



Preliminary Ecological Appraisal

Land North of Blair Street, Rochdale, OL12 7BU

Addnan Sadiq

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Industry Guidelines and Standards

This report has been written with due consideration to:

- Chartered Institute of Ecology and Environmental Management (2017). Guidelines for Preliminary Ecological Appraisal. 2nd edition. Chartered Institute of Ecology and Environmental Management, Winchester.
- Chartered Institute of Ecology and Environmental Management (2018). Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and Marine. Version 1.1. Chartered Institute of Ecology and Environmental Management, Winchester.
- Chartered Institute of Ecology and Environmental Management (2017). Guidelines on Ecological Report Writing. Chartered Institute of Ecology and Environmental Management, Winchester.
- Chartered Institute of Ecology and Environmental Management (2020). Guidelines for Accessing, Using and Sharing Biodiversity Data in the UK. 2nd Edition. Chartered Institute of Ecology and Environmental Management, Winchester.
- British Standard 42020 (2013). Biodiversity – Code of Practice for Planning and Development.
- British Standard 8683:2021 (2021). Process for Designing and Implementing Biodiversity Net Gain.

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.

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)

Executive Summary

Arbtech Consulting Limited was instructed by Addnan Sadiq to undertake a Preliminary Ecological Appraisal (PEA) at the Land North of Blair Street, Rochdale, OL12 7BU (hereafter referred to as “the site”). The survey was required to inform a planning application for the clearance of site and construction of a dwelling (hereafter referred to as “the proposed development”).

The following is work you will need to commission to comply with planning policy and legislation. Further information, along with opportunities for biodiversity enhancement, are outlined in Table 5 of this report.

Feature	Survey Results Summary	Impact Assessment	Recommendations
Habitats and flora	Based on drone footage and visibility from road, the site appears to comprise scrub and trees. This must be confirmed following full PEA. The site lies 15m from the river Sodden.	It is anticipated that the entirety of the site will be cleared to facilitate the proposed development. This may result in a loss of biodiversity. Due to the proximity of the site to the river Sodden, there is a risk of pollution during construction.	To be confirmed following full PEA. However trees should be retained insofar as possible and protected... or replacement tree and shrub planting should be incorporated into new landscaped areas. A Construction Ecological Management Plan (CEMP) will be necessary to protect the river Sodden.
Amphibians	There is a single pond located 100m from the site that could support great crested newts. There is some connectivity to the site and the onsite scrub habitats could provide opportunities for amphibians to forage and shelter.	The site comprises 0.1ha of potentially suitable great crested newt terrestrial habitat. Assuming complete site clearance, this will result in the removal of 0.1ha habitat within 100m of a potential breeding pond. A great crested newt rapid risk assessment has been undertaken, and has been returned as an AMBER, OFFENCE LIKELY.	Environmental DNA (eDNA) surveys will be required on the pond 100m away from the site (where accessible) to determine the presence or absence of great crested newts. This will comprise collecting water samples and sending them off for laboratory analysis and such surveys must be undertaken between mid-April and June, in accordance with current survey guidelines (Biggs et al, 2014). Alternatively the site could be registered under a great crested newt district level licensing scheme which would negate the requirement for further surveys. This is operated by Natural England and would require a financial contribution to be provided.
Reptiles	The site is located in a semi-urban area and so is not connected to a wider habitat suitable for reptiles. Further, the scrub onsite is likely to be a	Scrub and trees are assumed to be removed as part of the development, however thorough inspection of the site was not possible, and	To be confirmed following full PEA. There is a possibility that reptile presence/absence surveys will be necessary.

	sub-optimal for large populations of reptiles, however does have some suitability for species such as grass snake and slow worms.	therefore, an accurate impact assessment cannot be made until a full PEA is made.	
Roosting bats	Trees may provide some roosting habitat for bats. The trees may provide roosting opportunities for bats but this cannot be confirmed without full PEA.	Trees are assumed to be removed as part of the development, however thorough inspection of the site was not possible, and therefore, an accurate impact assessment cannot be made. Removal of these trees could destroy any roosts present.	A Preliminary roosting assessment of trees will be required alongside full PEA before recommendations can be made.
Foraging and commuting bats	Trees and scrub onsite are likely to be used by bats for commuting and foraging.	The proposed development will result in the loss of scrub and trees but given their low value, the small size of the site and the presence of more extensive areas of foraging and commuting habitat in the locality, this is likely to be inconsequential for bats. The proposed development will include the use of lighting which could spill on to bat roosting, foraging or commuting habitat and deter bats from using these areas.	A low impact lighting strategy will be adopted for the site during and post-development.
Badger	The presence or absence of badger cannot be determined without a full PEA. No evidence was found during the survey but there could be suitable habitat for badgers within the site.	Site clearance could damage or destroy badger setts, if present, and could cause the death or injury of badgers.	To be confirmed following a full PEA.
Riparian Mammals	The river Soddon 15m from the site could provide opportunities for otter and water vole. The site contains no suitable habitat and is of sufficient distance that water vole are unlikely to be present. Otter could venture on to the site and their presence or absence cannot be determined without a full PEA.	No impacts anticipated to water vole. Site clearance could damage or destroy otter holts, if present or kill or injure otter.	To be confirmed following full PEA.
Birds	The site provides nesting opportunities for birds within the scrub and trees, however their presence or absence cannot be determined without a full PEA.	Site clearance could result in the destruction or disturbance of bird nests.	A nesting bird check will be required prior to the start of works.

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1.0 Introduction and Context

1.1 Background

Arbtech Consulting Limited was instructed by Addnan Sadiq to undertake a Preliminary Ecological Appraisal (PEA) at the Land North of Blair Street, Rochdale, OL12 7BU (hereafter referred to as “the site”). The survey was required to inform a planning application for the clearance of site and construction of a dwelling (hereafter referred to as “the proposed development”). A plan showing the proposed development is provided in Appendix 1.

The aim of the PEA was to obtain data on existing ecological conditions, and to conduct a preliminary assessment of the likely significance of ecological impacts on the proposed development. No previous ecology reports have been produced for this site by Arbtech Consulting Ltd or, to the author’s knowledge, by any other consultancy.

1.2 Site Location and Landscape Context

The site is located at National Grid Reference SD 88557 14117 and has an area of approximately 0.1ha comprising of scrub with tall ruderals, lines of trees and groups of trees. It is located between Blair Street to the south and Belgrave Street to the north, with the river Spodden running approximately 15m to the east. The wider landscape comprises of a semi-rural dwelling, with several mature trees and open amenity grassland and woodland within the immediate vicinity. A site location plan is provided in Appendix 2.

1.3 Scope of the Report

This report describes the baseline ecological conditions at the site, evaluates habitats within the survey area in the context of the wider environment and describes the suitability of those habitats for notable or protected species. It identifies possible ecological constraints as a result of the proposed development and summarises the requirements for further surveys and mitigation measures to inform subsequent mitigation proposals, achieve planning or other statutory consent and to comply with wildlife legislation. To achieve this, the following steps have been taken:

- A desk study has been carried out.
- A field survey has been undertaken to record baseline information on the site and surrounding area including habitat types and their suitability for notable or protected species.
- Invasive plant and animal species (such as those listed on Schedule 9 of the Wildlife & Countryside Act) have been identified.
- Potential impacts on features of value, as a result of the proposed development, have been identified.
- Recommendations for further surveys and mitigation have been made.
- Opportunities for the enhancement of the site for biodiversity have been set out.

2.0 Methodology

2.1 Desk Study

The desk study included a review of the magic.gov.uk database for statutory designated sites within a 2km radius of the site. Landscape value and the presence of notable habitats as well as granted European Protected Species Licence (EPSL) and notable species records held on magic.gov.uk database has also been considered where these are within influencing distance of the site.

2.2 Field Survey

The survey was undertaken by Charlie Moore on 24-7-23.

An extended habitat survey was undertaken, following the methodology set out in *UK Habitat Classification User Manual* (UK Habitat Classification Working Group, 2018). All land parcels are described and mapped and, where appropriate, target notes provide supplementary information on habitat conditions, features too small to map to scale, species composition, structure and management. Botanical species lists were compiled with reference to the DAFOR scale (D = Dominant; A = Abundant, F = Frequent, O = Occasional, R = Rare).

For ease of reading, scientific names are omitted from this report for widespread, ubiquitous and well-known species. Scientific names are only included where deemed necessary in conveying correct information to the reader, for example where common names differ regionally or in specialised, notable, unusual or challenging taxa, or if there is any ambiguity in identification (e.g where a species can only be identified to genus level).

During the survey, habitats were assessed for their suitability to support protected species, and field signs indicating their presence recorded. The assessment takes into consideration the findings of the desk study, the habitat conditions on site and in the context of the surrounding landscape, and the ecology of the protected species.

A visual inspection of the trees on the site was undertaken from ground level using binoculars and, where accessible and safe to do so, an internal inspection of any features which bats could use for roosting was completed using an endoscope, torch and ladders.

2.3 Limitations

It should be noted that whilst every effort has been made to describe the baseline conditions within the survey area, and evaluate these features, this report does not provide a complete characterisation of the site. This assessment provides a preliminary view of the likelihood of protected species being present. This is based on suitability of the habitats on the site and in the wider landscape and the ecology and biology of species as currently understood.

A biological records data search has not been undertaken. However, given the location of the site, the nature of the habitats present and the assessed suitability of the site for protected or notable species, it is not anticipated that the purchase of biological records data will add any significant weight or alter the conclusions and recommendations outlined in this report.

The site was not inaccessible during the survey due to excessively overgrown flora. The site was therefore assessed using a drone and from adjacent roads around the site, but this does not constitute a robust survey effort. The site will need to be subject to a further survey to obtain accurate information regarding habitats and species, in accordance with the PEA methodology.

3.0 Results and Evaluation

3.1 Designated Sites

Details of any statutory designated sites within a 2km radius of the site, including their reasons for notification, are provided in Table 1 below. The presence of non-statutory designated sites within 2km cannot be established without biological records data from the local records centre. However, it is considered unlikely that such sites would be present in the immediate vicinity due to the lack of greenspace and built-up nature of the land surrounding the site.

The site lies within the impact risk zone for Rochdale Canal Site of Special Scientific Interest (SSSI). The construction of a single dwelling is not listed as a possible high risk with regard to this designation.

Table 1: Statutory designated sites within 2km radius of the site

Designated site name	Distance from site	Reasons for notification from Natural England
Healey Dell Local Nature Reserve (LNR)	860m north	Beauty spot and wildlife sanctuary rich in industrial archaeology, two miles from Rochdale town centre on the way to Whitworth and Bacup. The River Spodden has carved its way through the woodlands through thousands of years, creating delightful scenery and spectacular waterfalls which once powered ancient corn, wool and cotton mills. A disused 1800s railway line is now a nature trail with magnificent views from a 100-foot high viaduct.

3.2 Field Survey Results

The results of the field survey are illustrated in Appendix 3. The weather conditions recorded at the time of the survey are shown in Table 2.

Table 2: Weather conditions during the survey

Date:	24-7-23
Temperature	15°C
Humidity	67%
Cloud Cover	90%
Wind	8mph
Rain	None

Habitats and Flora

The following habitats are present within and adjacent to the site, based on drone footage and visible areas from site boundaries:

- Neglected scrub with tall herbs (h3-16-77)
- Line of trees (w1g6)
- Scattered trees (H3-11)

A description and photograph of each habitat is provided in Table 3.

No protected or non-native invasive plant species (as listed under Schedules 8 or 9 of the Wildlife and Countryside Act 1981) were identified on the site, however, due to the site being inaccessible it is possible that such species may have been missed.

Table 3: Description and photographs of habitats within and adjacent to the site

Habitat type	Habitat description	Photograph
Neglected scrub with tall herbs	The majority of the observed area of the site is comprised of neglected scrub, with tall herbs. Species include nettles and thistle (d), hogweed and dock (o). Sward heights were approximately between 2m and 80cm. It was not possible to fully inspect this land parcel, due to a lack of access, and so the above information is based on drone imagery and visibility from the site boundaries.	
Line of trees and scattered trees	Bounding the site was a large group of trees, with species including ash and sycamore (a), and beech (o). Noted throughout the site also were several scattered trees with species including birch, willow and elder. It was not possible to fully inspect this land parcel, due to a lack of access, and so the above information is based on drone imagery and visibility from the site boundaries.	

Fauna

An assessment of the suitability of the site for protected or notable species is provided in Table 4. Due to the access issues for the site, the below information is based on a desk study of aerial information only.

Table 4: Assessment of the suitability of the site for protected or notable species

Species	Assessment of suitability																							
Amphibians	Great crested newts exist in metapopulations and are known to utilise ponds and their connecting terrestrial habitat during their life cycle. Great crested newts are typically found within terrestrial habitats up to 500m from breeding ponds (Langton <i>et al.</i> 2001). A review of aerial imagery indicates the presence of a single pond located approximately 100m south of the site and that there is connectivity through woodland between the pond and the site. This pond was not accessible to survey as it is located on third party land. There are no aquatic habitats on the site. However, the scrub could provide opportunities for amphibians, including great crested newt, to forage and seek shelter within the site. The river Soddan lies 15m to the east of the site and this may deter amphibian movement in this direction due to the flowing current. The site comprises 0.1ha of potentially suitable great crested newt terrestrial habitat. Assuming complete site clearance, this will result in the removal of 0.1ha habitat within 100m of a potential breeding pond. A great crested newt rapid risk assessment has been undertaken and has been returned as an AMBER, OFFENCE LIKELY.																							
	<table><tr><th>Component</th><th>Likely effect (select one for each component; select the most harmful option if more than one is likely; lists are in order of harm, top to bottom)</th><th>Notional offence probability score</th></tr><tr><td>Great crested newt breeding pond(s)</td><td>No effect</td><td>0</td></tr><tr><td>Land within 100m of any breeding pond(s)</td><td>0.01 - 0.1 ha lost or damaged</td><td>0.3</td></tr><tr><td>Land 100-250m from any breeding</td><td>No effect</td><td>0</td></tr><tr><td>Land >250m from any breeding pond(s)</td><td>No effect</td><td>0</td></tr><tr><td>Individual great crested newts</td><td>No effect</td><td>0</td></tr><tr><td colspan="2">Maximum:</td><td>0.3</td></tr><tr><td>Rapid risk assessment result:</td><td colspan="2">AMBER: OFFENCE LIKELY</td></tr></table>	Component	Likely effect (select one for each component; select the most harmful option if more than one is likely; lists are in order of harm, top to bottom)	Notional offence probability score	Great crested newt breeding pond(s)	No effect	0	Land within 100m of any breeding pond(s)	0.01 - 0.1 ha lost or damaged	0.3	Land 100-250m from any breeding	No effect	0	Land >250m from any breeding pond(s)	No effect	0	Individual great crested newts	No effect	0	Maximum:		0.3	Rapid risk assessment result:	AMBER: OFFENCE LIKELY
Component	Likely effect (select one for each component; select the most harmful option if more than one is likely; lists are in order of harm, top to bottom)	Notional offence probability score																						
Great crested newt breeding pond(s)	No effect	0																						
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Land 100-250m from any breeding	No effect	0																						
Land >250m from any breeding pond(s)	No effect	0																						
Individual great crested newts	No effect	0																						
Maximum:		0.3																						
Rapid risk assessment result:	AMBER: OFFENCE LIKELY																							
Reptiles	The site is located in a semi-urban location, and there are no areas of good quality grassland identified within the immediate vicinity of the site. Further, the density of the scrub onsite is likely to obscure any refugia or sheltered basking spots for reptiles. There is however some suitability for reptiles particularly grass snake and slow worm.																							

Badgers	Badger evidence could not be identified at site due to the lack of access. Further, the surrounding area could support badgers due to the adjacent river and associated topography likely resulting in negative gradients suitable for sett construction.
Bats	The scrub and lines of trees are likely to provide foraging and commuting habitat for bats. An assessment of the trees for their suitability for roosting bats was not possible, due to lack of site access.
Hazel Dormouse	The site is located outside of the known geographic range (either natural or reintroduced) of any known dormice populations.
Hedgehog	Due to the size and density of the scrub observed, the site is likely to provide suitable habitats for hedgehogs to shelter and forage and includes some hibernation potential.
Riparian mammals	The river Soddon is located 15m to the east of the site, which could be used by riparian mammals, including otters and water voles. A full observation of this river was not possible due to a lack of suitable access. There is no suitable riparian habitat within the site.
Birds	The site, due to the ground coverage of dense scrub is likely to support ground nesting birds, and moreover, the trees are likely to support nesting activity for birds. However, a fox was noted within the vicinity, and so there is a risk of predation for birds.
Invertebrates	The habitats located onsite are common and widespread, and so a noteworthy assemblage of invertebrates is not likely.

4.0 Conclusions, Impacts and Recommendations

Taking the desk study and field survey results into account, Table 5 presents an evaluation of the ecological value of the site and also details any ecological constraints identified in relation to the proposed development which will comprise clearance of the site and construction of a dwelling.

The site was inaccessible during the survey. The site was therefore assessed using a drone and from adjacent roads around the site, but this does not constitute a robust survey effort. The site will need to be subject to a further survey to obtain accurate information regarding habitats and species, in accordance with the PEA methodology. This report should be updated once this survey data is available.

Table 5: Evaluation of the site and any ecological constraints

Feature	Survey Results Summary	Impact Assessment	Recommendations	Biodiversity Enhancement Opportunities
Designated sites	There is a single statutory site within 2km of the site, the closest being Healey Dell LNR located approximately 860m north of the site.	No impacts to designated sites are anticipated due to the small scale and distance of the proposed development from such sites (where known) as well as the urban location of the site with surrounding physical barriers.	None.	TBC once full PEA is undertaken
Habitats and flora	Based on drone footage and visibility from road, the site appears to comprise scrub and trees. This must be confirmed following full	It is anticipated that the entirety of the site will be cleared to facilitate the proposed development. This may result in a loss of biodiversity. Due to the proximity of the site to the river Sodden, there is a risk of pollution during construction.	To be confirmed following full PEA. However trees should be retained insofar as possible and protected... or replacement tree and shrub planting should be incorporated into new landscaped areas. A Construction Ecological Management Plan (CEMP) will be necessary to protect the river Sodden.	TBC once full PEA is undertaken

	PEA. The site lies 15m from the river Sodden.			
Amphibians	There is a single pond located 100m from the site that could support great crested newts. There is some connectivity to the site and the onsite scrub habitats could provide opportunities for amphibians to forage and shelter.	The site comprises 0.1ha of potentially suitable great crested newt terrestrial habitat. Assuming complete site clearance, this will result in the removal of 0.1ha habitat within 100m of a potential breeding pond. A great crested newt rapid risk assessment has been undertaken, and has been returned as an AMBER, OFFENCE LIKELY.	Environmental DNA (eDNA) surveys will be required on the pond 100m away from the site (where accessible) to determine the presence or absence of great crested newts. This will comprise collecting water samples and sending them off for laboratory analysis and such surveys must be undertaken between mid-April and June, in accordance with current survey guidelines (Biggs et al, 2014). Alternatively the site could be registered under a great crested newt district level licensing scheme which would negate the requirement for further surveys. This is operated by Natural England and would require a financial contribution to be provided.	TBC once full PEA is undertaken
Reptiles	The site is located in a semi-urban area and so is not connected to a wider habitat suitable for reptiles. Further, the scrub onsite is likely to be a sub-optimal for large	Scrub and trees are assumed to be removed as part of the development, however thorough inspection of the site was not possible, and therefore, an accurate impact assessment cannot be made until a full PEA is made.	To be confirmed following full PEA. There is a possibility that reptile presence/absence surveys will be necessary.	TBC once full PEA is undertaken

	populations of reptiles, however does have some suitability for species such as grass snake and slow worms.			
Roosting bats	Trees may provide some roosting habitat for bats. The trees may provide roosting opportunities for bats but this cannot be confirmed without full PEA.	Trees are assumed to be removed as part of the development, however thorough inspection of the site was not possible, and therefore, an accurate impact assessment cannot be made. Removal of these trees could destroy any roosts present.	A Preliminary roosting assessment of trees will be required alongside full PEA before recommendations can be made.	TBC once full PEA is undertaken
Foraging and commuting bats	Trees and scrub onsite are likely to be used by bats for commuting and foraging.	The proposed development will result in the loss of scrub and trees but given their low value, the small size of the site and the presence of more extensive areas of foraging and commuting habitat in the locality, this is likely to be inconsequential for bats. The proposed development will include the use of lighting which could spill on to bat roosting, foraging or commuting habitat and deter bats from using these areas.	A low impact lighting strategy will be adopted for the site during and post-development, which will include the following measures: • Light spill on to trees along the boundary should be avoided. • Use narrow spectrum light sources to lower the range of species affected by lighting. • Use light sources that emit minimal ultra-violet light. • Avoid white and blue wavelengths of the light spectrum to reduce insect attraction and where white light sources are required in order to manage the blue shortwave length	TBC once full PEA is undertaken

			content they should be of a warm / neutral colour temperature <4,200 kelvin. • Not use bare bulbs and any light pointing upwards. The spread of light will be kept in line with or below the horizontal. • Light spill will be reduced via the use of low-level lighting used in conjunction with hoods, cowls, louvers and shields. Lights will also be directional to ensure that light is directed to the intended areas only. • External lighting will be on PIR sensors that are sensitive to large objects only (so that they are not triggered by passing bats) and will be set to the shortest time duration to reduce the amount of time the lights are on. • Wall lights and security lights will be 'dimmable' and set to the lowest light intensity settings. There are several products on the market that allow the control of the light intensity and the duration that the lights are on. All lighting on the developed site will make use of the most up to date technology available.	
Badger	The presence or absence of badger cannot be determined without a full PEA. No evidence was	Site clearance could damage or destroy badger setts, if present, and could cause the death or injury of badgers.	To be confirmed following a full PEA.	TBC once full PEA is undertaken

	found during the survey but there could be suitable habitat for badgers within the site.			
Hazel dormouse	The site is located outside of the known area for populations of hazel dormice.	No impacts are anticipated on hazel dormice as a result of the proposed development.	None.	TBC once full PEA is undertaken
Hedgehog	The scrub could provide foraging and sheltering opportunities for hedgehog.	Site clearance could result in death or injury of hedgehog and a reduction in habitat	A precautionary working method will be implemented during construction, including the following measures: • A staged approach will be adopted for vegetation clearance, whereby the vegetation will be strimmed to 30cm and left overnight to allow any hedgehogs to disperse. The vegetation can then be cleared to ground level and must be maintained at this level for the duration of construction to deter hedgehogs from the working area. • Any excavations will be covered overnight, or a ramp will be installed to enable any trapped animals to escape. • The use of night-time lighting will be avoided, or sensitive lighting design will be implemented to avoid light spill on to retained habitats which hedgehogs could use. • Any chemicals or pollutants used or created by the development should be	TBC once full PEA is undertaken

			stored and disposed of correctly according to COSHH regulations. If any hedgehogs are found in the working area these should be allowed to disperse of their own accord or, if at immediate risk, should be moved by hand to a sheltered, vegetated area away from disturbance.	
Riparian Mammals	The river Sodden 15m from the site could provide opportunities for otter and water vole. The site contains no suitable habitat and is of sufficient distance that water vole are unlikely to be present. Otter could venture on to the site and their presence or absence cannot be determined without a full PEA.	No impacts anticipated to water vole. Site clearance could damage or destroy otter holts, if present or kill or injure otter.	To be confirmed following full PEA.	TBC once full PEA is undertaken
Birds	The site provides nesting opportunities for birds within the scrub and trees,	Site clearance could result in the destruction or disturbance of bird nests.	A nesting bird check will be required prior to the start of works.	TBC once full PEA is undertaken

	however their presence or absence cannot be determined without a full PEA.			
Invertebrates	The areas of scrub and trees are likely to support an assemblage of invertebrates, however due to the observed species it is unlikely these are notable assemblages of invertebrates.	Site clearance may reduce the availability of invertebrate habitat but this is unlikely to impact any notable populations or species.	None.	TBC once full PEA is undertaken

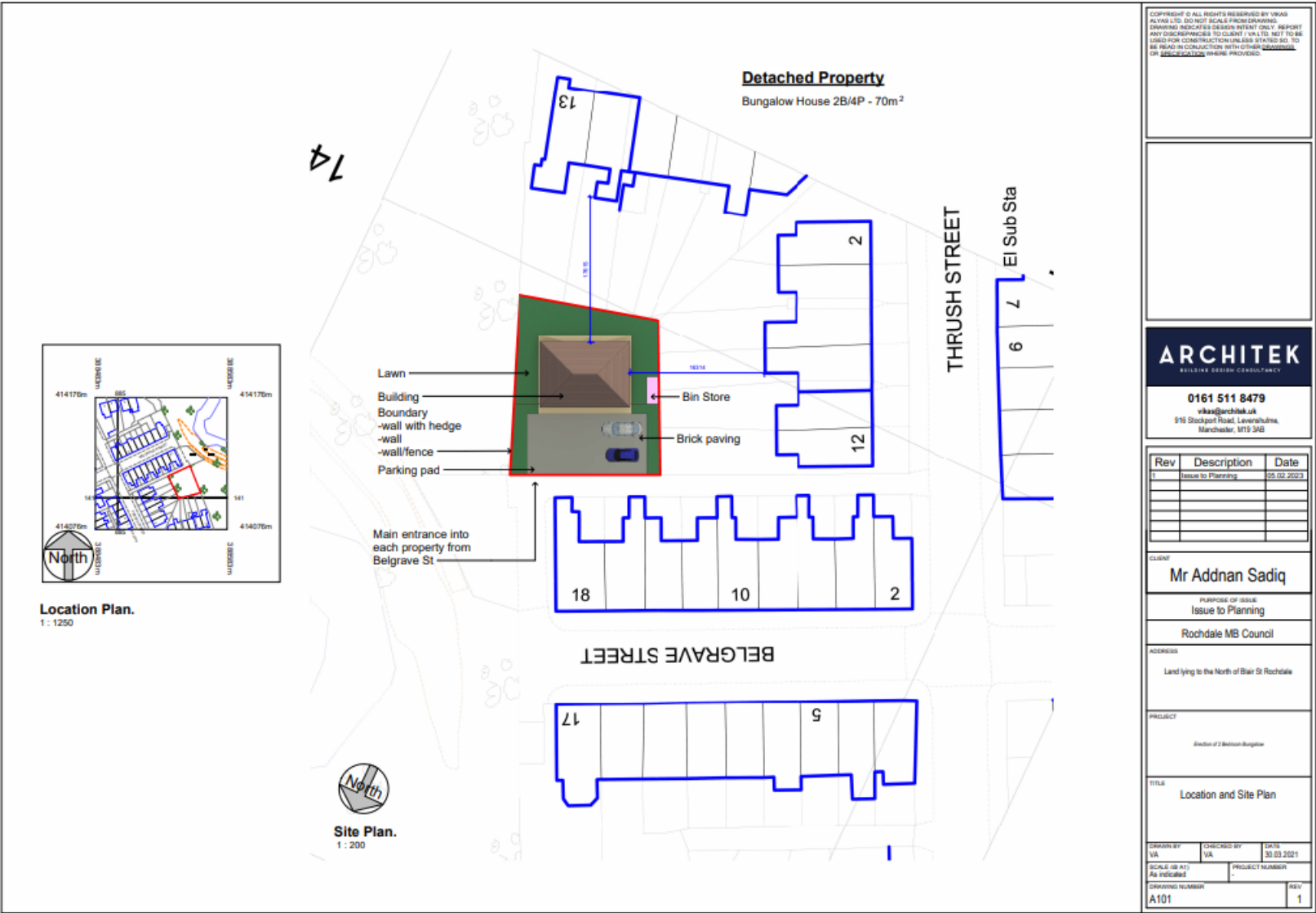
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Appendix 1: Proposed Development Plan



Appendix 2: Site Location Plan



Appendix 3a: Habitat Survey Plan



Appendix 4: Legislation and Planning Policy

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 (the Wild Birds Directive) 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 1000 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, both within and outside Natura 2000 sites.

Annex V species (over 90): 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.

The Conservation of Habitats and Species Regulations 2017 (as amended) form the legal basis for the implementation of the Habitats and Birds Directives in terrestrial areas and territorial waters out to 12 nautical miles 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 Conservation of Habitats and Species Regulations 2017 (as amended)

The Conservation of Habitats and Species Regulations 2017 (as amended) aims to promote the maintenance of biodiversity by requiring the Secretary of State to take measures to maintain or restore wild species listed within the Regulations at a favourable conservation status.

The Regulations make it an offence (subject to exceptions) to deliberately capture, kill, disturb, or trade in the animals listed in Schedule 2, or pick, collect, cut, uproot, destroy, or trade in the plants listed in Schedule 4. However, these actions can be made lawful through the granting of licenses by the appropriate authorities. Licenses may be granted for a number of purposes (such as science and education, conservation, preserving public health and safety), but only after the appropriate authority is satisfied that there are no satisfactory alternatives and that such actions will have no detrimental effect on wild population of the species concerned.

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).

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

EFFECT OF LEGISLATION AND POLICY ON DEVELOPMENT WORKS

A development licence will be required from the relevant countryside agency (i.e. Natural England) 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 agencies 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 kill, injure or take any wild bird
- Intentionally take, damage or destroy 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.

Certain species of bird, for example the barn owl, bittern and kingfisher receive additional protection under Schedule 1 of the WCA 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

EFFECT OF LEGISLATION AND POLICY 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.

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 *Naatrix natrix*, common lizard *Zootoca vivipara* and slow-worm *Anguis fragilis*. It is prohibited to:

- Intentionally or recklessly kill or injure these species.

EFFECT OF LEGISLATION AND POLICY ON DEVELOPMENT WORKS

A European Protected Species Licence (EPSL) issued by the relevant countryside agency (i.e. Natural England) 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

EFFECT OF LEGISLATION AND POLICY ON DEVELOPMENT WORKS

If development works are likely to affect habitats known to support water voles, the relevant countryside agency (i.e. Natural England) 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

EFFECT OF LEGISLATION AND POLICY ON DEVELOPMENT WORKS

A European Protected Species Licence (EPSL) issued by the relevant countryside agency (i.e. Natural England) 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

EFFECT OF LEGISLATION AND POLICY ON DEVELOPMENT WORKS

A European Protected Species Licence (EPSL) issued by the relevant countryside agency (i.e. Natural England) 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 EPSL. The licence is to allow derogation from the legislation through the application of appropriate mitigation measures and monitoring.

Hazel 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

EFFECT OF LEGISLATION AND POLICY 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 a European Protected Species Licence (EPSL) issued by the relevant countryside agency (i.e. Natural England). 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

EFFECT OF LEGISLATION AND POLICY ON DEVELOPMENT WORKS

The relevant countryside agency (i.e. Natural England) 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 picking, uprooting or destruction of any wild Schedule 8 species
- 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.

EFFECT OF LEGISLATION AND POLICY ON DEVELOPMENT WORKS

A European Protected Species Licence (EPSL) will be required from the relevant countryside agency (i.e. Natural England) 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 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*

EFFECT OF LEGISLATION AND POLICY 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 landowner 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*

EFFECT OF LEGISLATION AND POLICY ON DEVELOPMENT WORKS

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

Environment Act 2021

The Environment Act 2021 (EA 2021) received Royal Assent on 9 November 2021 and is expected to become fully mandated within the next couple of years. The Act principally creates a post Brexit framework to protect and enhance the natural environment. Through amendments to the Town and Country Planning Act 1990, the Act will require all planning permissions in England (subject to exemptions which is likely to include householder applications) to be granted subject to a new general pre-commencement condition that requires approval of a biodiversity net gain plan. This will ensure the delivery of a minimum of 10% measurable biodiversity net gain. The principal tool to calculate this will be the Defra Biodiversity 3.0 Metric. Works to enhance habitats can be carried out either onsite or offsite or through the purchase of 'biodiversity credits' from the Secretary of State. However, this flexibility may be removed (subject to regulations) if the onsite habitat is 'irreplaceable'. Both onsite and offsite enhancements must be maintained for at least 30 years after completion of a development (which period may be amended).

National Planning Policy Framework 2021

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 species of principal importance under Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006) 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; measurable gains in biodiversity in and around developments are incorporated; 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 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.

EUROPEAN PROTECTED SPECIES POLICIES

In December 2016 Natural England officially introduced the four licensing policies throughout England. The four policies seek to achieve better outcomes for European Protected Species (EPS) and reduce unnecessary costs, delays and uncertainty that can be inherent in the current standard EPS licensing system. The policies are summarised as follows:

- Policy 1; provides greater flexibility in exclusion and relocation activities, where there is investment in habitat provision;
- Policy 2; provides greater flexibility in the location of compensatory habitat;
- Policy 3; provides greater flexibility on exclusion measures where this will allow EPS to use temporary habitat; and,
- Policy 4; provides a reduced survey effort in circumstances where the impacts of development can be confidently predicted.

The four policies have been designed to have a net benefit for EPS by improving populations overall and not just protecting individuals within development sites. Most notably Natural England now recognises that the Habitats Regulations legal framework now applies to 'local populations' of EPS and not individuals/site populations.