



## Ecological Mitigation Plan

The Pears Building, Hampstead Pond St NW3 2QG

Royal Free Charity

Status	Issue	Name	Date
Draft	1	Joe Slade BSc (Hons), Consultant	23/09/20
Reviewed	1.1	Chris Formaggia BSc (Joint Hons) CBiol CEnv MCIEEM MRBS VR, Company Principal	30/09/20
Final	2	Joe Slade BSc (Hons), Consultant	30/09/20
Updated – repositioned bat boxes	3	Joe Slade BSc (Hons), Consultant	15/01/21

Arbtech Consultant's Contact details:

Joe Slade BSc (Hons)

Consultant

Tel: 07872127684 Email: [joeslade@arbtech.co.uk](mailto:joeslade@arbtech.co.uk)

Arbtech Consulting Ltd

<https://arbtech.co.uk>

## Limitations and Copyright

Arbtech Consulting Limited has prepared this report for the sole use of the above-named client or their agents in accordance with our General Terms and Conditions, under which our services are performed. It is expressly stated that no other warranty, expressed or implied, is made as to the professional advice included in this report or any other services provided by us. This report may not be relied upon by any other party without the prior and express written agreement of Arbtech Consulting Limited. The assessments made assume that the sites and facilities will continue to be used for their current purpose without significant change. The conclusions and recommendations contained in this report are based upon information provided by third parties. Information obtained from third parties has not been independently verified by Arbtech Consulting Limited.

© This report is the copyright of Arbtech Consulting Limited. Any unauthorised reproduction or usage by any person other than the addressee is strictly prohibited.

## Guidelines

This assessment has been designed to meet:

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

## Proportionality

The work involved in preparing and implementing all ecological surveys, impact assessments and measures for avoidance, mitigation, compensation and enhancement should be proportionate to the predicted degree of risk to biodiversity and to the nature and scale of the proposed development. Consequently, the decision-maker should only request supporting information and conservation measures that are relevant, necessary and material to the application in question. Similarly, the decision-maker and their consultees should ensure that any comments and advice made over an application are also proportionate.

This approach is enshrined in Government planning guidance, for example, paragraph 193 of the National Planning Policy Framework for England.

The desk studies and field surveys undertaken to provide a preliminary ecological appraisal (PEA) might in some cases be all that is necessary.

(BS 42020, 2013)

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

**Contents**

<b>1.0 Introduction and Context</b>	<b>4</b>
1.1 Background	4
1.2 Site location	4
1.3 Project Description	5
1.4 Scope of this report	7
<b>2.0 Ecological mitigation and enhancement details</b>	<b>9</b>
2.1 Informative and EPSL statement	9
2.2 Ecological mitigation plan	10
2.3 Ecological mitigation map	14
<b>3.0 Bibliography</b>	<b>19</b>
<b>Appendix 1: Legislation and Planning Policy</b>	<b>21</b>

## 1.0 Introduction and Context

### 1.1 Background

- Arbtech Consulting Ltd. was commissioned by Royal Free Charity to produce an Ecological Mitigation Plan (EMP) for the site of The Pears Building in Hampstead Pond Street, NW3 2QG.
- A Preliminary Ecological Appraisal was carried out on site on 23<sup>rd</sup> February 2018 to assess the existing ecological baseline.

### 1.2 Site location

- The site is located at National Grid Reference TQ 2716 8537 and measures 5000m<sup>2</sup> in area. It currently consists of a building site, ornamental planting and scattered trees to the west of the main hospital.

### 1.3 Ecological Baseline

The Preliminary Ecological Appraisal survey is summarised below:

#### **[A3] Scattered trees**

Scattered trees, of mainly broadleaved species lie around the edges of the central building site. None have any holes or crevices or roosting or nesting value and no in use nests were found, although the survey was undertaken out of the general nesting season. London planes lie to the west close to the road.

#### **[J2.4] Fence+ [J2.5] Wall**

A temporary fence lies around the building site, with a metal railing along the western boundary. Small walls are found around the ornamental planting on site. Comfrey is found along the boundaries.

#### **[J1.5] Gardens**

The 'garden' habitat is used to describe any complicated mosaics of flowerbeds, ornamental shrubs, vegetable patches, ornamental hedges etc. that do not fall neatly within any other P1 code. Therefore, greater spatial variation exists within these than it may appear on the survey map in appendix I.

On this site are bedding areas of shrubs and mulch, where most of the trees are planted. Privet hedge to west.

**[J3.6] Building and hard standing**

Two flat-roofed, brick ancillary structures to the south of the site are the only buildings. Much of the survey area is an existing building site. The land use within this consists of hard standing, bare ground, rubble, tarpaulin and small areas of rough grass and tall ruderal herbs. Species include buddleia, bramble, nettle, thistle, cow parsley, ground ivy and broad leaved dock. Blackbirds and pigeons were observed but no nests were found.

**1.5 Project Description**

- This ecological mitigation plan is prepared to support a planning application with Camden Borough Council. The proposal is described below:
  - *Demolition of existing carpark and ancillary structures and erection of new 7 storey building containing laboratory/research space for Institute for Immunity and Transplantation, a patient hotel, Royal Free Charity offices plus a replacement carpark, plant and landscaping.*

The proposed site plans are included below as figures 1 - 2.

[illegible]



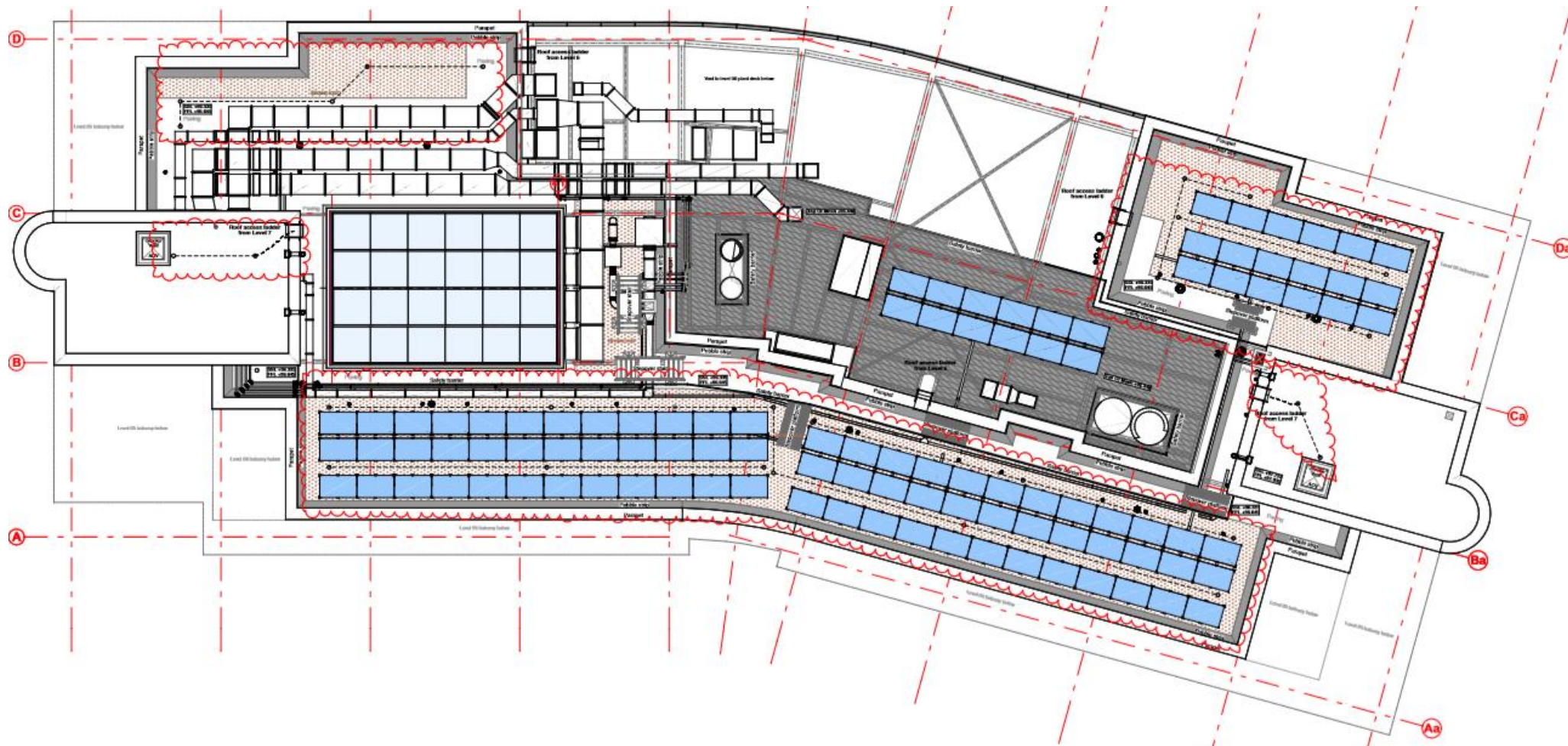


Figure 2: Proposed site plan (roof).

### **1.6 Scope of this report**

- The scope of this report is to provide a mitigation and enhancement plan for ecology in general and to outline the measures that would be used to comply with legislation. It aims to improve the site's intrinsic biodiversity value within the framework of the proposed development, or to propose changes to the plan where appropriate.
- This strategy provides ecological mitigation and enhancements for the site to inform condition discharge prior to the development itself. To satisfy the condition, the measures covered in this mitigation and enhancement plan will therefore ensure there is a net gain in biodiversity interest on site.
- This is an iterative document and may be superseded by any further findings on site, especially in relation to any taxa found during the development that require a European Protected Species Mitigation Licence (ESPML) due to disturbance (e.g. if great crested newts or bats are found during the development).
- The biodiversity improvement measures shall be completed in accordance with the approved details prior to the first occupation of the development and retained and maintained in accordance with the approved maintenance provisions for the lifetime of the development.
- Reason: In order to secure appropriate features to conserve and enhance wildlife habitats and biodiversity measures within the development in accordance with policy CS15 of the LB of Camden LDFCS.
- **The client has confirmed that all the mitigation and enhancement measures detailed in this ecological mitigation plan will all be implemented on site.**



## 2.0 Ecological mitigation and enhancement details

### 2.1 Informative and EPSL statement

The following Tables 1 and 2 detail the mitigation and enhancements of the site for ecology interest, which will need to be followed by the client to satisfy the aims of the report.

The enhancements will include a range of site-specific, suitable and achievable gains. Best practice management regimes will be implemented to further increase the ecological interest of the site. These are detailed below and should be undertaken in year 1 of the ecology enhancement plan.

- An application for an EPSM Licence from Natural England is **not necessary** for this development to comply with statutory legislation, based on the current plans and lack of known ecological receptors.

**Table 1: Mitigation, Capital Works and Possible Enhancements in Year 1**

Work	Specification
Invertebrate enhancements	<ul style="list-style-type: none"> <li>➤ Three bug hotels/insect towers will be installed adjacent to planting areas within the memorial garden (see figure 10 for the recommended positioning).</li> <li>➤ Two small piles of fine inert sand on the roof would also encourage burrowing by invertebrates (see figure 7 for the recommended positioning).</li> </ul>
Bird Enhancements	<p>Bird boxes will be installed on the new building.</p> <p><b>Habitat Boxes:</b></p> <ul style="list-style-type: none"> <li>➤ All bird boxes will be constructed of woodcrete/Woodstone. These are known to have minimal maintenance and a lifespan of 25 years plus. See the map in Figure 7 below for suggested locations.</li> <li>➤ The black redstart is a London BAP priority Species, and particular mitigation is also advised for it: Install a minimum of 2 Black Redstart (<i>Phoenicurus ochruros</i>) bird boxes on the new building. The Schwegler 2HW bird box is suitable for Black Redstarts should they choose to nest in Britain. These should be covered in stones on green/brown roofs (leaving the entrances free) to secure them to the roof as well as any other mounting required.</li> <li>➤ The house sparrow is another BAP species, and also a London Species action plan (SAP) Species. 4x 1SP Schwegler Sparrow Terraces or Vivara Pro WoodStone House Sparrow nest boxes should be installed either within the walls or on the new buildings. The unit can be completely integrated within a brick or concrete wall or can be mounted externally.</li> <li>➤ 1x Woodstone Nest Box – with 28mm entrance holes on the new building to attract Tree Sparrows, Blue Tits, Coal Tits, Great Tits and Crested Tits.</li> <li>➤ 1x Woodstone Nest Box – with 32mm entrance holes on the new building to attract blue, marsh, coal and crested tits, redstart, nuthatch, collared and pied flycatcher, wryneck, tree and house sparrow</li> </ul>



Figure 3: Schwegler 2HW bird box (image credit nhbs.com)



Figure 4: Vivara Pro WoodStone House Sparrow Nest Box (image credit vivarapro.co.uk)



Figure 5: Woodstone Nest Box (image credit arkwildlife.co.uk)

## Bat enhancements

***Provision of new roosting provision on site***

3x Vivara Pro Woodstone bat boxes will be installed on the south-western elevation of the building (see map in Figure 7 and 8 below for the positioning). This will provide roosting provision for local bats, and link to habitats in the vicinity. The bat boxes should be no less than three meters off ground level. No artificial light should shine on the bat box and clear flight paths to and from the box should be considered.



*Figure 6:*

*Vivara Pro Woodstone Bat Box*

If bats are found during any stage of the development, work should stop immediately, and the retained ecologist will provide further advice, possibly including further survey in the active season and an EPSML application to Natural England.

<b>Post-development inspection</b>	<p>A site visit will be undertaken upon completion of the development to check the habitat boxes and other enhancements. A letter report will then be produced stating the measures meet the measures outlined in this plan or not.</p> <p>If a European Protected Species Mitigation Licence is found to be required based on unknown receptors (e.g. if bats or great crested newts are found), then the 'Report of Actions Taken Under Licence' will be returned to Natural England within 14 days of the expiration date of the EPSM Licence in accordance with the terms and conditions of the licence.</p>
------------------------------------	--



2.3 Ecological mitigation maps

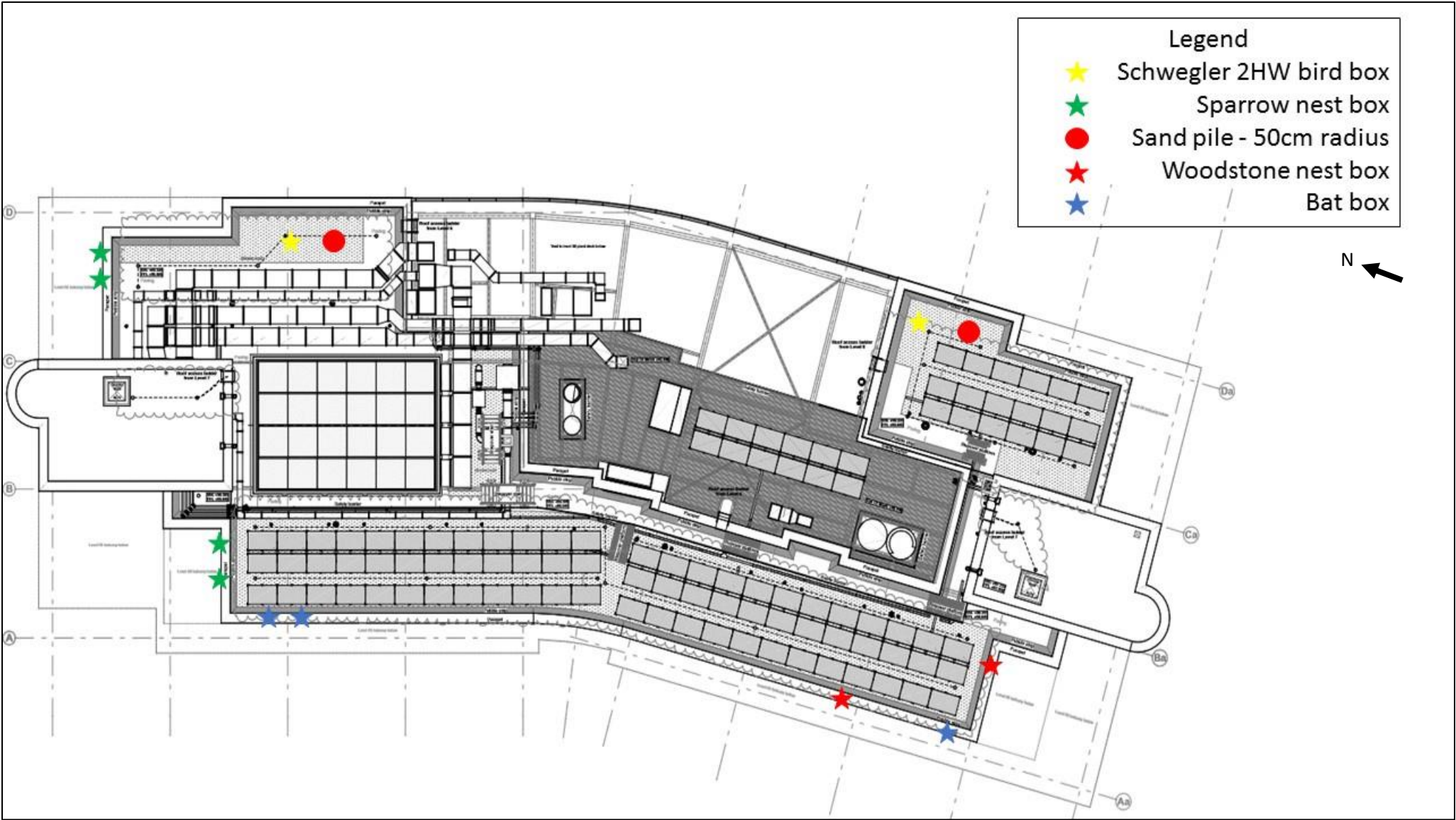


Figure 7: Combined ecological mitigation plan

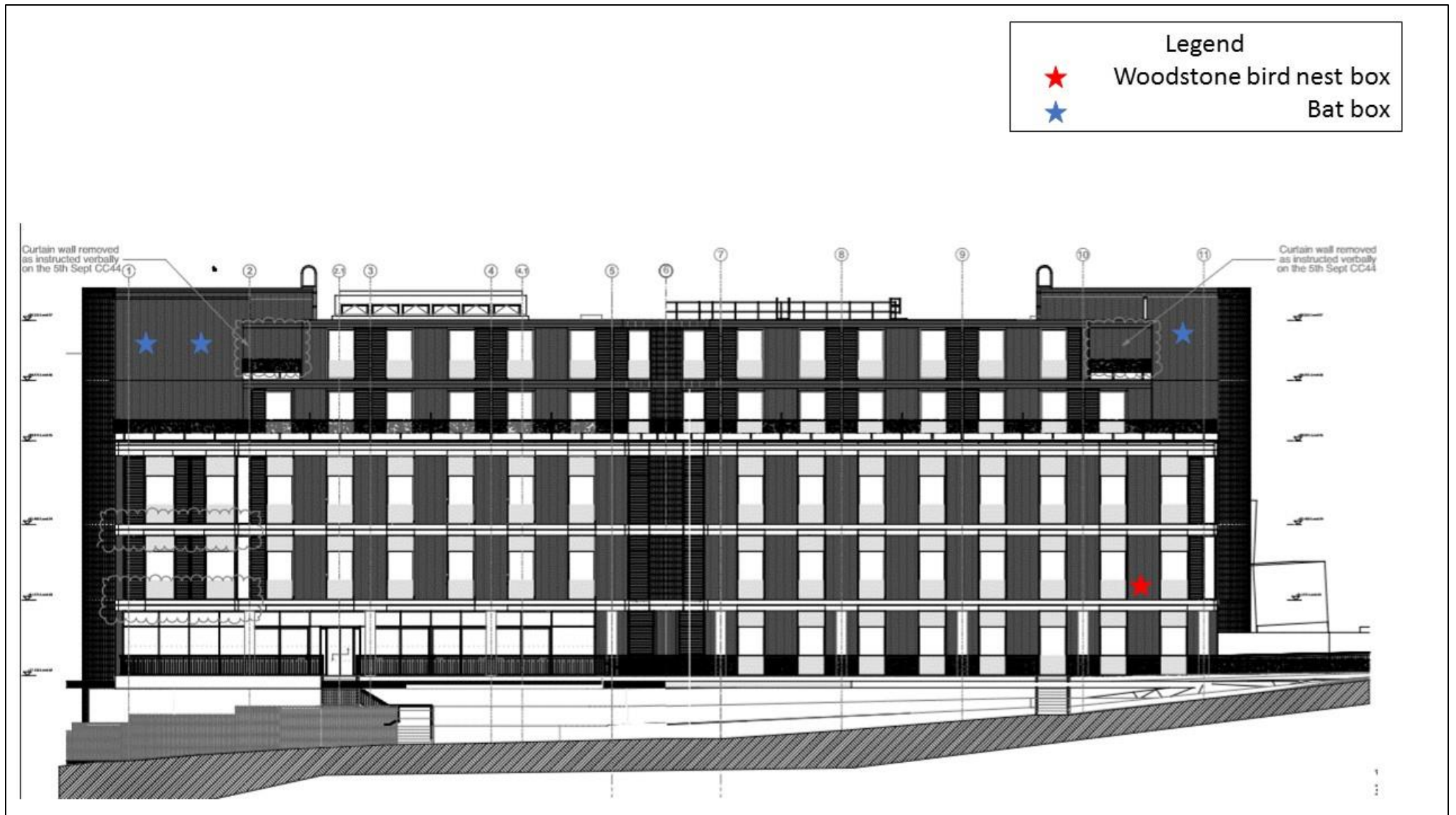


Figure 8: Enhancements – western elevations

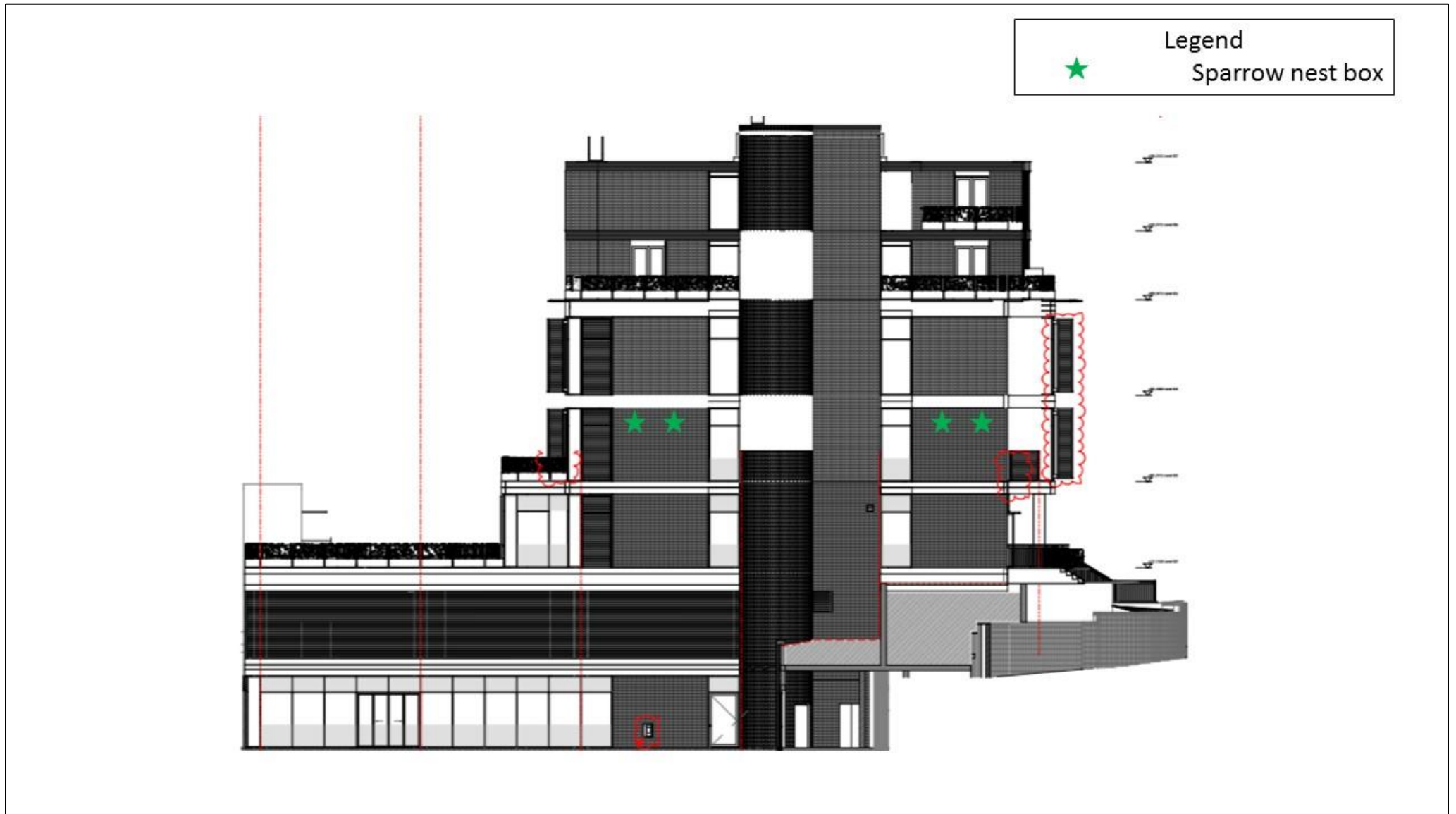


Figure 9: Enhancements – northern elevation



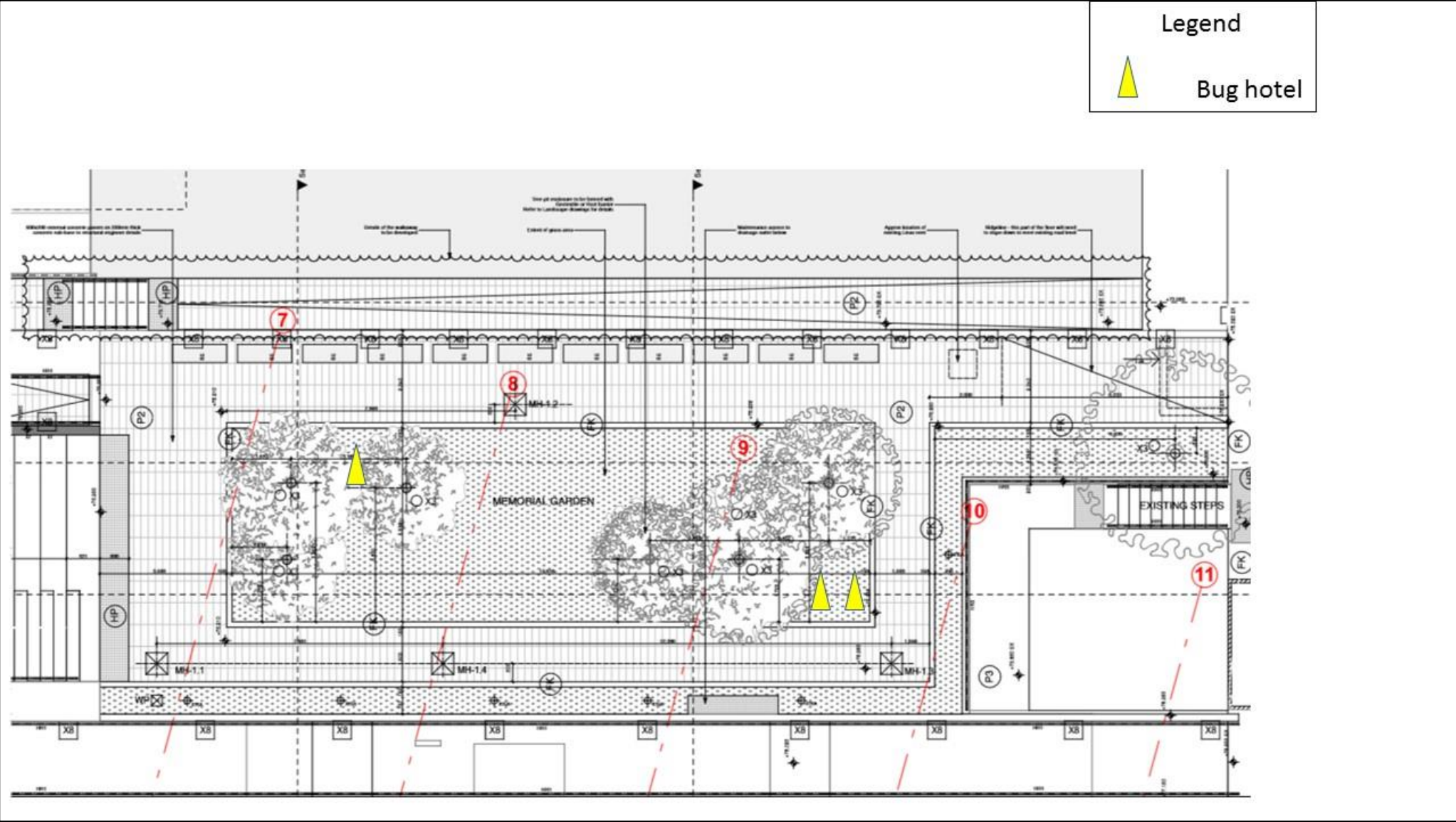


Figure 10: Enhancements – memorial garden

**Table 2 - Post Development Monitoring, Management and Maintenance**

Activity	Year 1	Every year for 25 years
Bug hotels/insect towers  Sand piles	Install the site's provision of insect enhancements using the following schedules of this plan:  ➤ Figure 7 and 10	Check annually and replace any bug hotels/insect towers that are broken or fall down.
Habitat boxes	Install the site's provision of habitat boxes for bats and birds using the following schedules of this plan:  ➤ Figure 7, 8 and 9	Check annually and replace any boxes that are broken or fall down e.g. during storms.



### 3.0 Bibliography

- BS 42020, Biodiversity – Code of practice for planning and development (2013) <http://www.eoebiodiversity.org/pdfs/BS42020.pdf>
- BS 42020, Biodiversity – Code of practice for planning and development (2013) <http://www.bsigroup.com/LocalFiles/en-GB/biodiversity/BS-42020-Smart-Guide.pdf>
- CIEEM (2016) Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater and Coastal, 2nd edition. Chartered Institute of Ecology and Environmental Management, Winchester. [http://www.cieem.net/data/files/Publications/EcIA\\_Guidelines\\_Terrestrial\\_Freshwater\\_and\\_Coastal\\_Jan\\_2016.pdf](http://www.cieem.net/data/files/Publications/EcIA_Guidelines_Terrestrial_Freshwater_and_Coastal_Jan_2016.pdf)
- CIEEM (2013) Guidelines for Preliminary Ecological Appraisal Institute of Ecology and Environmental Management [http://www.cieem.net/data/files/Resource\\_Library/Technical\\_Guidance\\_Series/GPEA/GPEA\\_April\\_2013.pdf](http://www.cieem.net/data/files/Resource_Library/Technical_Guidance_Series/GPEA/GPEA_April_2013.pdf)
- Collins, J. (ed.) (2012). Bat Surveys for Professional Ecologists —Good Practice Guidelines, 3<sup>rd</sup> edition, Bat Conservation Trust, London. <http://www.bats.org.uk/pages/batsurveyguide.html>
- Garland & Markham (2008) Is important bat foraging and commuting habitat legally protected?
- Google Earth (2020).
- HMSO: Wildlife and Countryside Act 1981 (as amended) <http://jncc.defra.gov.uk/page-1377>
- HMSO: Countryside & Rights of Way Act (2000) <http://jncc.defra.gov.uk/page-1378>
- HMSO: Natural Environmental and Rural Communities Act (2006) <http://www.legislation.gov.uk/ukpga/2006/16/contents>
- HMSO: The Conservation of Habitats and Species Regulations (2010) <http://www.legislation.gov.uk/uksi/2010/490/contents/made>
- JNCC (2004) Bat Workers Manual, 3rd Edition. <http://jncc.defra.gov.uk/page-2861>
- Magic database (2020) <http://www.magic.gov.uk/MagicMap.aspx>
- Mitchell-Jones, A.J. (2004). Bat Mitigation Guidelines. English Nature, Peterborough. [http://roost.bats.org.uk/sites/default/files/publications/EnglishNature\\_BatMitigationGuidelines\\_2004.pdf](http://roost.bats.org.uk/sites/default/files/publications/EnglishNature_BatMitigationGuidelines_2004.pdf)
- National Planning Policy Framework, 2012 <https://www.gov.uk/government/publications/national-planning-policy-framework--2>
- Natural England (2007). Badgers and Development a Guide to Best Practice and Licensing. Natural England. Bristol. <http://www.wildlifeco.co.uk/wp-content/uploads/2014/03/badgers-and-development.pdf>
- Oldham R.S., Keeble J., Swan M.J.S. & Jeffcote M. (2000) Evaluating the suitability of habitat for the Great Crested Newt (*Triturus cristatus*). Herpetological Journal 10(4), 143-155. [https://www.waterways.org.uk/wrg/wrg\\_documents/gcn\\_hsi](https://www.waterways.org.uk/wrg/wrg_documents/gcn_hsi)
- Paul Edgar, Jim Foster and John Baker (2010). Reptile Habitat Management Handbook. Amphibian and Reptile Conservation, Bournemouth <http://downloads.gigl.org.uk/website/Reptile%20Habitat%20Management%20Handbook.pdf>

- Tom Langton, Catherine Beckett and Jim Foster (2001). Great Crested Newt Conservation Handbook. Froglife. Suffolk. [http://www.froglife.org/wp-content/uploads/2013/06/GCN-Conservation-Handbook\\_compressed.pdf](http://www.froglife.org/wp-content/uploads/2013/06/GCN-Conservation-Handbook_compressed.pdf)
- <https://wildseed.co.uk/page/management-of-meadows-and-grassland>
- Natural England Technical Information Note TIN013 - Traditional orchards: site and tree selection
- Natural England Technical Information Note TIN014 - Traditional orchards: planting and establishing fruit trees  
<https://www.wildcare.co.uk> for photos of habitat boxes

## Appendix 1: Legislation and Planning Policy

### New legislation (2020)

The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 came into force when Britain left the European Union on 31<sup>st</sup> January 2020. It covered amendments relevant to this survey to:

Wildlife and Countryside Act 1981: England and Wales (x1 amendment)

Conservation of Habitats and Species Regulations 2017 (x29 amendments)

### LEGAL PROTECTION

#### National and European Legislation Afforded to Habitats

##### *International Statutory Designations*

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

Under the Habitats Directive Article 3 requires the establishment of a network of important conservation sites (SACs) across Europe. Over 1,000 animal and plant species, as well as 200 habitat types, listed in the directive's annexes are protected in various ways:

**Annex II species** (about 900): core areas of their habitat are designated as sites of Community importance (SCIs) and included in the Natura 2000 network. These sites must be managed in accordance with the ecological needs of the species.

**Annex IV species** (over 400, including many annex II species): a strict protection regime must be applied across their entire natural range within the EU, both within and outside Natura 2000 sites.

**Annex V species** (over 90): Member States must ensure that their exploitation and taking in the wild is compatible with maintaining them in a favourable conservation status.

SPAs are classified under Article 2 of the Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds both for rare bird species (as listed on Annex I) and for important migratory species.

SACs and SPAs up to 12 nautical miles from the coast (i.e. 'territorial waters') are afforded protection in the UK under the Conservation of Habitats and Species Regulations 2017 which consolidate all amendments made to the Conservation (Natural Habitats, &c.) Regulations 1994.

The Conservation of Offshore Marine Habitats and Species Regulations 2017 consolidate and update the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007. The 2017 Regulations introduce amendments which transfer responsibility for European nature conservation in the Welsh offshore region to Welsh Ministers. This gives Welsh Ministers similar powers in Welsh offshore waters to those currently exercised by Scottish Ministers in Scottish offshore waters. These regulations transpose into national law Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (Habitats Directive), and elements of Council Directive 2009/147/EC on the conservation of wild birds (Wild Birds Directive) in the UK offshore area. They came into force on 30th November 2017. These regulations apply to the UK's offshore marine area which covers waters beyond 12 nautical miles, within British Fishery Limits and the seabed within the UK Continental Shelf Designated Area. The Conservation of Habitats and Species Regulations 2017 form the legal basis for the implementation of the Habitats and Birds Directives in terrestrial areas and territorial waters out to 12nm in England and Wales (including the inshore marine area) and to a limited extent in Scotland and Northern Ireland. 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 01.04.1996) 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). Further provisions for the protection and management of SSSIs have been introduced by the Nature Conservation (Scotland) Act 2004.

### **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.

### **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 2017 (the Conservation Regulations) and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (as amended). The following notes are relevant for all species protected under the EC Habitats Directive:

In the Directive, the term 'deliberate' is interpreted as being somewhat wider than intentional and may be thought of as including an element of recklessness.

The Habitats Regulations do not define the act of 'migration' and, therefore, as a precaution, it is recommended that short distance movement of animals for e.g. foraging, breeding or dispersal purposes are also considered.

In order to obtain a European protected species mitigation (EPSM) licence, the application must demonstrate that it meets all of the following three 'tests':

- The action(s) are necessary for the purpose of preserving public health or safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequence of primary importance for the environment;
- There is no satisfactory alternative; and
- The action authorised will not be detrimental to the maintenance of the species concerned at a favourable conservation status in their natural range.

**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 1979, implemented 1982) 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 1992 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 (i.e. Natural England, Natural Resources Wales, Scottish Natural Heritage) for any development works likely 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 no possible to obtain a licence to translocate badgers.

***Birds***

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

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

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

This affords them protection against:

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

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.

**Reptiles (Amphibians and reptiles)**

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

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

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

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

Other native species of reptiles 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 (i.e. Natural England, Natural Resources Wales, Scottish Natural Heritage) will be required for works likely 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 likely to affect habitats known to support water voles, the relevant countryside agency (i.e. Natural England, Natural Resources Wales, Scottish Natural Heritage) 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 for the purpose of development activities if it can be shown that the activity has been properly planned and executed and thereby contributes to the conservation of the population. The licence will then only be granted to a suitably experienced person if it can be shown that adequate surveys have been undertaken to inform appropriate mitigation measures. Identification and preparation of a suitable receptor site will be necessary prior to the commencement of works.

**Otters**

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

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

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

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

Effects on development works:

An EPSM Licence issued by the relevant countryside agency (i.e. Natural England, Natural Resources Wales, Scottish Natural Heritage) will be required for works likely 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:

An EPSM Licence issued by the relevant countryside agency (i.e. Natural England, Natural Resources Wales, Scottish Natural Heritage) will be required for works are likely to affect a bat roost or an operation which are likely to result in an illegal level of disturbance to the species will require an EPSM licence. The licence is to allow derogation from the legislation through the application of appropriate mitigation measures and monitoring.

#### ***Dormice***

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

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

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

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

#### Effects on development works:

Works which are liable to affect a dormice habitat or an operation which are likely to result in an illegal level of disturbance to the species will require an EPSM licence issued by the relevant countryside agency (i.e. Natural England, Natural Resources Wales (NB: Hazel Dormouse are entirely absent from Scotland)). The licence is to allow derogation from the legislation through the application of appropriate mitigation measures and monitoring.

#### ***White clawed crayfish***

There is a considerable amount of legislation in place in an attempt to protect the White-clawed crayfish *Austropotamobius pallipes*. This species is listed under the European Union's (EU) Habitat and Species Directive and is listed under Schedule 5 of the Wildlife and Countryside Act (1981). This makes it an offence to:

- Protected against intentional or reckless taking
- Protected against selling, offering or advertising for sale, possessing or transporting for the purpose of sale

It is also classified as Endangered in the IUCN Red List of Endangered Species. As a result of this and other relevant crayfish legislation such as the Prohibition of Keeping of Live Fish (Crayfish)

Order 1996, a series of licences are needed for working with White-clawed and non-native crayfish. These are:



- A licence to handle crayfish (therefore survey work) in England
- A licence for the keeping of crayfish in England and Wales with an exemption for Signal crayfish (England).
- People in the post-code areas listed with crayfish present prior to 1996 do not need to apply for consent for crayfish already established. It does not, however, allow any new stocking of non-native crayfish into waterbodies. Consent for trapping of non-native crayfish for control or consumption is most likely to be granted in Thames and Anglian regions in the areas with "go area" postcodes.
- Harvesting of crayfish is prohibited in much of England and in any part of Scotland and Wales.

#### Effects on development works:

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

#### **Wild Mammals (Protection Act) 1996**

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

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

#### **Legislation afforded to Plants**

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

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

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

#### Effects on development works:

An EPSM licence will be required from the relevant countryside agency (i.e. Natural England, Natural Resources Wales, Scottish Natural Heritage) for works which are likely to affect species of planted 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*

#### 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 Framework (ENGLAND)**

The following sections are relevant to the report:

#### **Making effective use of land**

118. Planning policies and decisions should: a) encourage multiple benefits from both urban and rural land, including through mixed use schemes and taking opportunities to achieve net environmental gains – such as developments that would enable new habitat creation or improve public access to the countryside;

**Conserving and enhancing the natural environment**

170. Planning policies and decisions should contribute to and enhance the natural and local environment by: a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan); b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland; c) maintaining the character of the undeveloped coast, while improving public access to it where appropriate; d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures; e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

171. Plans should: distinguish between the hierarchy of international, national and locally designated sites; allocate land with the least environmental or amenity value, where consistent with other policies in this Framework<sup>53</sup>; take a strategic approach to maintaining and enhancing networks of habitats and green infrastructure; and plan for the enhancement of natural capital at a catchment or landscape scale across local authority boundaries.

**Habitats and biodiversity**

174. To protect and enhance biodiversity and geodiversity, plans should: a) Identify, map and safeguard components of local wildlife-rich habitats and wider ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity<sup>56</sup>; wildlife corridors and stepping stones that connect them; and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation<sup>57</sup>; and b) promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity.

175. When determining planning applications, local planning authorities should apply the following principles: a) if significant harm to biodiversity 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; b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact 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; c) development resulting in the loss or deterioration of irreplaceable

habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists; **and d)** development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.

176. The following should be given the same protection as habitats sites: a) potential Special Protection Areas and possible Special Areas of Conservation; b) listed or proposed Ramsar sites<sup>59</sup>; and c) sites identified, or required, as compensatory measures for adverse effects on habitats sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.

177. The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.