

**John Smith's Stadium Snow Sports
Slope**

Extended Phase 1 Habitat Survey
and Mitigation Strategy

May 2016

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1 Introduction

Background to commission

- 1.1 BSG Ecology undertook a range of ecological surveys at the John Smith Stadium, formerly known as the Galpharm Stadium, between 2007 and 2008, to inform a separate outline planning application for a specific proposal on the stadium grounds relating to a proposed snow sports slope. The snow sports slope footprint, 'the Site', was included within the survey area of surveys undertaken for breeding birds, badger, bats and invertebrates.

Site description

- 1.2 The footprint of the snow sports slope development, the Site, is set over a north-west orientated gradient. Amenity-managed species-poor grassland (on the golf driving range), hard-standing, ornamental shrubs and small patches of grassland sit at the lower level of the Site. The remaining area of the Site extends into Kilner Bank, a hill occupied by plantation mixed woodland. The plantation mixed woodland extends along the bank to the north and south beyond the Site. The location and boundary of the Site are shown on Figure 1.
- 1.3 The River Colne runs approximately 100 m to the west of the Site. Along this section, the River Colne has a fairly uniform channel profile with a moderate to fast flow-rate. Both banks of the river support near continuous broadleaved woodland and dense scrub habitats, but extensive sections of the north bank of the river consist of vertical walls and the remains of former structures, often rising to approximately 10 m above the river.

Description of project

- 1.4 Kirklees Stadium Development Limited (Ltd) proposes to submit a reserve matters application to Kirklees District Council in relation to an outline planning permission (application number 2014/60/92610/W) for a snow sports slope at John Smith Stadium in Huddersfield. The development includes a main outdoor ski slope, a nursery slope and a Snowsports Centre within the adjacent retail park.

Aims of study

- 1.5 Condition 9 of the outline planning permission states that *"notwithstanding the requirements of conditions 1 and 2, the reserved matters submission for 'landscape' shall include details of the treatment of the south western boundary of the slope including any earthworks, screening and soft landscaping together with an ecological survey and mitigation strategy of the site as a whole."*
- 1.6 In order to aid the discharge ecological elements of the above condition this report sets out the methods and results of the ecological survey and proposals for mitigation as follows:
- Identification of habitats and species present, identification of any ecological constraints based on currently available information, identification of any further ecology survey work that may be necessary, and provides recommendations for mitigation measures, should they be required again, based on the currently available information supplied by Signet Planning, on behalf of Kirklees Stadium Development.
 - Preparation of a mitigation strategy for the snow sports slope (included within Section 5 of this report), which sets out measures to mitigate for potential impacts of the snow sports slope development in relation to protected/notable features of ecological interest.

2 Methods

Desk study

- 2.1 A desk study was carried out in April 2016, which included a data search, to determine the presence of any protected species records or designated statutory/non-statutory sites of nature conservation value (such as Sites of Special Scientific Interest or Local Wildlife Sites) within a 2 km radius of the Site. These data were requested from West Yorkshire Ecology Services (WYES).
- 2.2 As part of the desk study, previous ecological survey reports and an Environmental Statement ecology chapter, prepared to inform a previous, separate planning application adjacent to the Site, were reviewed (Baker Shepherd Gillespie, 2007; 2008).
- 2.3 The Multi Agency Geographic Information for the Countryside (MAGIC) website was interrogated for information (MAGIC, 2016) on statutory designated sites and for information on European Protected Species Licences issued by Natural England for bats and great crested newts within 2 km of the site boundary. A check was also undertaken of on-line photographs (Bing, 2016) and the 1:25 000 OS map to search for any waterbodies located within 500 metres of the site.

Field survey

- 2.4 Principal Ecologist Philippa Harvey MCIEEM and Ecologist Rachel Hall ACIEEM undertook the field survey on 18 April 2016. The weather was mild, dry, clear and sunny with a temperature of 12°C. The Site was walked over and the habitats were described using the Phase 1 Habitat Survey methodology (JNCC, 2010).
- 2.5 The extended element of the survey work involved checks for signs of protected species potential or incidental signs of their presence throughout the Site. The trees within the Site were inspected from the ground, to assess their potential to support roosting bats.
- 2.6 Searches were made for evidence of badger *Meles meles* (such as setts, feeding remains, dung pits, hairs and tracks). Potential nesting habitats for breeding birds were identified, and any incidental sightings of birds were noted. The habitats on Site were also assessed for their suitability to support reptiles and amphibians. The Site was also searched for the presence of invasive non-native plant such as Japanese knotweed *Fallopia japonica*.

Limitations to methods

- 2.7 There are not considered to be any limitations to the methods employed.

3 Results and Interpretation

Designated sites

- 3.1 Two statutorily designated Local Nature Reserves (LNRs) lie within 2 km of the Site:
- Dalton Bank is situated approximately 1.8 km to the north-east of the Site and is designated for its urban fringe mosaic of broadleaved and coniferous woodland and grassland (Natural England, 2016). This LNR is also designated as a non-statutory site, see below.
 - Gledholt Woods lies approximately 2 km to the south-west of the Site and supports mature woodland, rough meadow, fungi species of interest and white-clawed crayfish (Natural England, 2016).
- 3.2 The following non-statutory designated sites also lie within 2km of Site:
- Dalton Bank LWS and Site of Wildlife Importance lies 1.8 km to the north-east of the Site (see ecological features above).
 - Sir John Ramsden Canal Site of Special Importance (SSI) and Local Wildlife Site (LWS) runs roughly parallel to the west bank of the River Colne, at a distance of 500 m to the west of the Site. This site supports several submerged and swamp communities along the canal banks including important populations of narrow-leaved water plantain *Alisma lanceolatum* and floating water plantain *Luronium natans*.
 - The Huddersfield Narrow Canal SSI and LWS is linked to the Sir John Ramsden Canal and is located approximately 1.2 km to the south-west of the Site, at its nearest point. This site supports a range of aquatic and emergent communities containing regionally uncommon species such as hornwort *Ceratophyllum demersum*, yellow floating heart *Nymphoides peltata* and the floating water plantain.
- 3.3 The eastern half of the Site falls on Kilner Bank, which forms part of the Kirklees Wildlife Habitat Network. This Network has been identified by Kirklees District Council to connect designated sites of biological and geological importance, and notable habitat links within the district. Under Policy 31 of Kirklees Draft Local Plan 'proposals will be required to protect the Wildlife Habitat Network' (Kirklees Council, 2016).

Habitats

- 3.4 The Site was mapped during the 2016 Phase 1 habitat survey and the habitats within the Site are described below. The locations of the habitats and Target Notes (TN) are shown on Figure 1; photographs referred to in the text below are presented in Section 8.
- 3.5 The Site comprises a tarmac car park, mixed plantation woodland on the Kilner Bank and part of the golf driving range; the character and range of habitats present within the Site has not changed significantly since the 2008 baseline.
- 3.6 The main outdoor ski slope extends onto the Kilner Bank which supports semi-mature plantation mixed woodland (Photographs 1-3). The hill-side has been planted with a mix of conifer and broadleaved species, with pockets of naturally regenerating silver birch occurring throughout the woodland, where the planted trees have died. The structure of the woodland is fairly uniform and consists of even-aged stands of Corsican Pine *Pinus nigra*, sycamore *Acer pseudoplatanus*, and beech *Fagus sylvatica*, oak *Quercus sp.*, Norway maple *Acer platanoides* and rowan *Sorbus aucuparia* are present in smaller quantities. Young silver birch, with hawthorn and elder shrubs are scattered under the broadleaved trees and the field layer is fairly species-poor with extensive patches of pine needle litter and exposed soils. Field layer species include bramble *Rubus fruticosus* agg., common nettle *Urtica dioica*, creeping soft-grass *Holcus mollis*, bluebell *Hyacinthoides non-scripta*, foxglove *Digitalis purpurea*.

- 3.7 The golf driving range comprises improved grassland located within a sided bowl, which flattens at the west and south edges (Photograph 4). This area supports amenity managed, species-poor grassland. The grassland is dominated by perennial rye-grass *Lolium perenne* with abundant red fescue *Festuca rubra* and occasional dandelion *Taraxacum* agg., daisy *Bellis perennis* and cock's-foot.
- 3.8 The north-western area of the Site consists of hard-standing car parking and footpaths, which are bordered in places by blocks of ornamental shrubs and scattered, immature broadleaved woodland (Photograph 5).

Invasive non-native species

- 3.9 No invasive non-native species were recorded within the Site during any of the 2007, 2008 or 2016 field surveys.

Protected Species

Bats

- 3.10 WYES returned 79 bat records within the desk study area, relating to common pipistrelle *Pipistrellus pipistrellus*, soprano pipistrelle *Pipistrellus pygmaeus*, whiskered bat *Myotis mystacinus*, Daubenton's bat *Myotis daubentonii*, Leisler's bat *Nyctalus leisleri*, noctule *Nyctalus noctula* and unidentified bat species. Records date between 1996 and 2015. At least 28 of the records relate to roosts of pipistrelle species or unidentified bat species. The nearest roost record is for a pipistrelle species and relates to a location approximately 450 m to the north-east of the Site from 2007.
- 3.11 No buildings are present within the Site and no trees with potentially suitable bat roosting features were identified within the Site's boundary.
- 3.12 One dead tree (T1) beyond but close to the north-eastern corner of the Site supports a woodpecker hole with potential for use by roosting bats (Photograph 6).
- 3.13 The edges of the mixed plantation woodland, and the river corridor to the west, provide potential flight paths and foraging routes for bats in the local area.

Nesting birds

- 3.14 WYES returned 33 bird records within the desk study area, dating between 1970 and 2015. These records include the following species of high conservation concern: linnet *Linaria cannabina*, grey wagtail *Motacilla cinerea*, song thrush *Turdus philomelos*, spotted flycatcher *Muscicapa striata*, and medium conservation concern: dunnock *Prunella modularis*, bullfinch *Pyrrhula pyrrhula*, kestrel *Falco tinnunculus*, swift *Apus apus* and kingfisher *Alcedo atthis*.
- 3.15 Previous targeted survey work for breeding birds was carried out by BSG Ecology of a wider area, including the Site (Baker Shepherd Gillespie, 2008). This survey recorded 27 bird species using the Site and wider stadium area (including the River Colne) and including species of medium and high conservation concern.
- 3.16 Incidental records of birds were made during the 2016 field survey and species recorded are listed in Table 1 below.

3.17 Table 1. Bird species recorded during the field survey

Species	Latin	BOCC ¹ Status
Robin	<i>Erithacus rubecula</i>	Green
Chaffinch	<i>Fringilla coelebs</i>	Green
Mallard	<i>Anas platyrhynchos</i>	Green
Wren	<i>Troglodytes troglodytes</i>	Green
Dunnock	<i>Prunella modularis</i>	Amber
Wood pigeon	<i>Columba palumbus</i>	Green
Chiffchaff	<i>Phylloscopus collybita</i>	Green
Willow warbler	<i>Phylloscopus trochilus</i>	Amber
Mistle thrush	<i>Turdus viscivorus</i>	Red
Long-tailed Tit	<i>Aegithalos caudatus</i>	Green
Magpie	<i>Pica pica</i>	Green
Carrion Crow	<i>Corvus corone</i>	Green
Blue Tit	<i>Cyanistes caerulea</i>	Green
Great Tit	<i>Parus major</i>	Green
Goldfinch	<i>Carduelis carduelis</i>	Green
Kestrel	<i>Falco tinnunculus</i>	Amber

Badger

- 3.18 No records of badger were returned by WYES for the desk study area. No signs of badger activity were located within the Site during the 2007 or 2008 field surveys.
- 3.19 During the 2016 field survey, a single badger latrine was located within the mixed plantation woodland to the south beyond the Site boundary, at OS grid reference SE 15341 17052. No further signs of badger activity were located within or immediately adjacent to the Site.

Reptiles

- 3.20 No reptile records were returned by WYES. The woodland edge habitat, where it meets less managed areas of grassland, has some potential to provide suitable basking and foraging habitat for reptiles. However, regular and heavy disturbance of some of this habitat through management makes it less suitable for reptiles.

¹ Eaton M.A., Aebischer N., Brown A., Hearn R., Lock L., Musgrove A., Noble D., Stroud D. and Gregory R. (2015) Birds of Conservation Concern 4: the population status of birds in the UK, Channels Islands and Isle of Man. *British Birds*, 108, 708-746.

4 Potential Impacts

Habitats

- 4.1 The development of the outdoor main ski slope will result in the loss of approximately 0.35 ha of mixed plantation woodland, approximately 0.25 ha of amenity grassland within the driving range and approximately 0.5 ha of hard standing.
- 4.2 The proposed development site extends into Kilner Bank, which lies within the Kirklees Wildlife Habitat Network, a network that requires protection under Policy 31 of the Kirklees Draft Local Plan. The mixed plantation woodland within the Site is included within this designation it is considered to be of less ecological value than the grassland/heathland areas on the bank.
- 4.3 During the construction phase the woodland habitat will be subject to a permanent loss of approximately 0.35ha due to the construction of the proposed ski slope. A strip of the woodland amounting to 0.15ha is to be retained along the eastern edge of the snow slope. As such, without mitigation, the continuity of the woodland will be permanently severed, leading to habitat loss and fragmentation. Additional disturbance in the form of machinery movements and general construction activities may also result in root damage and soil compaction to trees on the fringes of the proposed development.

Nesting birds

- 4.4 The removal of a section of woodland along the Kilner Bank will result in the partial loss of habitats which currently provide opportunities for bird species such as bullfinch, dunnock, goldcrest and song thrush, which have been recorded within the woodland. Security lighting and noise from construction and roads can have adverse effects on birds, affecting normal diurnal rhythms. This can impact factors such as commuting routes, and bird breeding success.
- 4.5 The majority of birds recorded within the site are generally well-adapted to an urban environment and so will be able to live alongside the various commercial and leisure activities within the site.
- 4.6 Lighting and recreational disturbance could affect bird behaviour and nesting success on the Kilner Bank area and the nearby river corridor, displacing birds from the site which would affect birds such as bullfinch, dunnock, goldcrest, grey wagtail, dipper and kingfisher. Disturbance along the water course from additional noise and lighting may have a minor impact on breeding birds within this area

Bats

- 4.7 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. 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.
- 4.8 Common pipistrelle bats have been recorded within the site. Common pipistrelle bats have been recorded foraging on the site. The tree line of the Kilner Bank and the River Colne site provide commuting corridors, foraging habitat and possibly roosting opportunities for bats. They use the site for foraging and possibly commuting between roosts and feeding sites. However, impacts on commuting routes and feeding areas are likely, especially along the Kilner Bank where a large

number of trees are to be removed; partially severing the continuity of the woodland bank and this will reduce the quality of habitat for feeding bats in the local area.

- 4.9 Lighting schemes can lead to spatial exclusion of bats due to high illuminance or by severing commuting routes from roosts. Lighting can lead to an impact on bats and bright lighting adjacent or within habitat corridors can lead to a detrimental effect on foraging/commuting bats.
- 4.10 The outdoor ski slope is likely to operate until at least 10pm throughout the year. A minimum of 30 Lux is required where there is snow sports activity. This is likely to be provided by LED lights on columns of between 4-8m height. Adverse impacts on bat commuting routes and feeding areas are likely along the Kilner Bank where light from the proposed ski slope may sever the continuity of the woodland bank.

Badger

- 4.11 No badger setts were located within the mixed plantation woodland during the field survey. A fresh badger latrine was located at the southern end of the Kilner Bank mixed plantation woodland indicating badger are present in the local area and are likely to use the woodland for foraging purposes.

5 Mitigation/Compensation Strategy

- 5.1 Since this previous baseline, the character and range of habitats present within the Site has not changed significantly. The following section specifies whether mitigation set out in the 2008 ES Ecology Chapter (Baker Shepherd Gillespie, 2008) remain relevant and proportionate, or whether additional measures are considered necessary based on the findings of the 2016 study.

Habitats

- 5.2 A strip of the woodland amounting to 0.15ha is to be retained along the eastern edge of the snow slope. This strip of woodland provides links the areas of plantation woodland to the north and south thereby reducing the impact of the development on protected species and maintaining a corridor for mobile species such as badger.
- 5.3 This strip of woodland to be retained will be protected during construction by the installation of protective fencing and signage.
- 5.4 The mitigation set out in the 2008 ES Ecology Chapter (Baker Shepherd Gillespie, 2008) remains relevant and proportionate. A woodland management plan will be produced and implement a woodland management plan for the woodland associated with the Kilner Bank to enhance the woodland for wildlife and nature conservation. The key focus of the management plan will be to bring the woodland back into active management, which would include thinning the density of coniferous trees and favouring native tree species as well as creating glades to promote the development of an understory and shrub layers giving a greater diversity of habitats within the woodland itself. Further focus should be given for maintaining the connectivity of the site to encourage breeding birds and roosting bats.

Breeding birds

- 5.5 All nesting birds are protected under the Wildlife and Countryside Act 1981 (as amended), which makes it an offence to 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.
- 5.6 In order to avoid and impact on nesting birds, habitat removal/site clearance will be undertaken between September and early February so as to avoid the bird nesting season (mid-February to late August inclusive).

Foraging/commuting bats

- 5.7 A strip of the woodland amounting to 0.15ha is to be retained along the eastern edge of the snow slope. This strip of woodland provides links to and access between the areas of plantation mixed woodland to the north and south thereby reducing the impact of the development on commuting and foraging bats using the woodland edge. An additional hedgerow will be planted along the eastern boundary of the Kilner Bank to ensure long term connectivity of the woodland. To enhance opportunities for wildlife, locally native species will be planted.
- 5.8 Mitigation is required to avoid or at least minimise the effect of artificial lighting on bats that are likely to be foraging on the woodland edges adjacent to the outdoor ski slope. In line with guidance within Paragraph 125 of the National Planning Policy Framework in relation to lighting, the proposed development will minimise external lighting as part of the development proposals. Where required on the outdoor ski slope, appropriate lighting should be installed such that light spillage onto the adjacent woodland is minimised, so as to minimise any potential impacts of any development on bats that may use the Site.
- 5.9 Currently there is not a lighting strategy for the Snow Sports Centre. A lighting engineer will be commissioned to develop a lighting strategy for the Snowsports Centre in consultation with the ecologist.

- 5.10 Mitigation measures which will be considered by the Lighting Strategy in order to minimise the impact of external lighting of the ski slope include:
- Utilising light design schemes limiting the height of the lighting columns with a focused down beam to minimise light spillage into adjacent areas used by bats and keep the light as close to the ground as possible.
 - Increasing the spaces of the between light units can reduce the intensity and spread of light, thereby minimising the area illuminated.
 - Minimising excessive light spill along vegetative foraging and commuting habitat both existing and newly created within the scheme.
- 5.11 The following measures will also be considered to reduce potential negative impacts on bats (and other wildlife):
- Avoid blue-white (short wavelength) lights - these have impacts on insect prey of bats. Use warm-white (long wavelength) lights.
 - Avoid lights with a high UV content or reduce/remove the UV content. UV has high attractiveness to insects and therefore can reduce the availability of insect prey. Use UV filters or use glass housing on lamps which can filter out much of the UV content (Stone, 2013).
 - Avoid upward spread of light using full horizontal cut off units, low beam angle.

Badger

- 5.12 The strip of the woodland amounting to 0.15ha is to be retained along the eastern edge of the snow slope. This strip of woodland provides links to and access between the areas of plantation mixed woodland to the north and south thereby reducing the impact of the development on badger and potentially maintaining a link between the woodland to the south and north of the ski slope for badger.
- 5.13 This strip of woodland to be retained will be protected during construction by the installation of protective fencing and signage.

6 References

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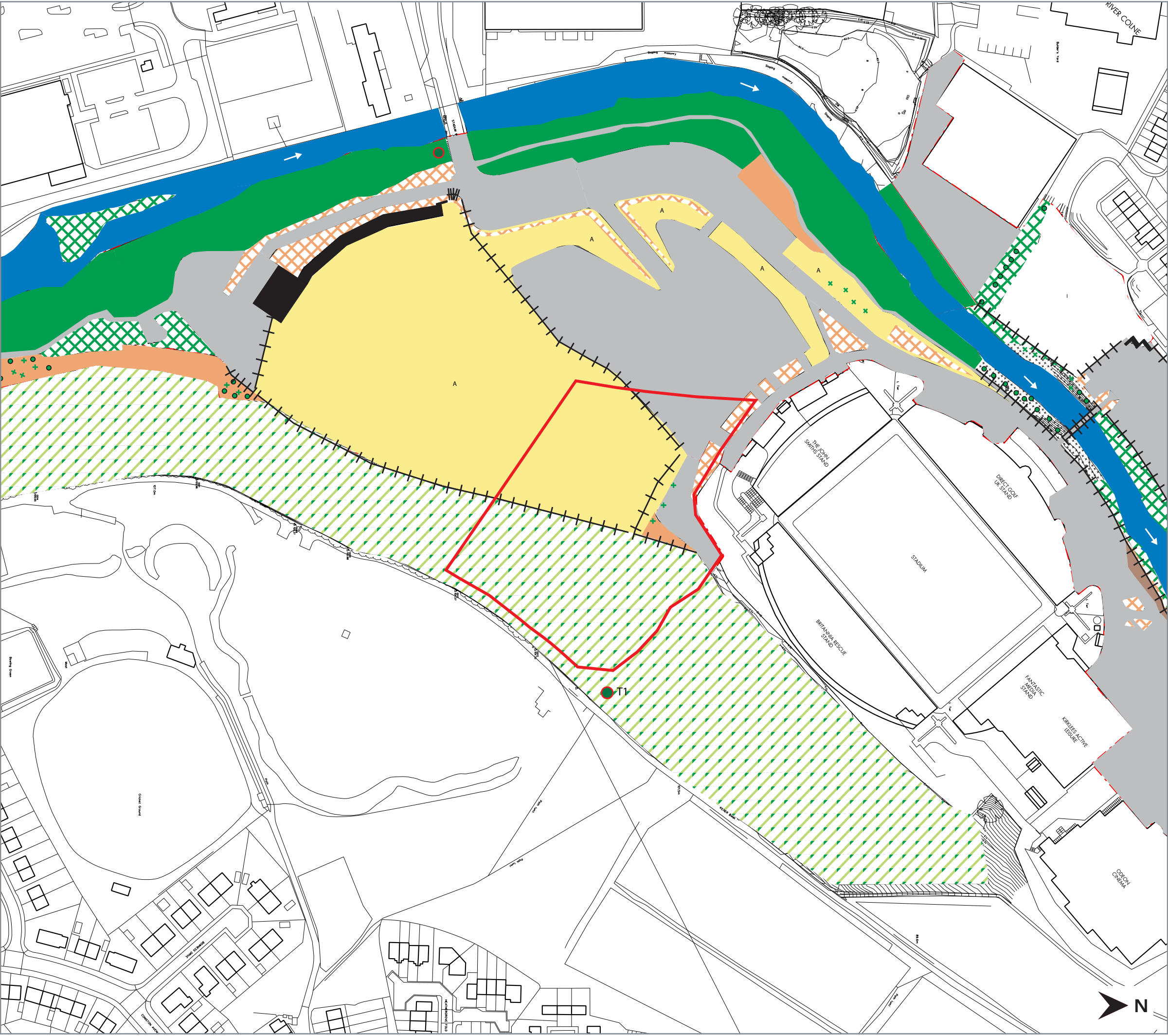
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7 Figures

(overleaf)



LEGEND

A

Amenity-managed grassland

Semi-improved neutral grassland

I

Improved grassland

Ephemeral grassland and bare ground

Broadleaved woodland

Plantation mixed woodland

Dense scrub

River with direction of flow

Ornamental shrubs

Hard-standing

Buildings

X X X

Scattered scrub

Bare ground

●

Individual tree

●

Tree with bat roosting potential

Fence

Site boundary

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PROJECT TITLE
John Smith's Stadium Snow Sports Slope,
Huddersfield

DRAWING TITLE
Figure 1: Extended Phase 1 Habitat Survey Results

DATE: 21.04.2016
DRAWN: RH
CHECKED: RH
APPROVED: PH
SCALE: NTS
STATUS: FINAL

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8 Photographs

Photograph 1: Kilner Bank plantation mixed woodland



Photograph 2: Kilner Bank plantation mixed woodland



Photograph 3: Kilner Bank plantation mixed woodland



Photograph 4: Amenity-managed, species-poor grassland on driving range



Photograph 5: Hard-standing and ornamental shrubs with Kilner Bank in background



Photograph 6: Dead tree (T1) with woodpecker hole



Appendix 1: Summaries of Relevant Policy, Legislation and Other Instruments

This section briefly summarises the legislation, policy and related issues that are relevant to the main text of the report. The following text does not constitute legal or planning advice.

National Planning Policy Framework (England)

- 9.1 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.
- 9.2 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.
- 9.3 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.'
- 9.4 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.'
- 9.5 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.
- 9.6 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.'

- 9.7 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.'
- 9.8 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)

- 9.9 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..."
- 9.10 Paragraph 99 of Government Circular 06/2005² 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".

Standing Advice (GOV.UK - England only)

- 9.11 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.'

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

- 9.12 The standing advice (originally from Natural England and now held and updated on GOV.UK³) 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.
- 9.13 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.'

Natural Environment and Rural Communities (NERC) Act 2006 – Habitats and species of principal importance (England and Wales)

- 9.14 The Natural Environment and Rural Communities (NERC) Act came into force on 1st October 2006. Sections 41 and 42 (S41 and S42) of the Act require the Secretary of State to publish a list of habitats and species which are of principal importance for the conservation of biodiversity in England and Wales respectively. The list has been drawn up in consultation with Natural England and Countryside Council for Wales (now NRW), as required by the Act. In accordance with the Act the Secretary of State keeps this list under review and will publish a revised list if necessary, in consultation with Natural England and NRW.
- 9.15 The S41 and S42 lists are used to guide decision-makers such as public bodies, including local authorities and utilities companies, in implementing their duty under Section 40 of the NERC Act 2006, to have regard to the conservation of biodiversity in England and Wales, when carrying out their normal functions, including development control and planning. This is commonly referred to as the 'Biodiversity Duty.'
- 9.16 Guidance for public authorities on implementing the Biodiversity Duty⁴ has been jointly published by Defra and the Welsh Assembly Government. One of the key messages in this document is that 'conserving biodiversity includes restoring and enhancing species populations and habitats, as well as protecting them.' In England and Wales, the administration of the planning system and licensing schemes are highlighted as having a 'profound influence on biodiversity conservation.' Local authorities are required to take measures to "promote the preservation, restoration and re-creation of priority habitats, ecological networks and the protection and recovery of priority species. The guidance states that 'the duty aims to raise the profile and visibility of biodiversity, clarify existing commitments with regard to biodiversity, and to make it a natural and integral part of policy and decision making.'
- 9.17 In 2007, the UK Biodiversity Action Plan (BAP) Partnership published an updated list of priority UK species and habitats covering terrestrial, freshwater and marine biodiversity to focus conservation action for rarer species and habitats in the UK. The UK Post-2010 Biodiversity Framework⁵, which covers the period from 2011 to 2020, now succeeds the UK BAP. The UK priority list contained 1150 species and 65 habitats requiring special protection and has been used as a reference to draw up the lists of species and habitats of principal importance in England and Wales.
- 9.18 In England, there are 56 habitats of principal importance and 943 species of principal importance on the S41 list. These are all the habitats and species found in England that were identified as requiring action in the UK BAP and which continue to be regarded as conservation priorities in the subsequent UK Post-2010 Biodiversity Framework.
- 9.19 In Wales, there are 54 habitats of principal importance and 557 species of principal importance on the S42 list. This includes three marine habitats and 53 species which were not on the list of UK BAP priorities, but which are recognised as of principal importance for Wales.

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

⁴ Defra, 2007. *Guidance for Public Authorities on Implementing The Biodiversity Duty*. (<http://www.defra.gov.uk/publications/files/pb12585-pa-guid-english-070516.pdf>)

⁵ JNCC and Defra (on behalf of the Four Countries' Biodiversity Group). 2012. *UK Post-2010 Biodiversity Framework*. July 2012. (<http://jncc.defra.gov.uk/page-6189>)

European protected species (Animals)

- 9.20 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.
- 9.21 "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:
- c. Intentionally or deliberately capture, injure or kill any wild animal included amongst these species
 - d. Possess or control any live or dead specimens or any part of, or anything derived from a these species
 - e. deliberately disturb wild animals of any such species
 - f. deliberately take or destroy the eggs of such an animal, or
 - g. intentionally, deliberately or recklessly damage or destroy a breeding site or resting place of such an animal, or obstruct access to such a place
- 9.22 For the purposes of paragraph (c), disturbance of animals includes in particular any disturbance which is likely—
- h. 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
 - i. to affect significantly the local distribution or abundance of the species to which they belong.
- 9.23 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.'

Definition of breeding sites and resting places

- 9.24 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.⁶ 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

⁶ Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC. (February 2007), EC.

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

- 9.25 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.
- 9.26 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'⁷) (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...'
- 9.27 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

- 9.28 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".
- 9.29 ODPM Circular 06/2005⁸ 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 significantly increasing the likelihood of road or rail casualties amongst badger populations, are capable of being material considerations in planning decisions."
- 9.30 Natural England provides Standing Advice⁹, 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.

⁷ 2009/147/EC Birds Directive (30 November 2009. European Parliament and the Council of the European Union.

⁸ ODPM Circular 06/2005. *Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impacts within the Planning System* (2005). HMSO Norwich.

⁹ <http://www.naturalengland.org.uk/ourwork/planningdevelopment/spatialplanning/standingadvice/specieslinks.aspx>