

- 5.2 In order to avoid any potential impact on breeding birds, any external refurbishment and/or demolition works on or near to the roof areas should commence outside the main bird nesting season which is taken to run between March to August inclusive⁵, with works possible between September and February inclusive.
- 5.3 Where avoidance of the breeding bird season is not possible, in accordance with best practice, measures should be taken to deter birds from nesting and these should be put in place *prior* to the nesting bird season commencing to ensure nesting birds do not pose a constraint to works.
- 5.4 Deterrents could include the installation of netting around roof areas or employing a bird scaring system such as sonic deterrents or the use of predatory birds. There are a number of companies that specialise in bird deterrent measures and these should be consulted, as required, once a schedule of works is known.
- 5.5 If works cannot avoid the breeding bird season, an ecologist would need to check the area for active nests and signs of bird breeding activity immediately prior to works. In the event that a nest is found, an exclusion zone around the nest would need to be established. Works would have to cease within this buffer area until the young birds have fledged.
- 5.6 It is crucial that the presence of nesting birds is considered at an early stage when preparing the works schedule in order to avoid delays to development. It is advised that once a works schedule is known, this is discussed with the ecologist to enable activities to be timed to avoid delays to the project. Internal renovation and works to the lower external facade of the buildings can be undertaken at any time of the year and unconstrained by this species group.

Bats

- 5.7 All species of bat found in the UK are protected under the Conservation of Habitats and Species Regulations 2010 (as amended) and The Wildlife and Countryside Act 1981 (as amended). Legislation affords protection to individuals and the places they use for breeding and shelter.

⁵ It should be noted that this is the main breeding period. Breeding activity may occur outside this period (depending on the particular species and geographical location of the site) and thus due care and attention should be given when undertaking potentially disturbing works at any time of year.

- 5.8 Although the potential for bats was considered to be negligible based on the location of the site, due to the presence of discrete areas of otherwise potentially suitable features on the external building facade, should any demolition or external renovation works be required as part of the development, some precautions are recommended to ensure that individuals are safeguarded during works.
- 5.9 Immediately prior to any external works commencing, a suitably experienced ecologist should undertake a pre-works check of the site and inspect any features considered to have potential for sheltering bats including areas behind loose render to ensure there are no bats present at the site.
- 5.10 Any discovery of bats will require an appropriate working methodology to be devised between the project ecologist, Natural England and the client which may include the need to obtain a disturbance license in respect of a European species. It must be noted that Natural England requires 30 days to respond to a license once it has been submitted.
- 5.11 Internal renovation works to the buildings can be carried out unconstrained by this species group.
- 5.12 If bats are subsequently found to be present during the remainder of the work, activities should cease immediately and advice sought from a suitably qualified ecologist.

Habitat Enhancement

- 5.13 New development offers the opportunity for habitat enhancement in accordance with local and national planning policy.

Post Development Planting

- 5.14 Wildlife planting could be incorporated into the landscape proposals for any newly created amenity areas in order to increase species diversity post works.
- 5.15 Planting should include a high proportion of native species of wildlife value and include shrubs. Some species of known wildlife value are listed in Appendix E.

Bird Boxes

5.16 Bird nesting opportunities could be provided through the incorporation of external bird boxes post development. There are a range of bird boxes available and these can be selected to suit the development however Schwegler boxes are recommended. These are durable, hard wearing and low maintenance. The design protects occupants from drafts and is long-lasting. Bird boxes should be installed at appropriate locations ideally on south-east or south-west facing walls at least 3m from ground level and a suitable distance away from windows and doors to avoid disturbance.

Green Roof

5.17 It is understood a bio-diverse roof is to be incorporated into the design proposals. The specification should be of proven ecological value for foraging birds and invertebrates and should serve to provide suitable foraging habitat for black redstart; a priority species for London.

5.18 Such 'bio-diverse roofs' comprise substrates of varying type and depth, include dead wood habitat and open areas of vegetation, are low maintenance and are attractive to people as well as wildlife. They also provide opportunities for natural colonisation by plants and invertebrates. Such roofs are preferable to standard stonecrop (*Sedum* spp.) roofs which deliver fewer biodiversity services as they are typically less species-rich and have a shallower substrate depth.



6. REFERENCES

- British Standards Institute (2013). *24040:2013. Biodiversity-Code of Practice for Planning and Development*. Standards Policy & Strategy Committee. Milton Keynes: BSI.
- Communities and Local Government (2012) National Planning Policy Framework (NPPF) (on-line). Available from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf [Accessed on 04/12/2015].
- Department for Communities and Local Government (DfCLG) (2012). National Planning Policy Framework. London: DfCLG.
- Greater London Authority (2015). The London Plan [on-line]. Available from <http://www.london.gov.uk/priorities/planning/london-plan> [Accessed: 04/12/2015].
- Greenspace Information for Greater London (GiGL) (2015). *Desktop Biodiversity Report for Land at New Oxford Street Estate*. Unpublished report for Phlorum Limited. London: GiGL.
- HMSO - Her Majesty's Stationery Office (1981). The Wildlife and Countryside Act (WCA) (as amended). HMSO, London.
- HMSO - Her Majesty's Stationery Office (2000). The Countryside and Rights of Way Act (CRoW). HMSO, London.
- HMSO - Her Majesty's Stationery Office (2010). The Conservation of Habitats and Species Regulations 2010. HMSO, London.
- Eaton, M.A., Brown, A. F., Noble, D. G., Musgrove, A.J., Hearn, R., Aebischer, N.J., Gibbons, D.W., Evans, A. & Gregory, R.D. (2009). Birds of Conservation Concern 3: The Population Status of Birds in the United Kingdom, Channel Islands and the Isle of Man. *British Birds* 102, pp296–341 [on-line]. Available from http://www.rspb.org.uk/Images/BoCC_tcm9-217852.pdf [Accessed 04/12/2015].



- IEEM - Institute of Ecology and Environmental Management (2006). Guidelines for Ecological Impact Assessment in the United Kingdom [on-line]. Available from <http://www.ieem.net/ecia/download.html> [Accessed 04/12/2015].
- Joint Nature Conservation Committee (2010). Handbook for Phase 1 habitat survey - A technique for Environmental Audit JNCC, Peterborough. [on-line]. Available from <http://www.jncc.gov.uk/page-2468> [Accessed: 04/12/2015].
- London Biodiversity Partnership (2015). *Introduction to Black Redstarts* (On-line). Available from: <http://www.blackredstarts.org.uk/index.html> [Accessed: 04/12/2015].
- MAGIC - Multi-Agency Geographic Information for the Countryside (2013). MAGIC Natural England, Leeds. [on-line]. Available from: www.magic.gov.uk [Accessed: 04/12/2015].
- Office of the Deputy Prime Minister (ODPM) (2005). Biodiversity & Geological Conservation: Statutory Obligations & Their Impact within The Planning System. Government Circular.
- Stace, C.A. (2010). *New Flora of the British Isles* (3rd Ed.). Cambridge University Press, Cambridge.




7. GLOSSARY OF TERMS

BAP	Biodiversity Action Plan
BoCC	Birds of Conservation Concern
BTO	British Trust for Ornithology
CCW	Countryside Council for Wales
CEH	Centre for Ecology and Hydrology
CIEEM	Chartered Institute of Ecology and Environmental Management
CRoW Act 2000	Countryside and Rights of Way Act 2000
cSAC	Candidate Special Area of Conservation
CWS	County Wildlife Site
DAFOR	Plant abundance scale used to score plants recorded within a surveyed area. Values are: Dominant, abundant, frequent, occasional, rare.
Defra	Department for Environment, Food and Rural Affairs
DfCLG	Department for Communities and Local Government
DoE	Department of the Environment (now Defra)
dSAC	Draft Special Area of Conservation
EC	European Commission; also European Community with reference to the Habitats Directive
EN	English Nature (now Natural England)
EPS	European Protected Species
EPSM	European Protected Species Mitigation
EU	European Union
FCS	Favourable Conservation Status
GB	Great Britain (England, Scotland and Wales, excluding Northern Ireland)
HMSO	Her Majesty's Stationery Office
IDD	International Designations Database
IUCN	The World Conservation Union (International Union for the Conservation of Nature)
IUCN	International Union for Conservation of Nature
JNCC	Joint Nature Conservation Committee
Lekking	Where males assemble during the mating season to engage in competitive displays to attract females.
LISI	London Invasive Species Initiative
LNCS	Local Nature Conservation Sites

LNR	Local Nature Reserve
LRBI	Lowland Raised Bog Inventory
LWS	Local Wildlife Site
MAGIC	Multi-Agency Geographical Information for the Countryside
NCC	Nature Conservancy Council
NERC Act 2006	The Natural Environment and Rural Communities Act 2006
NGO	Non-governmental organisation
NI	Northern Ireland
NNR	National Nature Reserve
Nomenclature	The system of devising of names for plants
NPPF	National Planning Policy Framework
NVC	National Vegetation Classification
ODPM	Office of the Deputy Prime Minister
OS	Ordnance Survey
PCAIWCG	Property Care Association Invasive Weeds Control Group
PEA	Preliminary Ecological Appraisal- formerly referred to as a Phase 1 Habitat Survey
pSAC	Possible Special Area of Conservation
SAC	Special Area of Conservation
SBI	Sites of Biological Importance
SCI	Site of Community Importance
SEA	Strategic Environmental Assessment
SINC	Sites of Importance for Nature Conservation
SNCI	Site of Nature Conservation Importance
SNH	Scottish Nature Heritage
SPA	Special Protection Area
SSSI	Site of Special Scientific Interest
UK	United Kingdom (England, Scotland, Wales and Northern Ireland)

Appendix A

Photographs

Feature	Photograph of Feature
<p>Photograph 1: A view north along the eastern aspect.</p>	 A photograph showing a multi-story building facade. The ground floor has a storefront with a sign that says 'EXPRESS'. The upper floors have many windows. The building is light-colored with some darker sections.
<p>Photograph 2: A view of east across the southern aspect of the structure showing large areas of flaking paint.</p>	 A photograph of a building corner. The ground floor is dark grey or black, and the upper floors are white. There is significant peeling and flaking of paint on the white sections. A blue sign is visible on the upper part of the building.
<p>Photograph 3: A view north along the eastern roof top.</p>	 A photograph taken from a rooftop. In the foreground, there is a concrete ledge and a satellite dish mounted on a wall. In the background, a city street is visible with a large red brick building and a white dome structure in the distance.

Appendix B
Habitat Map



Legend

- Site Boundary**
Lines
- Buildings**
Areas
- Introduced Shrub**
Areas

New Oxford Street Estate Habitat Map

Drawn by: JWK
 On the: 04/12/2015
 Not to Scale
 Ref: 6020



Phlorum Limited, 12 Hunns Mere Way,
 Woodingdean, Brighton, East Sussex,
 BN2 6AH

Tel: +44(0)1273 307167 Fax: 01273 7044 99
 Web: www.phlorum.com Email: info@phlorum.com

Appendix C

Legislation

LEGISLATIVE FRAMEWORK

This section contains information pertaining to the legislation and planning policy applicable in Britain. This information is not applicable to Northern Ireland, the Republic of Ireland the Isle of Man or the Channel Islands. Information contained in the following appendix is provided for guidance only.

Species

The objective of the EC Habitats Directive⁶ is to conserve plants and animals which are considered to be rare across Europe. The Directive is transposed into UK law by The Conservation of Habitats and Species Regulations 2010 (as amended) (formerly The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) and The Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (as amended).

The Wildlife and Countryside Act 1981 (as amended) implements the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention) and also implements the obligations set out for species protection from the Council Directive 2009/147/EC (formerly 79/409/EEC) on the Conservation of Wild Birds (EC Birds Directive) in Great Britain.

Various amendments have been made since the Wildlife & Countryside Act came into force in 1981. Further details pertaining to alterations of the Act can be found on the following website: www.opsi.gov.uk. Key amendments have been made through the Countryside and Rights of Way (CRoW) Act (2000) and Nature Conservation (Scotland) Act 2004.

There are a number of other legislative Acts affording protection to species and habitats. These include

- Countryside and Rights of Way (CRoW) Act 2000
- Deer Act 1991
- Natural Environment & Rural Communities (NERC) Act 2006
- Protection of Badgers Act 1992
- Wild Mammals (Protection) Act 1996

⁶ Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora.

Badger

Badgers and their setts are protected under the Protection of Badgers Act (1992), which consolidated and added to the previous Badger Acts of 1973 and 1991. Under this legislation it is an offence to:

- cruelly ill-treat a badger, including use of tongs and digging;
- intentionally or recklessly cause a dog to enter a badger sett;
- intentionally or recklessly damage, destroy or obstruct access to a badger sett⁷ or any part thereof;
- intentionally or recklessly disturb⁸ a badger when it is occupying a badger sett;
- possess or control a dead badger or any part of a badger;
- sell or offers for sale, possesses or has under his control, a live badger; and
- wilfully kill, injure, take, or attempt to kill, injure or take a badger.

A Development Licence will be required from Natural England for any development works affecting an active badger sett, or to disturb badgers while individuals are occupying the sett. Depending on the nature of the works and the specifics of the sett, badgers could be disturbed by work near the sett even if there is no direct interference or damage to the sett itself. Natural England has issued guidelines on what constitutes a licensable activity. There is no provision in law for the capture of badgers for development purposes and therefore it is not possible to obtain a licence to translocate badgers from one area to another.

Bats

Bats are protected under Schedule 5 of the Wildlife & Countryside Act 1981 (as amended). This act protects individuals from:

- intentional or reckless disturbance (at any level);

⁷ A badger sett is defined in the legislation as "any structure or place which displays signs indicating current use by a badger". This includes seasonally used setts. Natural England (2009) have issued guidance on what is likely to constitute current use of a badger sett: www.naturalengland.org.uk/Images/WMLG17_tcm6-11815.pdf

⁸ For guidance on what constitutes disturbance and other licensing queries, see Natural England (2007) Badgers & Development: A Guide to Best Practice and Licensing. www.naturalengland.org.uk/Images/badgers-dev-guidance_tcm6-4057.pdf, Natural England (2009) Interpretation of 'Disturbance' in relation to badgers occupying a sett www.naturalengland.org.uk/Images/WMLG16_tcm6-11814.pdf, Scottish Natural Heritage (2002) Badgers & Development.

www.snh.org.uk/publications/online/wildlife/badgersanddevelopment/default.asp and Countryside Council for Wales (undated) Badgers: A Guide for Developers. www.ccw.gov.uk.

- intentional or reckless obstruction of access to any place of shelter or protection; and
- selling, offering or exposing for sale, possession or transporting for purpose of sale

In addition, all species of bat are fully protected under The Conservation of Habitats and Species Regulations 2010 (as amended) through their inclusion on Schedule 2. Regulation 41 prohibits:

- deliberate killing, injuring or capturing of Schedule 2 species (all bats);
- deliberate disturbance of bat species as to impair their ability:
 - (i) to survive, breed, or reproduce, or to rear or nurture young; and
 - (ii) to hibernate or migrate.
- deliberate disturbance of bat species as to affect significantly the local distribution or abundance of the species;
- damage or destruction of a breeding site or resting place; and
- keeping, transporting, selling, exchanging or offering for sale whether live or dead or of any part thereof.

A European Protected Species Mitigation (EPSM) Licence issued by Natural England will be required for works liable to affect a bat roost or for operations likely to result in a level of disturbance which might impair their ability to undertake activities listed above. A licence is required to allow derogation from the relevant legislation but also to enable appropriate mitigation measures to be put in place and monitored.

Breeding Birds

Under the Wildlife & Countryside Act, 1981 (as amended), a wild bird is defined as any bird of a species that is resident in or is a visitor to the European Territory of any member state in a wild state. Game birds, however, are not included in this definition (except for limited parts of the Act). They are covered by the Games Acts, which fully protect them during the closed season.

Under the Wildlife & Countryside Act, 1981 (as amended), all birds, their nests and eggs are protected under Sections 1-8 of the Act and it is an offence, with certain exceptions, to:

- intentionally (or recklessly in Scotland) kill, injure or take any wild bird;
- intentionally (or recklessly in Scotland) take, damage or destroy (or, in Scotland, otherwise interfere with) the nest of any wild bird while it is in use or being built
- intentionally take or destroy the egg of any wild bird;

- have in one's possession or control any wild bird, dead or alive, or any part of a wild bird, which has been taken in contravention of the Act;
- have in one's possession or control any egg or part of an egg which has been taken in contravention of the Act;
- use traps or similar items to kill, injure or take wild birds;
- have in one's possession or control any bird (dead or alive) unless registered, and in most cases ringed, in accordance with the Secretary of State's regulations; and
- in Scotland only, intentionally or recklessly obstruct or prevent any wild bird from using its nest.

Certain rare species receive additional special protection under Schedule 1 of the Act and Annex 1 of the European Community Directive on the Conservation of Wild Birds (2009/147/EC). 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; and
- in Scotland only, intentional or reckless harassment.

The British Trust for Ornithology (BTO) has a list of birds that are Species of Conservation Concern. These birds are not legally protected but where they are found on site they should be given planning consideration. The criteria for birds listed as amber (medium conservation concern) include:

- historical population decline during 1800-1995, but recovering: population has more than doubled over last 25 years;
- moderate (25-49%) decline in UK breeding population over last 25 years;
- moderate (25-49%) contraction of UK breeding range over last 25 years;
- moderate (25-49%) decline in UK non-breeding population over last 25 years;
- species with unfavourable conservation status in Europe (Species of conservation Concern);
- five year mean of breeding pairs in the UK;
- $\geq 50\%$ of UK breeding population in 10 or fewer sites.
- $\geq 50\%$ of UK non-breeding population in 10 or fewer sites;
- $\geq 20\%$ of European breeding population in UK; and
- $\geq 20\%$ of NW European (wildfowl), East Atlantic Flyway (waders) or European (others) non breeding populations in UK.

Hazel Dormouse

The hazel dormouse (*Muscardinus avellanarius*) is fully protected under The Conservation of Habitats and Species Regulations 2010 through its inclusion on Schedule 2. Regulation 41 prohibits:

- deliberate killing, injuring or capturing;
- deliberate disturbance as to impair its ability:
 - (i) to survive, breed, or reproduce, or to rear or nurture young; and
 - (ii) to hibernate or migrate.
- deliberate disturbance as to affect significantly the local distribution or abundance of the species;
- damage or destruction of a breeding site or resting place; and
- keeping, transporting, selling, exchanging or offering for sale whether live or dead or of any part of this species.

The hazel dormouse is also currently protected under the Wildlife and Countryside Act 1981 (as amended) through its inclusion on Schedule 5. Under this Act, this species is additionally protected from:

- intentional or reckless disturbance;
- intentional or reckless obstruction of access to any place of shelter or protection; and
- selling, offering or exposing for sale, possession or transporting for purpose of sale.

A European Protected Species Mitigation (EPSM) Licence issued by Natural England will be required for works liable to affect dormouse breeding or resting places (N.B. this is usually taken to mean dormouse 'habitat') or for operations likely to result in a level of disturbance which might impair their ability to undertake those activities mentioned above. The licence will allow derogation from the relevant legislation but will also to enable appropriate mitigation measures to be put in place and monitored.

Herpetofauna (Reptiles and Amphibians)

The following species receive full protection under the The Conservation of Habitats and Species Regulations 2010 (as amended) through their inclusion on Schedule 2.

- sand lizard (*Lacerta agilis*);

- smooth snake (*Coronella austriaca*);
- natterjack toad (*Epidalea calamita*);
- great crested newt (*Triturus cristatus*); and
- pool frog (*Pelophylax lessonae*).

Under this legislation, Regulation 41 prohibits:

- deliberate killing, injuring or capturing of species listed on Schedule 2;
- deliberate disturbance of any Schedule 2 species as to impair their ability:
 - (i) to survive, breed, or reproduce, or to rear or nurture young; and
 - (ii) to hibernate or migrate.
- deliberate disturbance of any Schedule 2 species as to affect significantly the local distribution or abundance of the species;
- deliberate taking or destroying of the eggs of a Schedule 2 species;
- damage or destruction of a breeding site or resting place; and
- keeping, transporting, selling, exchanging or offering for sale whether live or dead or of any part of a species.

With the exception of the pool frog, these species are also currently listed on Schedule 5 of the Wildlife and Countryside Act 1981 (as amended). 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; and
- selling, offering or exposing for sale, possession or transporting for purpose of sale.

Other native species of herpetofauna are protected solely under Schedule 5 of the Wildlife & Countryside Act 1981 (as amended). These species include:

- adder (*Vipera berus*);
- grass snake (*Natrix natrix*);
- common lizard (*Zootoca vivipara*); and
- slow-worm (*Anguis fragilis*).

Under this legislation, for these species it is prohibited under Section 9(1) & (5) to:

- intentionally (or recklessly in Scotland) kill or injure these species

- sell, offer or expose for sale, possess or transport for purpose of sale these species, or any part thereof.

The following species are listed in respect to Section 9(5) of Schedule 5 of the Wildlife & Countryside Act 1981 (as amended) which only affords them protection against sale, offering or exposing for sale, possession or transport for the purpose of sale:

- common frog (*Rana temporaria*);
- common toad (*Bufo bufo*);
- smooth newt (*Lissotriton vulgaris*); and
- palmate newt (*L. helveticus*).

Water Vole

The water vole (*Arvicola amphibius*) (=terrestris) is fully protected under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended). This makes it an offence to:

- intentionally kill, injure or take (capture) this species;
- 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; and
- sell, offer or expose for sale, or have in his possession or transport for the purpose of sale, any live or dead water vole or part of this species.

Where development works are liable to affect habitats known to support water voles, Natural England must be consulted. All alternative design options must have been explored and communicated to Natural England in order to demonstrate that works have tried to avoid contravening the legislation e.g. the use of alternative sites, appropriate timing of works to avoid times of the year in which water voles are most vulnerable etc. Conservation licences for the capture and translocation of water voles may be issued by 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.

Otter

Otters (*Lutra lutra*) are fully protected under The Conservation of Habitats and Species Regulations 2010 through their inclusion on Schedule 2. Regulation 41 prohibits:

- deliberate killing, injuring or capturing of otters
- deliberate disturbance as to impair their ability:
 - (i) to survive, breed, or reproduce, or to rear or nurture young; and
 - (ii) to hibernate or migrate.
- deliberate disturbance as to affect significantly the local distribution or abundance of the species;
- damage or destruction of a breeding site or resting place; and
- keeping, transporting, selling, exchanging or offering for sale whether live or dead or of any part of this species.

Otters also receive protection under the Wildlife and Countryside Act 1981 (as amended) 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; and
- selling, offering or exposing for sale, possession or transporting for purpose of sale.

A European Protected Species Mitigation (EPSM) Licence issued by Natural England will be required for works liable to affect breeding or resting places or for activities likely to result in a level of disturbance which might impair their ability to undertake those activities mentioned above. The licence is to allow derogation from the relevant legislation but also to enable appropriate mitigation measures to be put in place and monitored.

Red Squirrel

The red squirrel (*Sciurus vulgaris*) is fully protected under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended). This makes it an offence to:

- intentionally (or recklessly in Scotland) kill, injure or take (capture) red squirrels;
- intentionally or recklessly damage, destroy or obstruct access to any structure or place used for shelter or protection;
- intentionally or recklessly disturb this species while they are occupying a structure or place used for shelter; and
- sell, offer or expose for sale, or have in his possession or transport for the purpose of sale, any live or dead red squirrel or part of this species.