



GEO-ENVIRONMENTAL CONSULTING ENGINEERS

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Ref BEK-23071-1

10 May 2023

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Land at 21 Thomas Street, Lindley – Biodiversity Net Gain

Guidelines

This assessment has been designed to meet:

- British Standard 42020 (2013) 'Biodiversity – Code of Practice for Planning and Development'
- National Planning Policy Framework 2021 (NPPF, Para 170(d) and Para 175(d))

Summary

Further to the Preliminary Ecological Assessment and Potential Bat Roost Survey at land 21 Thomas St Lindley Huddersfield (BEK April 2022), this report has been commissioned to meet the NPPF requirements for developments to show a minimum of 10% Biodiversity Net Gain.

The BNG Metric calculation shows a 25% Biodiversity Net Loss on the site with the current landscape plan (included at Appendix 3). This loss is caused by the difference in the area of trees pre and post works.

Further tree planting on site, incorporating a green roof area or purchased BNG units will be required to obtain the required 10% net gain. Habitat creation on nearby land matching the requirements may also be taken into account.

Biodiversity enhancement as recommended at 4.3 and mitigation recommendations from the PEA need to be incorporated into any landscaping and building design to achieve the required enhancements.



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1.0 Introduction and Context

1.1 Background

Further to the Ecological survey (Preliminary Ecological Appraisal PEA BEK, 2022) an assessment was required to determine the Biodiversity Net Gain of the site at Land at 21 Thomas St, Lindley, Huddersfield to support a proposed planning application. Full project description, and survey outcomes are described in the above documents.

1.2 Scope of the report

The assessment takes into consideration the local and national planning policy and strategy relevant to the site, the baseline ecological condition of the site, and the proposed development plans and the enhancement plan, and to meet the requirements of The National Planning Policy Framework (2021) and standards set in the CIEEM/CIRIA *Biodiversity Net Gain. Good Practice Principles for development a practical guide*.

Under current guidelines (CIEEM, April 2019) this report will be valid until December 31st 2024. Beyond this date further site visits may be deemed necessary to update the condition of ecological features on site.

2.0 Methodology

2.1 Desk & Field Study methodology

Habitats are described using the UK Habitat Classification System methods and codes (converted from JNCC Phase 1 codes where necessary), and condition assessed according to the Biodiversity Metric 3.1 Auditing and Accounting for Biodiversity Condition Assessment Sheets.

Surveys and assessment were carried out by C Edmondson MSc MRSB, consultant ecologist with 10yrs field survey experience and Natural England Class 2 bat licence holder. Methods used are described in detail in the PEA report for this site.

Ultimately the site calculation was carried out using the small site metric 4.0, as the site is below the 5000m² threshold.

2.2 Approach to BNG

BNG principles: BNG is achieved through 10 principles, the first of which is the Mitigation Hierarchy. This Hierarchy will be followed at each stage of the development.

BNG Metric: The DEFRA Biodiversity Net Gain Small Sites Metric 4.0 was used to:

- Assess the biodiversity unit value of an area of land
- Demonstrate biodiversity net gains or losses in a consistent way
- Measure and account for direct impacts on biodiversity
- Compare proposals for a site - such as creating or enhancing habitat on-site or off-site



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The metric assesses existing habitats and planned new habitats created by a development or land change.

2.3 Limitations

There were no limitations to this report

3.0 Baseline site conditions

3.1 Priority Habitats & designated areas

The PEA (BEK, 2022) concluded that no designated areas or priority habitats were present on site.

3.2 Baseline metric calculations

Using the DEFRA Small Sites Metric Metric 4.0 BNG Calculation tool, the development shows a total baseline habitat of 6.539 habitat units on site including urban tree units. Calculation is shown below at Table 1, full calculation included at Appendix 3, and full metric available on request.

The total area of the site is .2500m²

Table 1: Baseline habitats

Site Features:	Code (UKHABS)	Area ha/length/no.	Condition Assesment	BNG Units
Vacant/derelict land/ bare ground/ short ephemeral	u1b6. 17	1500m ²	Poor	0.69
Introduced shrub		200m ²	n/a	0.05
Sealed surface		800m2	n/a	
Urban Tree small	n/a	2		
Urban Tree medium	n/a	11		
Urban Tree medium		22		
Total tree units				5.8

4.0 BNG Good Practice Principles for Development

BNG is achieved through 10 principles, the first of which is the Mitigation Hierarchy. This Hierarchy will be followed at each stage of the development.

Principle 1: Mitigation Hierarchy

- 1: Avoid Biodiversity Loss e.g. Finding alternative sites, changing development plans etc
- 2: Minimise any loss
- 3: Mitigate for any loss
- 4: Compensate

The measures required for this development are shown below at Table 2.

Table 2: Hierarchy Measures:

1: Avoidance The CSBI defines avoidance as ‘Measures taken to anticipate and prevent adverse impacts on biodiversity before actions or decisions are taken that could lead to such impacts’.	The results of the Ecological appraisal at Table 2 show that there are no priority habitats present within the site boundaries, nor is the site within or close enough to cause damage to any local designated sites. • Habitats present: sparse short ephemeral and non-native shrub in patches. • Condition: Poor • Distinctiveness: Low Measures to avoid pollution will be implemented according to current EA Pollution Prevention Guidance.
2. Minimise	Implementing tree protection zones around the adjacent hedges & tree lined boundaries to protect from any impacts of the development during construction. Mitigation measures as described at PEA 4.2 Including a Reasonable Avoidance Measures Strategy included at Appendix 4 in the PEA report (BEK, 2022). Minimise the number of trees removed.
3. Mitigation	Planting native berry producing shrub species, and late flowering shrubs in the hedgerows between the new properties. Introducing areas of native and locally relevant wildflower species in the landscaping to enhance the area for invertebrates. Enhancement measures as described at 4.3 in the PEA report (BEK, 2022)
4. Compensation	Bat & Bird boxes added into the building during construction. Replacement planting of trees Additional hedges and wildflower areas created.

Principle 2: Avoid losing biodiversity that cannot be offset by gains elsewhere:

Avoid impacts on irreplaceable biodiversity – these impacts cannot be offset to achieve No Net Loss or Net Gain.

- No Priority Habitats or Irreplaceable habitats are present on site.

Principle 3: Be Inclusive and Equitable

Engage stakeholders early (e.g RSPB & Natural England), and involve them in designing, implementing, monitoring and evaluating the approach to Biodiversity Net Gain. Achieve net gain in partnership with stakeholders where possible and share the benefits fairly among stakeholders.

Principle 4: Address Risk

This is addressed within the metric and methodology set out within this document



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Principle 5: Make a measurable Net Gain Achievement

This will be achieved through the landscape plan and Biodiversity enhancement plan, with the potential to invest in off-site BNG units.

Principle 6: Achieve the best outcomes for biodiversity

Net gain calculations from Landscape plan to show 10% net gain. If this cannot be achieved on-site, biodiversity credits for appropriate habitat to be purchased.

Principle 7: Be additional

Aim to achieve a greater BNG than the required 10% and include all enhancement recommendations made through the PEA and further bat surveys

Principle 8: Create a net gain legacy

To be achieved through the “Next steps”:

- Project Implementation Construction Plan incorporating the Biodiversity Enhancement Plan.
- Biodiversity Net Gain Audit Report.
- Biodiversity Net Gain Management and Monitoring Plan.

Principle 9: Optimise sustainability & prioritise biodiversity

By implementing the BNG management plan and proposed SUDS in the landscaping plan this development will improve the sustainability of the site.

Principle 10: Be transparent

Communicate all Biodiversity Net Gain activities in a transparent and timely manner, sharing the learning with all stakeholders.

5.0 Proposed Design

The Site proposals includes the following features in the landscape plan & Arboriculture Impact assessment: (full proposal drawings at Appendix.3.) Area measurements provided by landscape design.

Site features created:	Code (UKHABS)	Area ha/length/no.
Buildings & Hardstanding tarmac	U1b5 & u1b6	2104m ²
Introduced shrub		99m ²
Other neutral grassland (seeded)		297m ²
Hedge 1: Single species Yew		45m
Hedge 2: Mixed native species		639m
Small sized trees (no.)		8



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Site Features retained:	Code (UKHABS)	Area ha/length/no.
Urban Tree small	n/a	14
Urban Tree medium	n/a	9

In addition to the above the development will follow the biodiversity enhancements guidelines of the PEA (BEK, 2022) and will include:

- Bird boxes
- Integrated Bat boxes
- Insect bricks and hotels

5.2 Biodiversity Net Gain Calculation

The summary of results for the proposed design shows a net habitat loss of **25.62%** (shown below at Appendix 3).

Assumptions made for the purpose of the calculation:

- All trees on the landscape planting drawing at App.2 stated to be retained, will be retained.
- All grassland areas to be sown with wildflower seed as stated in the landscape planting drawing.
- Areas of decorative shrub will be non-native species

Any changes to the above assumptions will require a re-calculation of the metric.

To improve on this score the following additions to the landscape plan could be made:

- Increased number of trees planted,
- Native shrub areas in the landscaping
- Green walls
- Green roof
- Sustainable urban drainage systems

If you have any queries, please do not hesitate to contact me.

Yours sincerely

Michael Buckley
Director

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Appendix 1: PEA Survey Plan

Extended Phase 1 survey map. 21 Thomas St Lindley, Huddersfield. 22.04.2022



Reproduced using Google Earth Pro, 2022

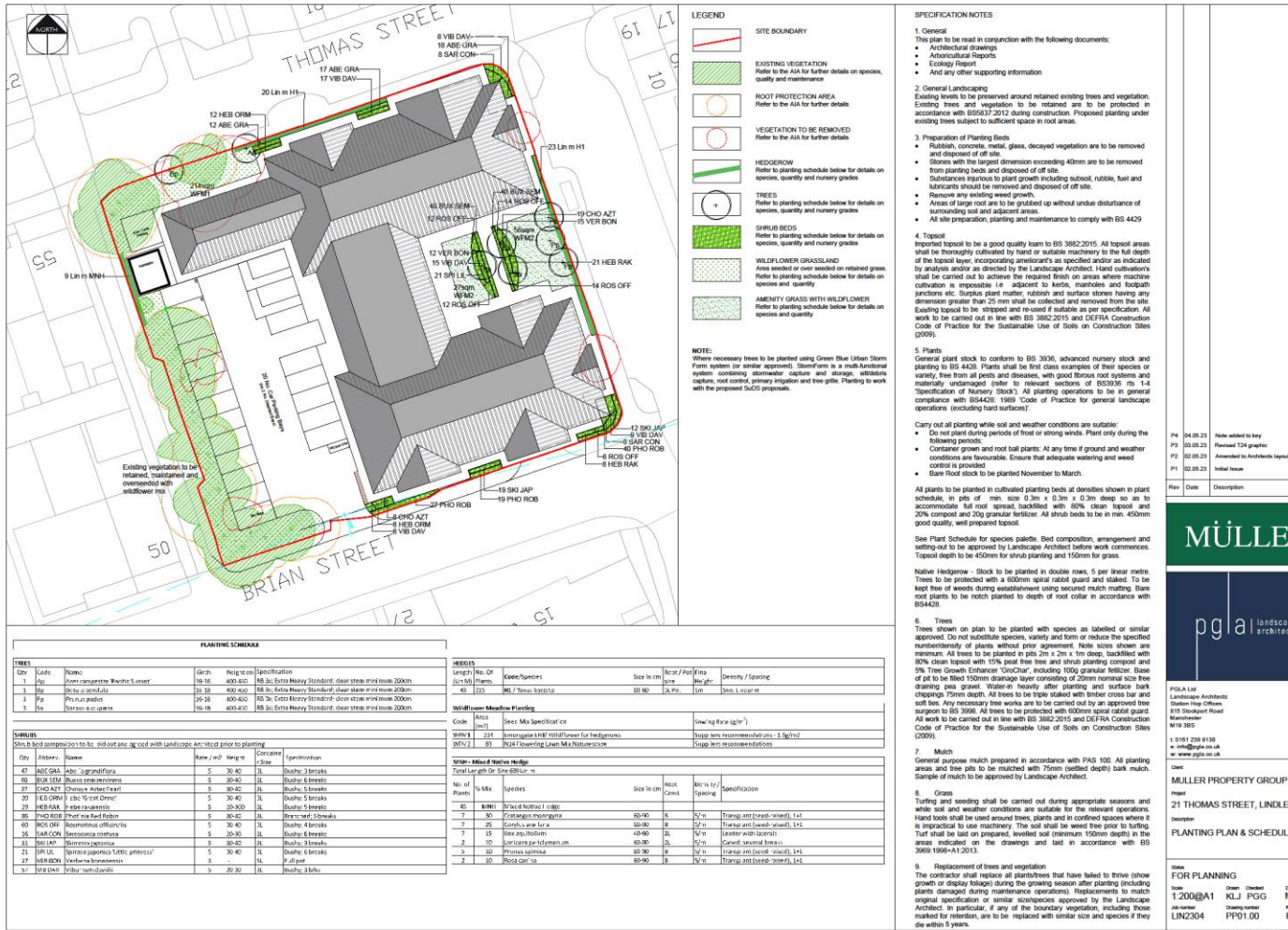
Drawn by CE



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Appendix 2: Proposed Site Plan





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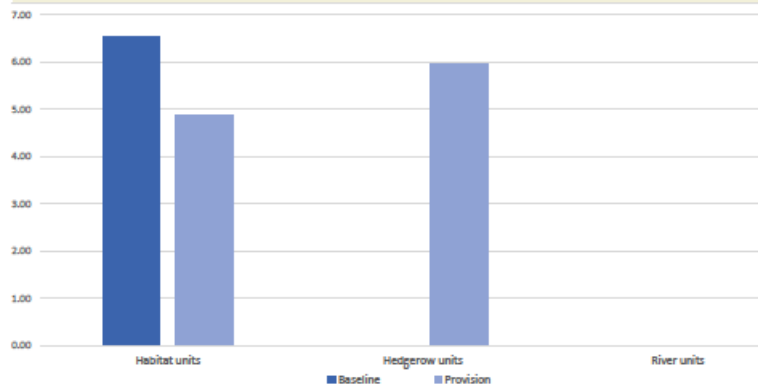
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Appendix 3: BNG Headline results

Site Name		Land at 21 Thomas St Lindley
Sheet Name		Headline Results
Headline Results		
Headline		BNG Targets Not Met A
Trading Rules		Trading Rules Not Satisfied A
Next steps		Scheme alterations or offsite units required
If BNG targets cannot be reached on-site, the main Biodiversity Metric 4.0 should be used		
Baseline Units	Habitat units	6.5390
	Hedgerow units	Zero Units Baseline
	River units	Zero Units Baseline
Post-development Units	Habitat units	4.8637
	Hedgerow units	5.9530
	River units	0.0000
Total net unit change	Habitat units	-1.6753
	Hedgerow units	5.9530
	River units	0.0000
Total net % change	Habitat units	-25.62%
	Hedgerow units	% target not appropriate
	River units	% target not appropriate
Habitats units required to meet target		1.6753
Hedgerow units required to meet target		0.0000
River units required to meet target		0.0000

Chart 1 - Unit change by habitat group



Appendix 4: Reasonable Avoidance Measures (RAMS)

Method Statement for Reasonable Avoidance Measures

Reasonable Avoidance Measures (RAMS) - Method Statement in relation to:

- Reptiles
- Common amphibians
- Terrestrial Mammals e.g hedgehog, badger, hare

Objectives of the Method Statement

Some development related activities on the site, such as excavation creation and removal of materials from site in areas local to otherwise suitable terrestrial habitat, has the potential to affect common amphibian and reptiles, and some terrestrial mammals, whilst protected mammals are known in the extending area. Therefore, safeguards must be implemented to protect these species and the Method Statement below outlines measures to be implemented in order to ensure this objective is achieved. Following these methods reduces the likelihood of negative impacts.

Timings – preferred timing of scrub clearance to minimise impact

- **GCN** : When the GCN are found in their aquatic habitat and not in terrestrial habitat (core breeding season: March-May inclusive).
- **Nesting Birds**: Outside the key breeding season which is 1st March – 31st August inclusive
- **Mammals** : All year

Before Any Works

- Before any work commence at the site all contractors will be attend a ‘tool box’ talk by a suitably licenced ecologist of the potential for protected species to occur on site, what to look out for and what to do in the event that protected animals are found.
- Photograph(s) of relevant protected species will be displayed at the site office and/or kept by the contractor’s personal being for visual reference purposes.
- Contractors to ask any questions as required following toolbox talk, before signing the Toolbox Talk Audit Form.
- Clearance works within the site should only commence after a careful visual inspection (Hand Search) has been carried out by a suitably qualified and experienced ecologist has determined that no animals are present on site/targeted areas and is satisfied no animals are at risk.
- Habitat manipulation - vegetation that can support reptiles/GCN is to be reduced to a height of 150-200 mm, followed by a visual hand search. After the hand search the vegetation is then to be cut to ground level and raked bare.



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During Works

- Habitat manipulation will encourage animals to temporarily move away/abandon the area.
- For the full duration of the work, vegetation will be kept at ground level.
- No works are to extend off site in the areas adjacent to the red line boundary.
- The impact of works on adjacent habitats will be avoided by the clear demarcation of the works area.
- All work must strictly be in accordance with all of the relevant Pollution Prevention Guidelines published by the Environment Agency which may include, but is not limited to, PPG1 (general), PPG5 (works in, near, or liable to affect watercourses) and PPG6 (work at construction & demolition sites). Contingency/emergency plan should be drawn up to address chemical spillage, drainage, collision, etc.
- Machinery and materials are to remain on bare ground and reasonable efforts must be made to avoid the compiling of accumulated piles. Materials that do require piling will be stored within areas of bare ground above ground level using pallets in order to prevent animals from seeking shelter beneath.
- Any excavated material stored overnight should be searched prior to being used as infill.
- Where open vertical-sided trenches are excavated it should be ensured that they are not left open overnight to avoid amphibians or small mammals falling into them and becoming trapped. If trenches cannot be back filled after the working day planks of 150-200 mm wide should be placed in them at a 45 degree diagonal angle to serve as an escape mechanism.
- Excavations should also be checked in the morning on a daily basis for the presence of any animals that may have fallen in during the night. In the event that a protected species is located in trenches then it/they should be left in situ and the ecologist promptly contacted to identify and provide further advice.

If in the event a reptile or protected amphibian is found work must cease; the ecologist will be made aware of the finding and can then appraise the situation providing further advice.

Site staff must be made aware that if a reptile or protected amphibian are found there is a correct procedure in place to follow, and failure to halt works may result in committing an offence.

At no point should any person handle a a reptile or protected amphibian. Unlicensed handling is illegal and untrained handling may cause the animal unnecessary stress and injury.

A Natural England Protected Species Mitigation Licence may be required following the discovery of any protected species on site.



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Appendix 5: Legislation and Planning Policy

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



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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.



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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.

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 badger 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 not 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:



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- 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

Effects on development works:

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)



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- 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;



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- 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.

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



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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 plants listed on Schedule 5 of the Conservation of 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*



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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.



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