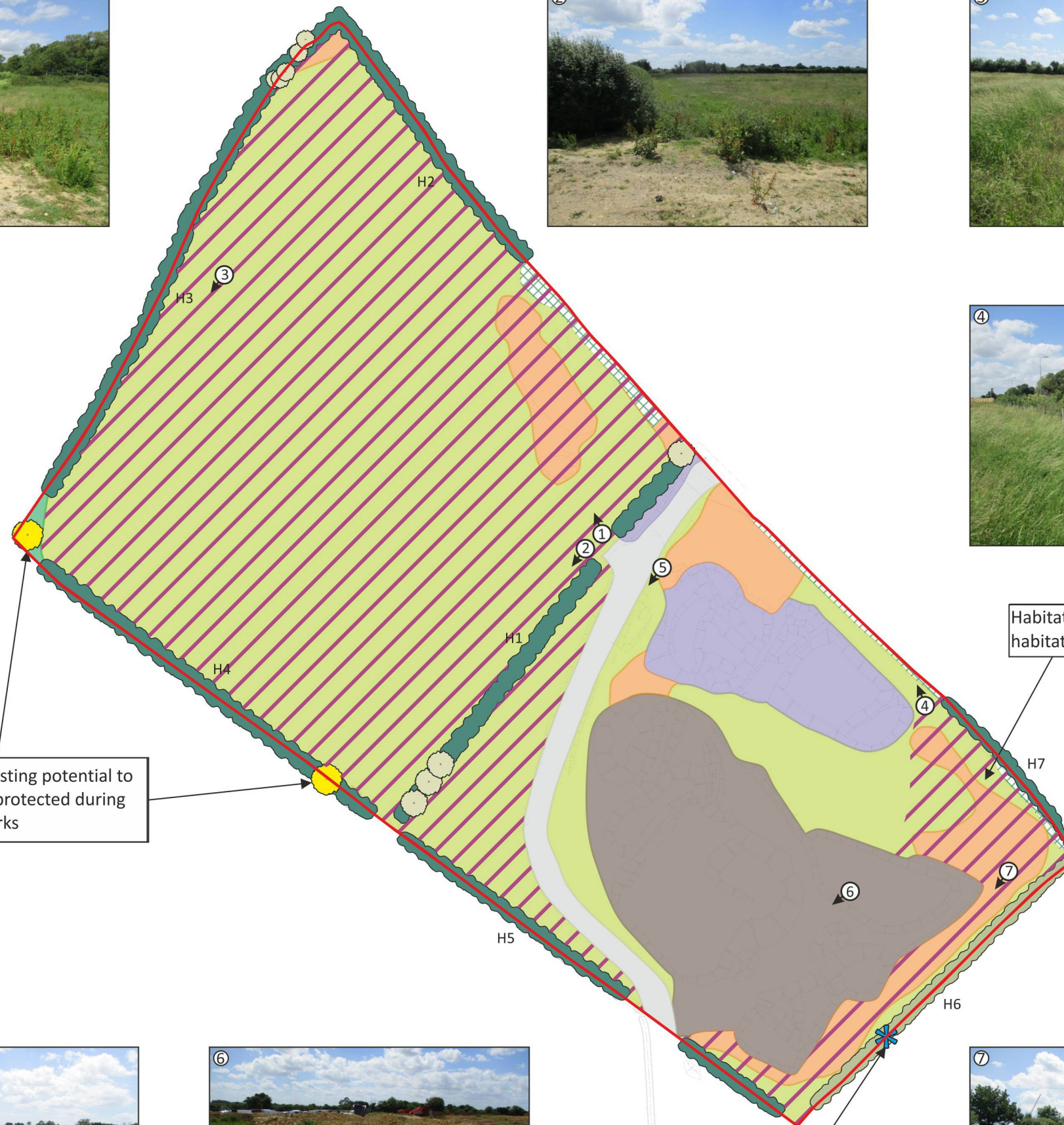
Activity	Trigger Point	Time Restrictions	Responsibility
Mammal safeguards	To be adhered to at all times	Ongoing throughout construction	All staff. Technical Manager will appoint a member of staff to carry out daily checks on excavations and spoil piles
Positioning of any temporary lighting required during construction to safeguard commuting/foraging bats	To be adhered to at all times when erecting or moving temporary lighting	Ongoing throughout construction	Technical Manager (or a member of staff appointed by them) will review the locations of temporary lighting and adjust if necessary

4 Summary and Conclusions

- 4.1.1 Aspect Ecology has been appointed by Crest Nicholson Regeneration in respect of ecological matters relating to land at Elmsbrook, Bicester. The site, which forms Phase 3 and 4 of the Exemplar Phase of the north-west Bicester Eco Town development, is in receipt of full planning permission for residential development (ref: 10/01780/HYBRID).
- 4.1.2 The planning permission is subject to a number of conditions, of which this report is concerned with Condition 83, relating to the production of a Construction Environmental Management Plan for the development.
- 4.1.3 The plan provides details of the measures which will be implemented to ensure protected fauna are fully safeguarded prior to and throughout the construction phase. It is considered that, subject to the implementation of the protection measures set out, no net loss of biodiversity will occur.

Plan 5192/CEMP1:

Ecological Features and Mitigation



Trees with bat roosting potential to be retained and protected during works

Habitat to be subject to reptile habitat manipulation exercise

Location of mammal entrances subject to monitoring

Key:

- Site Boundary
- Semi-improved Grassland
- Tall Ruderal Vegetation
- Unvegetated Mound
- Woodland
- Hardstanding
- Recolonising Vegetation
- Hedgerow
- Hedgerow Likely to Qualify as 'Important' under the Hedgerow Regulations 1997
- Dense Scrub
- Tree
- Mammal Entrances
- Photograph Location

Constraints:

- Tree with Low Potential to Support Roosting Bats (BCT Category 2)
- Area Subject to Reptile Habitat Manipulation Exercise



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Elmsbrook, Bicester PROJECT

Ecological Features and Mitigation TITLE

5192/CEMP1 DRAWING NO.

- REV.

November 2017 DATE



Appendix 5192/1:

Legislation Summary

LEGISLATION SUMMARY

1. In England and Wales primary legislation is made by the UK Parliament, and in Scotland by the Scottish Parliament, in the form of Acts. The main piece of legislation relating to nature conservation in the UK is the Wildlife and Countryside Act 1981 (as amended).
2. Acts of Parliament confer powers on Ministers to make more detailed orders, rules or regulations by means of secondary legislation in the form of statutory instruments. Statutory instruments are used to provide the necessary detail that would be too complex to include in an Act itself¹. The provisions of an Act of Parliament can also be enforced, amended or updated by secondary legislation.
3. In summary, the key pieces of legislation relating to nature conservation in the UK are:
 - Wildlife and Countryside Act 1981 (as amended)
 - Protection of Badgers Act 1992
 - Hedgerows Regulations 1997
 - Countryside and Rights of Way (CROW) Act for England and Wales 2000
 - Natural Environment and Rural Communities Act 2006
 - Conservation of Habitats and Species Regulations 2010 (as amended)
4. A brief summary of the relevant legislation is provided below. The original Acts and instruments should be referred to for the full and most up to date text of the legislation.
5. **Wildlife and Countryside Act 1981 (as amended)**. The WCA Act provides for the notification and confirmation of Sites of Special Scientific Interest (SSSIs) identified for their flora, fauna, geological or physiographical features. The Act contains strict measures for the protection and management of SSSIs.
6. The Act also refers to the treatment of UK wildlife including protected species listed under Schedules 1 (birds), 5 (mammals, herpetofauna, fish, invertebrates) and 8 (plants).
7. Under Section 1(1) of the Act, all wild birds are protected such that it is an offence to intentionally:
 - Kill, injure or take any wild bird;
 - Take, damage or destroy the nest of any wild bird whilst in use* or being built;
 - Take or destroy an egg of any wild bird.

* The nests of birds that re-use their nests as listed under Schedule ZA1, e.g. Golden Eagle, are protected against taking, damage or destruction irrespective of whether they are in use or not.
8. Offences in respect of Schedule 1 birds are subject to special, i.e. higher, penalties. Schedule 1 birds also receive greater protection such that it is an offence to intentionally or recklessly:
 - Disturb any wild bird included in Schedule 1 while it is building a nest or while it is in, on or near a nest containing eggs or young;
 - Disturb dependent young of such a bird

¹ <http://www.parliament.uk/business/bills-and-legislation/secondary-legislation/statutory-instruments/>

9. Under Section 9(1) of the Act, it is an offence to:
 - Intentionally kill, injure or take any wild animal included in Schedule 5.
10. In addition, under Section 9(4) it is an offence to intentionally or recklessly:
 - Obstruct access to, any structure or place which any wild animal included in Schedule 5 uses for shelter or protection; or
 - Disturb any wild animal included in Schedule 5 while occupying a structure or place which it uses for that purpose.
11. Under Section 13(1) it is an offence:
 - To intentionally pick, uproot or destroy any wild plant listed in Schedule 8; or
 - Unless the authorised person, to intentionally uproot any wild plant not included in Schedule 8.
12. The Act also contains measures (S.14) for preventing the establishment of non-native species that may be detrimental to native wildlife, prohibiting the introduction into the wild of animals (releases or allows to escape) and plants (plants or causes to grow) listed under Schedule 9.
13. **Protection of Badgers Act 1992.** The Act aims to protect the species from persecution, rather than being a response to an unfavourable conservation status, as the species is in fact common over most of Britain. It should be noted that the legislation is not intended to prevent properly authorised development. Under the Act it is an offence to:
 - Wilfully kill, injure, take, possess or cruelly ill-treat* a Badger, or attempt to do so;
 - To intentionally or recklessly interfere with a sett# (this includes disturbing Badgers whilst they are occupying a sett, as well as damaging or destroying a sett or obstructing access to it).

* the intentional elimination of sufficient foraging area to support a known social group of Badgers may, in certain circumstances, be construed as an offence

A sett is defined as “any structure or place which displays signs indicating current use by a Badger”. Natural England advice (June 2009) is that a sett is protected so long as such signs remain present, which in practice could potentially be for some time after the last actual occupation by Badger. Interference with a sett includes blocking tunnels or damaging the sett in any way
14. Licences can be obtained from the Statutory Nature Conservation Organisation (SNCO) for development activities that would otherwise be unlawful under the legislation, provided there is suitable justification. The SNCO for England is Natural England.
15. **Hedgerows Regulations 1997.** ‘Important’ hedgerows (as defined by the Regulations) are protected from removal (up-rooting or otherwise destroying). Various criteria specified in the Regulations are employed to identify ‘important’ hedgerows for wildlife, landscape or historical reasons.
16. **Countryside and Rights of Way (CRoW) Act for England and Wales 2000.** The CRoW Act provides increased measures for the management and protection of SSSIs and strengthens wildlife enforcement legislation. Schedule 12 of the Act amends the species provisions of the WCA 1981, strengthening the legal protection for threatened species. The Act also introduced a duty on Government to have regard to the conservation of biodiversity and maintain lists of species and habitats for which conservation steps should be taken or promoted, in accordance with the Convention on Biological Diversity.

17. **Natural Environment and Rural Communities Act 2006.** Section 41 of the NERC Act requires the Secretary of State to publish a list of habitats and species that are of principal importance for the conservation of biodiversity in England. The S41 list is used to guide decision-makers such as local planning authorities, in implementing their duty under Section 40 of the Act, to have regard to the conservation of biodiversity in England, when exercising their normal functions. 56 habitats and 943 species of principal importance are included on the S41 list. These are all the habitats and species in England that were identified as requiring action in the UK Biodiversity Action Plan (BAP).
18. **Conservation of Habitats and Species Regulations 2010 (as amended).** The Regulations enact the European Union's Habitats Directive (92/43/EEC) in the UK. The Habitats Directive was designed to contribute to the maintenance of biodiversity within member states through the conservation of sites, known in the UK as Special Areas of Conservation (SACs), containing habitats and species selected as being of EC importance (as listed in Annexes I and II of the Habitats Directive respectively). Member states are required to take measures to maintain or restore these natural and semi-natural habitats and wild species at a favourable conservation status.
19. The Regulations also require the compilation and maintenance of a register of European sites, to include SACs and Special Protection Areas (SPAs)² classified under Council Directive 79/409/EEC on the Conservation of Wild Birds (the Birds Directive). These sites constitute the Natura 2000 network. The Regulations impose restrictions on planning decisions likely to significantly affect SPAs or SACs.
20. The Regulations also provide protection to European Protected Species that largely overlaps with the WCA 1981, albeit the provisions are generally stricter. Under Regulation 41 it is an offence, *inter alia*, to:
 - Deliberately capture, injure or kill any wild animal of a European Protected Species;
 - Deliberately disturb any wild animals of any such species, including in particular any disturbance likely to impair their ability to survive, to reproduce or to hibernate, or migrate, or which is likely to affect significantly their local distribution or abundance;
 - Deliberately take or destroy the eggs of such an animal;
 - Damage or destroy a breeding site or resting place of such an animal
21. The Regulations do provide a licensing system that permit otherwise illegal activities in relation to European Protected Species, subject to certain tests being fulfilled.

² Special Protection Areas (SPAs) are protected sites classified in accordance with Article 4 of the EC Directive on the Conservation of Wild Birds (79/409/EEC) (aka the Birds Directive), which came into force in April 1979. SPAs are classified for rare and vulnerable birds (as listed on Annex I of the Directive), and for regularly occurring migratory species.

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