



Non licenced Mitigation Plan: Great Crested Newts

ST PAUL'S CATHOLIC COLLEGE, JANE MURRAY WAY, BURGESS HILL, RH15 8GA

Bosco Catholic Education Trust

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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)

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1.0 Introduction and Context

1.1 Background

Arbtech Consulting Limited was instructed by Bosco Catholic Education Trust to produce a Great Crested Newt Mitigation Plan for St Paul's Catholic College, Jane Murray Way, Burgess Hill, RH15 8GA (hereafter referred to as "the site"). The survey was required to inform a planning application with Mid Sussex District Council (reference: DM/24/2686) for the "Proposed demolition of the existing caretaker garage to be replaced with a two-storey side extension to the existing caretaker house. A complete new replacement roof and remodelling of the building to convert it into a reception area, offices and meeting rooms. The existing entrance is to be redeveloped into a new access with additional parking to the front and a new outdoor terrace is proposed at the rear." (hereafter referred to as "the proposed development"). A plan showing the proposed development is shown in Appendix 1.

Previous reports for this site are to be read in conjunction with this plan:

- Preliminary Ecological Appraisal and Roost Assessment – (Arbtech, 2024)

1.2 Site Context

The survey site is centred on National Grid Reference TQ 29549 20221 and has an area of approximately 0.043ha. The site comprises one dwelling (B1) which was formerly utilised as a school premise house and is due to be converted to Trust Offices. The building has an attached garage to the west elevation. The site sits within the larger boundary of the St Paul's Catholic College School Ground in Burgess Hill, West Sussex. To the south of the site is a footpath and main road. To the north of the site is sports fields and grounds. There is a large pond within the landownership boundary, approximately 100m east of the site. There are large arable fields with mature trees and hedgerows in the wider landscape. A site location plan is provided in Appendix 2.

1.3 Scope of This Report

This report is prepared to support planning application DM/24/2686 and to ensure that the proposal does not negatively impact great crested newts or common amphibians. This report aims to mitigate any impacts and enhance the site for amphibians.

Given the small scale of the development (impacts limited to the existing building and immediate surrounding vegetated garden), the assessed suitability of the site to support great crested newts and the assessed impacts to great crested newts, population surveys are deemed disproportionate. The scope of this report is to provide a non-licensed great crested newt mitigation and enhancement strategy to ensure great crested newts and common amphibians are suitably protected during site clearance and construction activity and that habitat enhancements are provided to ensure opportunities for great crested newts and common amphibians at the site are maintained post-development.

2.0 Ecological Baseline Conditions Relevant to This Report

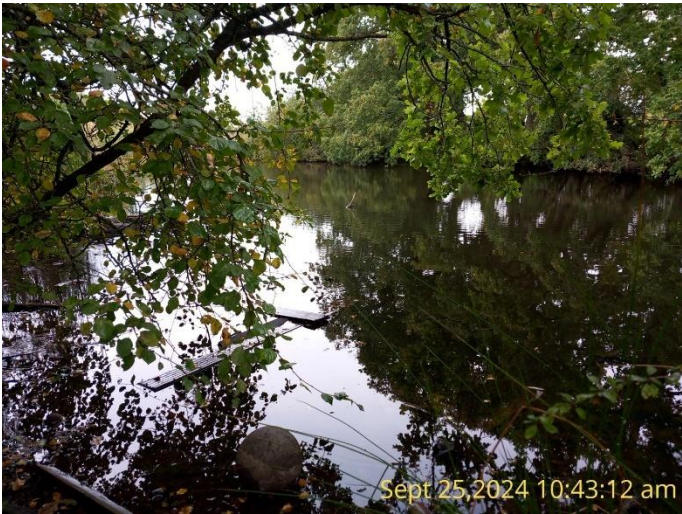
The baseline ecological conditions of relevance to this report were determined as a result of the onsite PEA (2024) and updated site visits for the bat emergence surveys (Arbtech, 2025).

2.1 Great Crested Newts and Common Amphibian Appraisal

The majority of the site impact area (area around the building due to be impacted by the proposed development) is comprised of amenity grassland and bramble scrub. The grassland to the front (north) of the building is frequently mown and thus sub-optimal for great crested newts (GCN) and common amphibians due to the lack of refuge from predators.

However, the bramble scrub in the rear garden (south of the building) is suitable for sheltering and commuting great crested newts. Furthermore, there is one pond within the land ownership boundary (approximately 100m east of the site red line boundary), which is surrounded by long, tussocky grass which provides suitable aquatic and terrestrial habitat for great crested newts.





The pond was subject to a habitat suitability assessment:

Description	P1
Geographic location	1
Pond Area	0.9
Pond Permanence	0.9
Water Quality	0.67
Shade	1.0
Waterfowl Effect	1.0
Fish Presence	1
Pond Density	0.8
Terrestrial Habitat	0.33
Macrophyte Cover	0.3
HSI Score	0.73
HSI Category	Good

Further to the one pond within the landownership boundary, there are five ponds within 500m of the site, located approximately 195m north, 300m west, 340 southeast, 370m southwest and 430m southeast of the site (see appendix 2b for a pond map).

When georeferencing the proposed development plans over scaled mapping of the site, it is noted that the development area is likely to result in the significant disturbance of 0.02Ha of suitable scrub and grassland habitat. If great crested newts are present within any of the ponds within 500m of the site, this will constitute a loss of 0.02ha within 100m of a potential breeding pond. When completing the rapid risk assessment published by Natural England (Natural England 2015), the proposed development produces an Amber risk score, which states: 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
Land within 100m of any breeding pond(s)	0.01 - 0.1 ha lost or damaged	0.3
Land 100-250m from any breeding pond(s)	0.01 - 0.1 ha lost or damaged	0.01
Land >250m from any breeding pond(s)	0.01 - 0.1 ha lost or damaged	0
Individual great crested newts	No effect	0
	Maximum:	0.3
Rapid risk assessment result:	AMBER: OFFENCE LIKELY	

2.3 Impact Assessment and Scope for On-Site Mitigation and Enhancement

A review of the MAGIC database returned four granted EPSL records for great crested newts (GCN) within 2km of the site. Further, 15 positive class survey licence return or DLL historic survey data (2017 – 2019) were present within 2km of the site. The closest EPSL record for GCN is located on site (within the ownership boundary).

Habitats recorded within the land ownership boundary were assessed to provide refuge, foraging, and commuting opportunities for GCN and common amphibians. However, these areas are limited, the north of the site is sub-optimal for GCN due to frequent mowing and the site is located in an urban context, surrounded by hard-standing, buildings and artificial sports pitches, which further reduce the suitability of the site to support good populations of GCN and common amphibians.

Given the small scale of the proposed on-site development (impacts confined to red line boundary only), and the physical barriers between the site and the pond (including the College building, steep curb car park and artificial sports pitch, which are significant barriers to dispersal), the anticipated risk to GCN resulting from the development is considered low. However, their presence cannot be wholly discounted and mitigation is considered necessary for implementation during the construction phase to reduce the potential for impacts to an acceptable level. Furthermore, there is scope to provide habitat enhancements within the land ownership boundary to ensure opportunities for GCN and common amphibians remain post-development.

3.0 Great Crested Newt Mitigation and Enhancement Plan

Mitigation and Enhancement prescriptions to reduce adverse impacts to GCN during construction and to ensure opportunities for GCN remain post-development detailed in Table 1 below.

Table 1: GCN Mitigation and Enhancement Prescriptions.

Mitigation	Specification
Persons Responsible and Lines of Communication	A Development Biodiversity Champion will be selected for the vegetation clearance and construction phase of the development. The Biodiversity Champion will be someone with significant influence during construction, such as the contract or project manager. The Development Biodiversity Champion will be responsible for ensuring all actions outlined in this strategy are implemented. Any queries with regards to the mitigation and enhancement prescriptions should be addressed to the project ecologist and communication should be retained between the Development Biodiversity Champion and project ecologist throughout the construction phase of the development where necessary to ensure the strategy is applied and impacts to GCN are effectively minimised. The project ecologist's contact details are located on the title page of this report. The Biodiversity Champion will inform the project ecologist of the commencement of construction works and provide updates where necessary.
Ecological Clerk of Works (ECoW)	All mitigation works detailed below will be supervised by a suitably qualified ecologist acting as an ECoW. The ECoW will work alongside the Biodiversity Champion and contractors on site to ensure that the mitigation and enhancement measures detailed below are implemented correctly and that any GCN or common amphibians displaced during the works are removed and relocated unharmed insofar as is possible. Works will be able to commence in the absence of the ECoW once the below mitigation has been applied effectively, whereby the site has been sensitively cleared and assessed to be unsuitable to support GCN by the ECoW.
Receptor Site	The receptor site is located within the land ownership boundary, at the middle of the Northern boundary (see appendix 3). Grass in this area should be allowed to grow to a high sward height >15cm. This receptor area and a 30m boundary will be protected from encroachment of machinery, human activity and debris storage. The receptor site will include a minimum of one hibernaculum (as discussed further in below section). The receptor site is well connected to optimal habitats within the wider landscape, so any displaced individual common amphibians or GCN will be able to disperse from the site of their own accord.
Mitigation	Pre-commencement inspection and destruction search Prior to the construction works, the habitat within the red line boundary will be subject to a pre-commencement inspection for the presence of GCN and common amphibians (see Appendix 3). The pre-commencement walkover will be completed immediately prior to works, whereby any shrubs will be subject to a finger-tip search. Any common amphibians identified during the pre-commencement inspection will be displaced to the receptor area by the ECoW. If any GCN are identified, works must stop immediately and the project ecologist will need to advise on how to lawfully progress the development. Toolbox Talk A toolbox talk will be given by the ECoW to the contractors, prior to the start of the works, to ensure the contractors are confident in identifying great crested newts and are aware of their legal protection, and the need to stop works if they are observed within the site.

Vegetation clearance and management

The grassland at the north of the building is frequently mown and has a sward height of <7cm. The current mowing regime should be maintained throughout the period of works to maintain the sub-optimal GCN habitat.

All vegetation at the south of the building should be subject to staged clearing, to reduce suitability for GCN during the construction phase. A staged approach will be adopted for the vegetation clearance, whereby the vegetation will be strimmed to 15cm and left overnight to allow any amphibians to disperse. The vegetation can then be cleared to ground level and must be maintained at this level (or lower) for the duration of construction to deter amphibians from the working area. Vegetation removal will comprise a phased cutting method in addition to cutting in systematic patterns where required. The phased cutting method will be undertaken in two stages; the first cut will remove all vegetation to approximately 150mm from ground level and the second cut will be to ground level/ bare ground. GCN and common amphibians are most likely to be present at or just below ground level; the phased technique allows any individuals present to disperse prior to reducing vegetation to ground level. The systematic vegetation cutting must be applied to both cutting phases and comprises cutting systematically towards the south boundary in an attempt to encourage any individual GCN and common amphibians to retreat unharmed. This method also prevents the creation of habitat islands during the second cutting phase which has potential to trap GCN and common amphibians in isolated pockets of habitat and thus increase the potential for injury or death during works. Two suitable systematic cutting techniques are schematically represented on Figure 1.

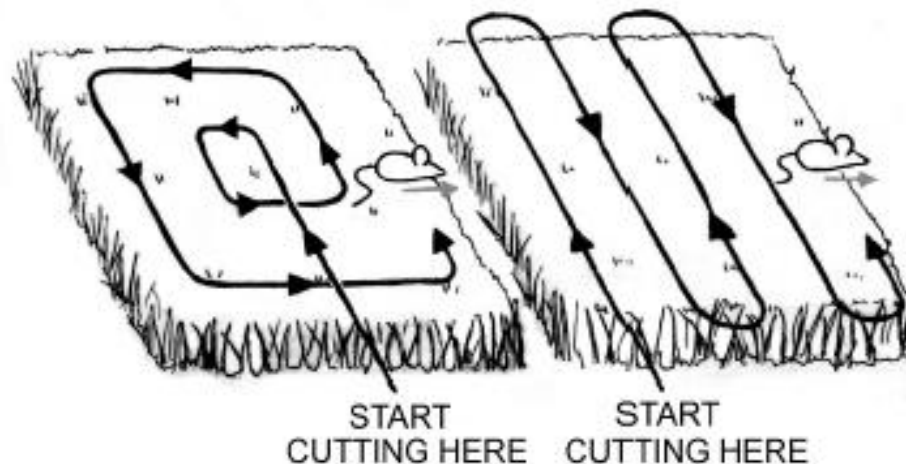
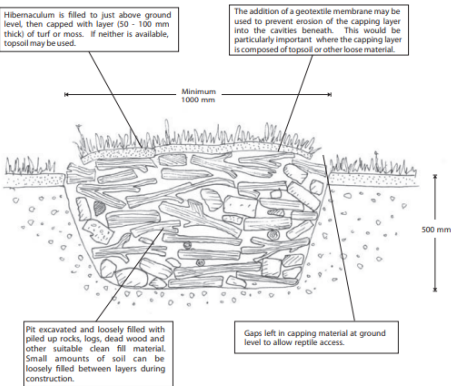


Figure 1: A schematic representation of vegetation cutting patterns as best to eliminate terrestrial opportunities for amphibians and reptiles within the development area.

	Any rubble piles or log piles must be dismantled by hand. These works are best undertaken between April and September. During this timeframe, GCN and are active and able to escape to adjacent areas when disturbed. Clearance works must not take place between October and March when GCN are torpid and thus highly vulnerable to injury or death. Any common amphibians identified during the works will be displaced to the receptor area by the ECoW. In the unlikely event GCN are identified, works must stop immediately and the project ecologist will need to advise on how to lawfully progress the development. Progression of Works Without ECoW Supervision Once the red line boundary has been subject to a search by the ECoW and the habitat is strimmed and confirmed as unsuitable for GCN, the development can then progress in the absence of ECoW supervision. However, the Biodiversity Champion must remain in close contact with the project ecologist. In the unlikely event that common amphibians are encountered during development works in the absence of the ECoW, they may be moved carefully by hand to the receptor site, away from disturbance. In the unlikely event GCN are identified, works must stop immediately and the project ecologist will need to advise on how to lawfully progress the development. Storage of Building Materials Once the above mitigation has been completed, the excavation and construction activity can commence. However, in order to prevent the creation of large debris piles resulting from development works that could in turn become suitable refuge hibernacula for GCN, all debris will be stored within a skip (see Appendix 3). Debris and materials must not be stored over vegetated habitats at any time. Prevent Trapping Wildlife During Works Excavations will be required during construction activity. Excavations could trap GCN, common amphibians and other wildlife (eg hedgehogs, reptiles etc) and cause injury or death. All excavations will therefore either be suitably sealed overnight, or a ramp will be installed to enable any trapped animals to escape such as a piece of rough timber that is long enough to reach the base of the excavation from ground level.
GCN Habitat Enhancements	Enhancement of receptor area The grassland within this area will be left to grow to a long sward height. The area will be enhanced for GCN and common amphibians by the addition of a hibernacula, which is described below. Provision of Hibernacula One hibernaculum will be created prior to any works and located in the receptor area in the middle of the Northern boundary (see appendix 3) and remain in-situ. This will be created using natural materials such as logs collected from the site, stone, vegetation arisings, and earth to provide additional refugia opportunities for GCN post-development, as shown on the plan in Appendix 3. A specification for the construction of the hibernacula is provided in Figure 2 below.

Hibernaculum on free-draining ground

Where ground conditions allow, the hibernaculum should be incorporated into a shallow pit. This design is more likely to remain frost-free, and will be less obtrusive and thus unlikely to be subject to interference.



Hibernaculum on impermeable ground

Where ground conditions are impermeable, then an 'above-ground' or mounded design should be utilised in order to prevent the hibernaculum from flooding. This design should also be used if it is not possible to excavate a pit for any other reason.

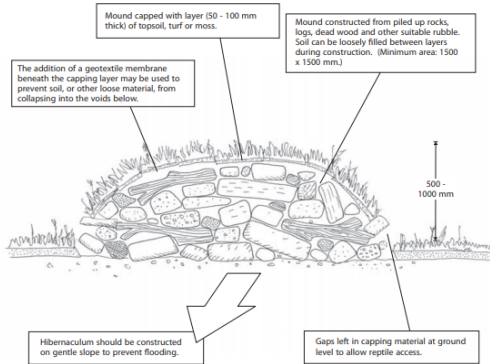


Figure 2: A schematic representation of a man-made hibernaculum.

On site habitat enhancement

The following habitat creation and enhancement opportunities could be incorporated into the proposed development which would be beneficial for amphibians:

- Planting of native wildflower grass turf within the rear garden with a relaxed mowing regime, leading to varied sward height
- Addition of native shrubs within the site boundary
- Any new or retained fencing must have gaps beneath them so that reptiles and other fauna can move through the garden habitats to retain connectivity of green space
- Addition of log piles around the existing pond in the land ownership boundary

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Appendix 1: Proposed Development Plan



Appendix 2a: Site Location Plan



Appendix 2b: Pond Plan



Appendix 3: Great Crested Newt Mitigation 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 *Natrix 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 plants listed on Schedule 5 of the Conservation of Habitats and Species Regulations 2010. The licence is to allow derogation from the legislation through the application of appropriate mitigation measures and monitoring.

Invasive Species

Part II of Schedule 9 of the WCA lists non-native invasive plant species for which it is a criminal offence in England 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.