

The Old Alma, Canterbury Road, Chilham, Kent

Preliminary Ecological Appraisal

21st May 2020 / Ref No 2020/04/20

Client: Mr A McNamara



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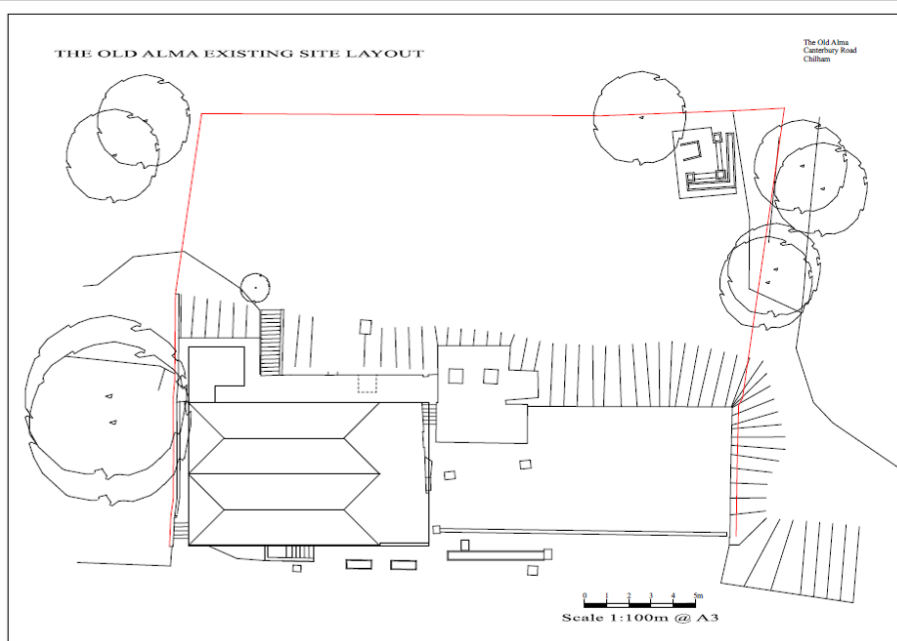
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1 Introduction

1.1 Background to the Scheme

KB Ecology Ltd has been commissioned to undertake a baseline ecological survey and a preliminary ecological appraisal with regards to a proposed development at The Old Alma, Canterbury Road, Chilham CT4 8DX Kent, in support of a planning application for the demolition of the existing buildings prior to construction of new dwellings.

The extent of site to be surveyed is shown on the map below, as sent by the client:



1.2 Survey Location/Area

The site is located at approximately TR 077 537. The location of the site is shown on Figure 1 and Figure 2.

1.3 Survey Objectives

The purpose of this survey is to provide a scoping assessment and to assist in demonstrating compliance with wildlife legislation and planning policy objectives.

The key objectives are as follows:

- Identify all relevant statutory and non-statutory designated sites and features of ecological significance within the site and its surroundings.
- Assess the potential for the presence of protected species and species of principal conservation importance, important habitats or other biodiversity features within the site and its surroundings.
- Provide recommendations for further surveys where assessed as necessary and suggest potential enhancements.

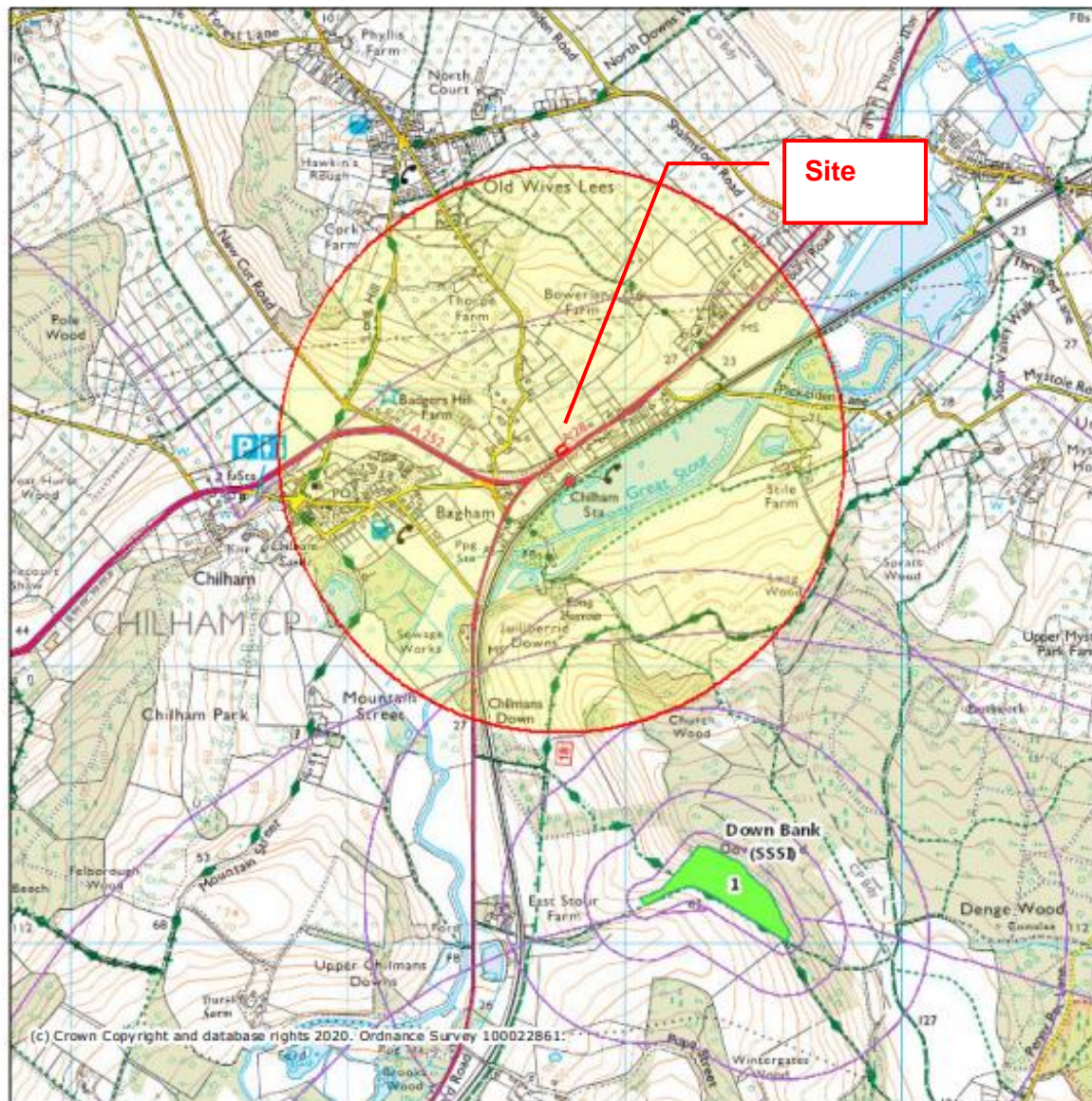
- Present the likely significance of ecological impacts on the proposed development.
- Provide an early indication of potential ecological mitigation and compensation requirements necessary as part of any development proposals.

A summary of wildlife legislation and policy has been included in Appendix A.

1.4 Limitations

This report has been prepared and provided in accordance with the Chartered Institute of Ecology and Environmental Management's Code of Professional Conduct and the opinions expressed are true and professional bona fide opinions. It records the potential for flora and fauna evident on the days of the site visits. It does not record any flora or fauna that may appear at other times of the year and, as such, were not evident at the time of visit.

The findings of this report represent the professional opinion of a qualified ecologist and do not constitute professional legal advice. The client may wish to seek professional legal interpretation of the relevant wildlife legislation cited in this document.



Legend

- | | |
|-------------------------------------|---------------------------------|
| Limestone Pavement Orders (England) | National Parks (England) |
| Local Nature Reserves (England) | Ramsar Sites (England) |
| Moorland Line (England) | Proposed Ramsar Sites (England) |
| National Nature Reserves (England) | Ramsar Sites (Scotland) |
| National Nature Reserves (Scotland) | Ramsar Sites (Wales) |
| National Nature Reserves (Wales) | |

0 0.6 1.2
km

Projection = OSGB36

xmin = 604400

ymin = 151100

xmax = 611100

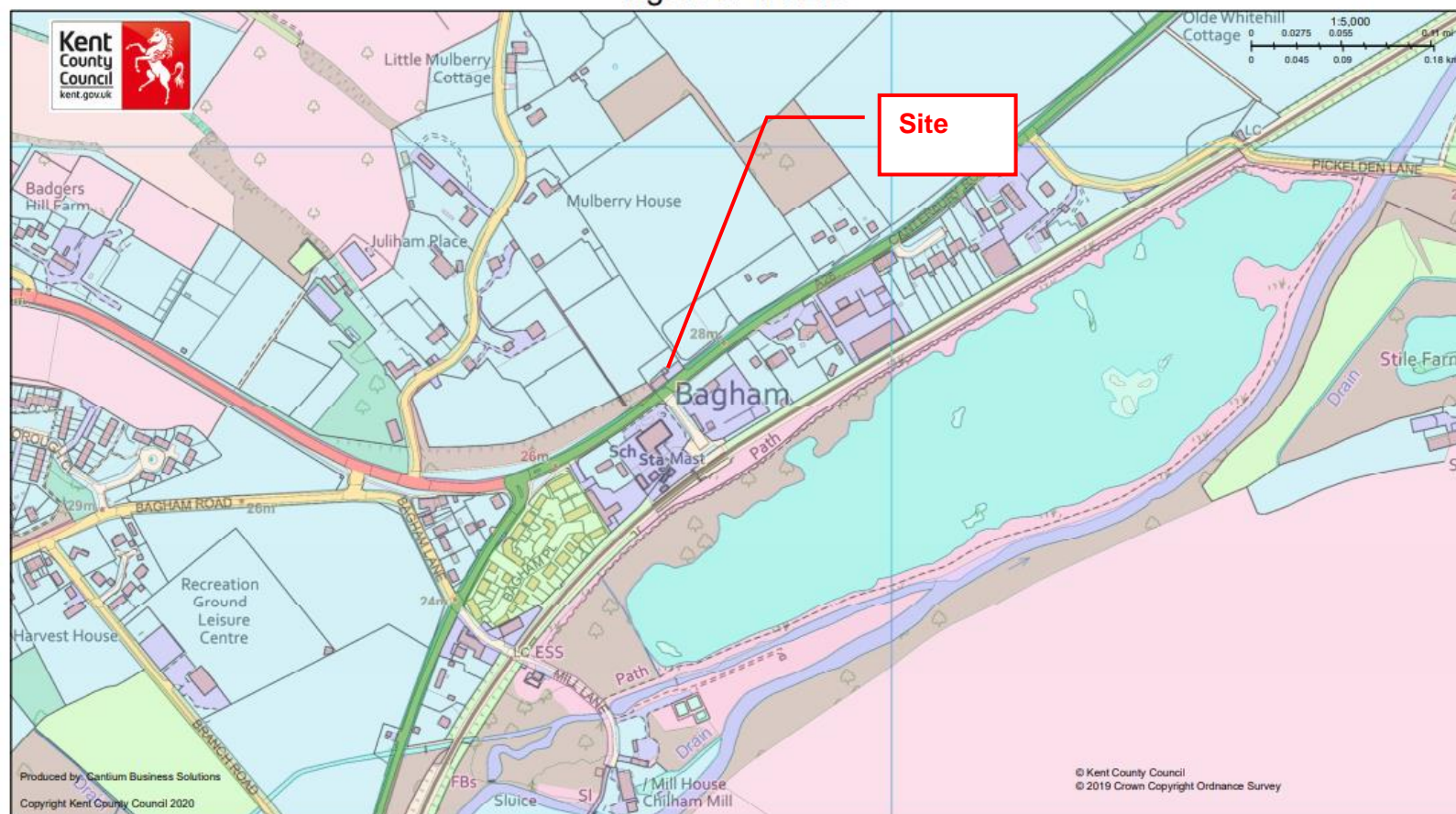
ymax = 155700

Map produced by MAGiC on 21 May, 2020.

Copyright resides with the data suppliers and the map must not be reproduced without their permission. Some information in MAGiC is a snapshot of the information that is being maintained or continually updated by the originating organisation. Please refer to the metadata for details as information may be illustrative or representative rather than definitive at this stage.

Figure 2 - K-LIS

May 21, 2020

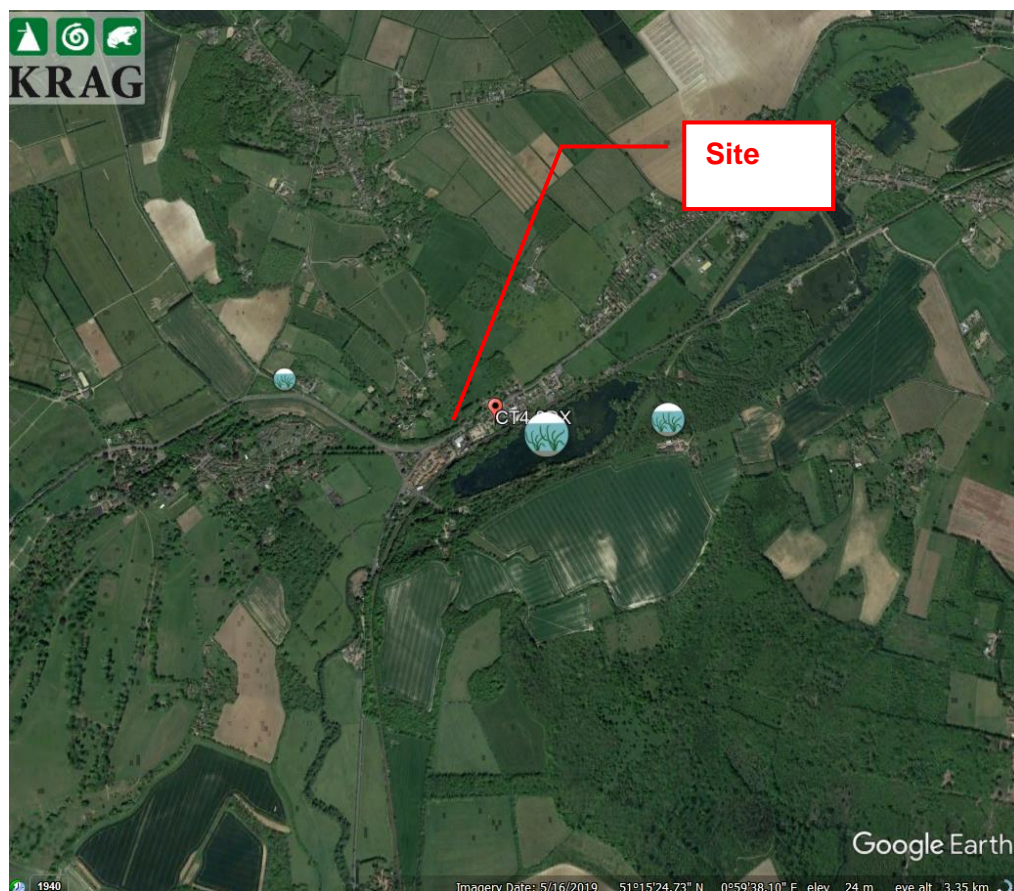


Legend

Kent Habitat Survey 2012

Acid grassland	Bracken	Coniferous woodland	Inland rock/Quarry	Neutral grassland	Supralittoral Sediment
Arable and horticulture	Broadleaved, mixed, and yew woodland	European dry heaths	Littoral Rock	Rivers and streams	Traditional orchard
Boundary and linear features	Built-up areas	Fen, marsh and swamp	Littoral Sediment	Standing open water and canals	Unknown terrestrial vegetation
	Calcareous grassland	Improved grassland	Maritime grassland	Supralittoral Rock	

Figure 3: indicates location of ponds from Krag data search



2 Methodology

2.1 Desk Study

Internet-based resources were consulted to identify designated nature conservation sites within 1km of the site and habitats of potentially high ecological importance and sensitivity within 500m of the site (e.g. ancient woodlands, ponds).

A data search was carried out with the Kent Reptile and Amphibian Group Krag^{1,2}.

2.2 Scoping Survey

The site and its immediate surroundings were considered in terms of habitats, protected species and species of principal conservation importance during a walkover survey undertaken on 5th May 2020 by Katia Bresso CEnv MCIEEM, a qualified professional consultant ecologist with over 15 years of experience³, licensed bat surveyor (Class Licence CL19, Level 3, Registration Number: 2016-27133-CLS-CLS) and Registered Consultant of the Bat Mitigation Class Licence (BMCL) (formerly Bat Low Impact Class Licence) WML-CL21 with Natural England (Registered Consultant Reference Number RC056, since May 2015), licensed dormouse surveyor (Class Survey Licences Registration Number 2016-22060-CLS-CLS) and licensed great crested newt surveyor (Science, Education and Conservation only licence: WML-A29 reference 2018-37426-SCI-SCI). Evidence of the use of the site by species was recorded (i.e. field signs).

The habitat survey was undertaken in general accordance with Phase 1 Habitat Survey (JNCC 2010), i.e. within the survey area every parcel of land is classified, recorded and mapped in accordance with a list of ninety specified habitat types using standard colour codes to allow rapid visual assessment of the extent and distribution of different habitat types.

The survey and report aim at following the guidance and recommendations in the 'British Standard Biodiversity Code of Practice for Planning and Development (BS 42020: 2013)'.

A visual examination of the external areas of the buildings was undertaken⁴. This consisted of a ground level visual inspection using a bright torch (Cluson CB1 Clubman Standard High Power, 500,000 candle power). The purpose of the survey was to look for signs of bats such as droppings, urine staining, marking around entrance/exit holes and any animals; and to note any potential roosting locations and access points. The latter is important because signs of bats are frequently not present; for example, they can be washed off external surfaces by wind and rain and are often not visible where bats roost in crevices such as gaps between tiles and boarding or felt, behind weatherboarding, holes in brickwork, timbers and similar.

All trees were also checked for suitability for roosting bats.

¹ Please note that absence of records should not be taken as confirmation that a species is absent from the search area.

² Due to the scale of the project, it was judged disproportionate to undertake a costly data search with the local Biological Record Centre as the data would be unlikely to be relevant to this site.

³ Katia Bresso is a Suitably Qualified Ecologist with regards to Code for Sustainable Homes assessment and BREEAM

⁴ Due to the Covid-19 outbreak, no internal inspection was undertaken

3 Baseline Ecological Conditions

3.1 Designated Nature Conservation Sites

The site is not part of, nor directly adjacent to, any statutory designated sites and none are located within 1km of the site.

One local wildlife site⁵, 'Great Stour, Ashford to Fordwich', is present 120m to the south of the site.

3.2 Habitats




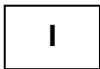


The Integrated Habitat System (IHS) classification of the Kent Habitat Survey 2012 describes the site as:

- *Built-up areas,*
- *Improved grassland.*

Indeed the site consists of a former Public House which is currently used as a Bed & Breakfast, with a detached main building with associated outbuildings and hard surfaced parking areas. Behind the building, a set of steps in a steep bank (approx. 3m high) leads up into a garden area currently laid to lawn and enclosed by wooden fencing. An air raid shelter is present into the bank. Some ruderal vegetation is present (with cleavers and nettles) atop a bank that is difficult of access to the east.

Plates are present in Appendix B. Figure 4 below shows the location of the habitats.

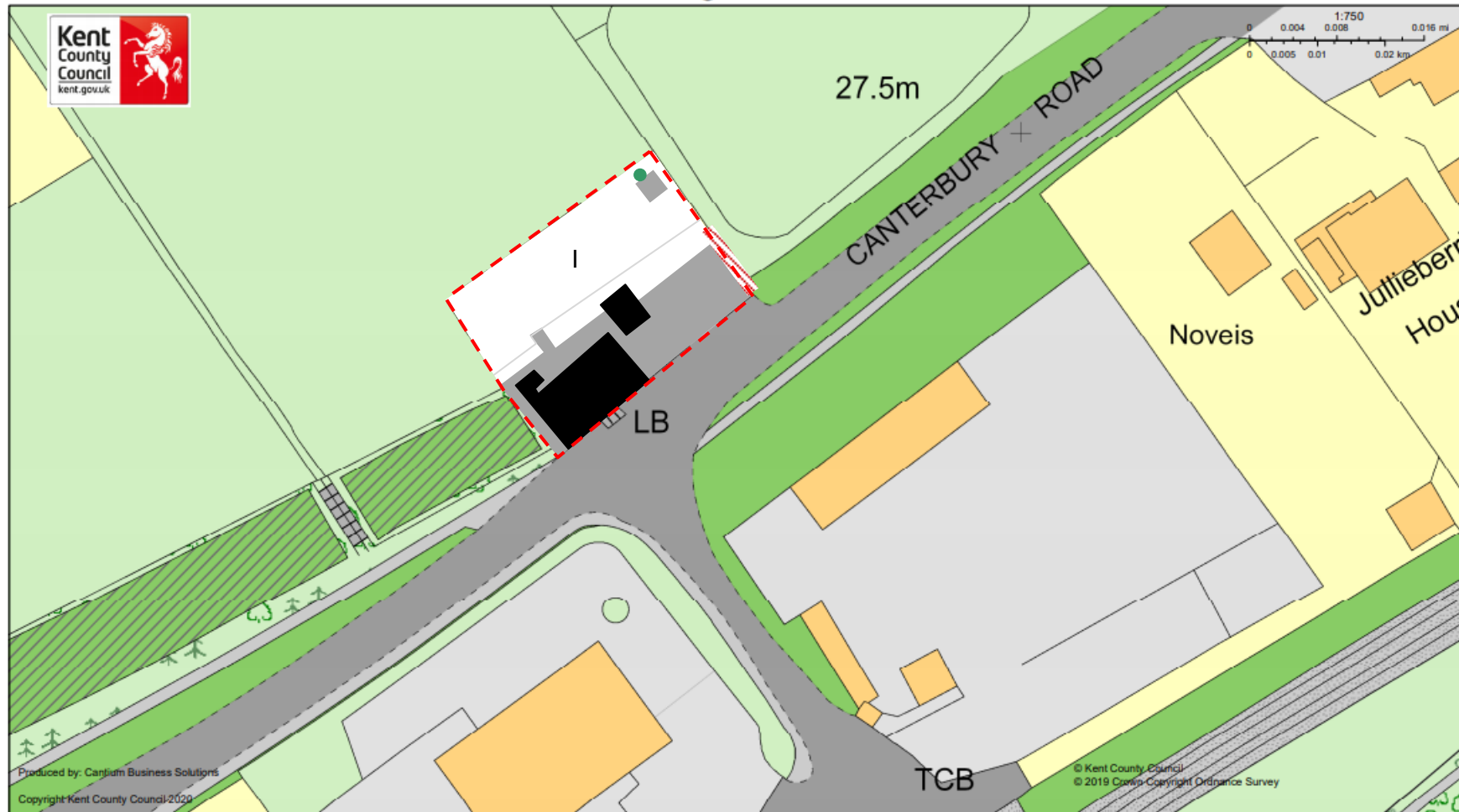
Legend of Phase 1 habitat survey map hereafter:

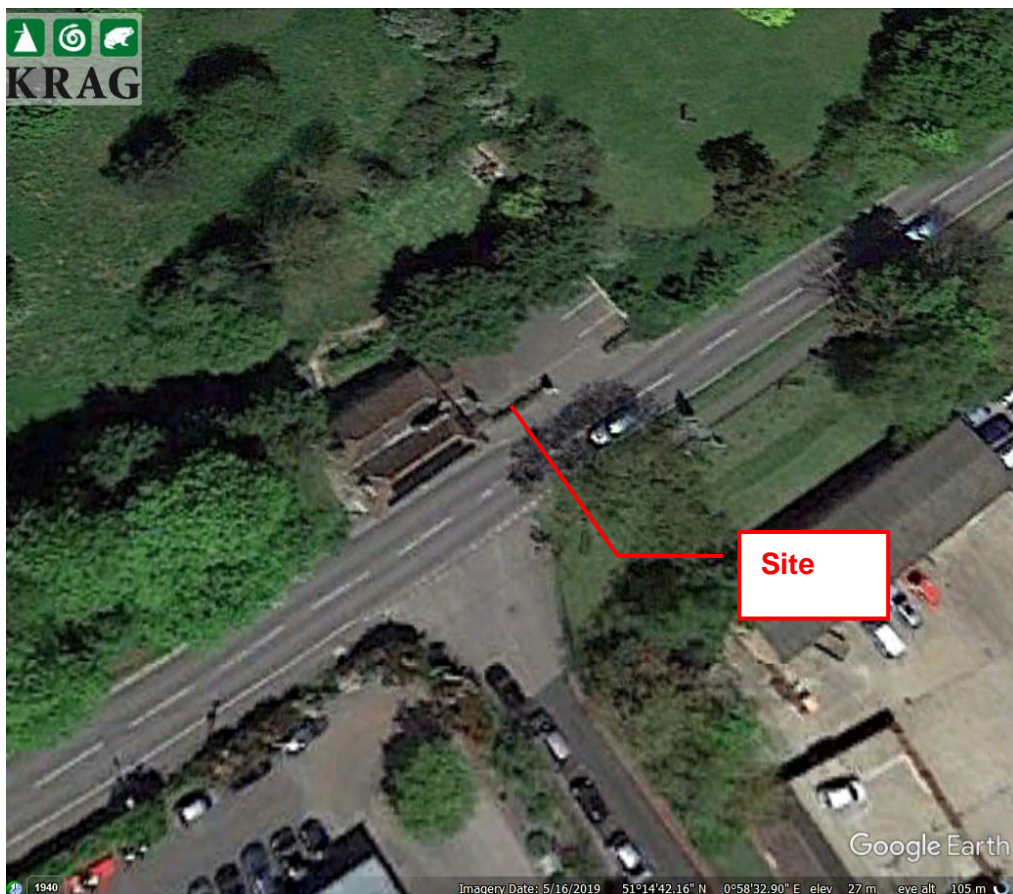
	Site boundary
	Hard standing
	Building
	Regularly cut grass
	Ruderal (nettles, cleavers)
	Individual tree (number and location approximate)

⁵ In Kent, there are over 460 Local Wildlife Sites, covering a total area of over 27,500 hectares, (roughly 7% of the county). They range from a 0.13 hectares churchyard important for its orchids, to grazing marsh sites of over 1,000 hectares.

Figure 4

May 21, 2020





3.3 Amphibians

The data search carried out with Krag (Enquiry No: CES/20/073) revealed that the closest recorded Great Crested Newt *Triturus cristatus* site is located 4.75 km to the S (record id: 94909).

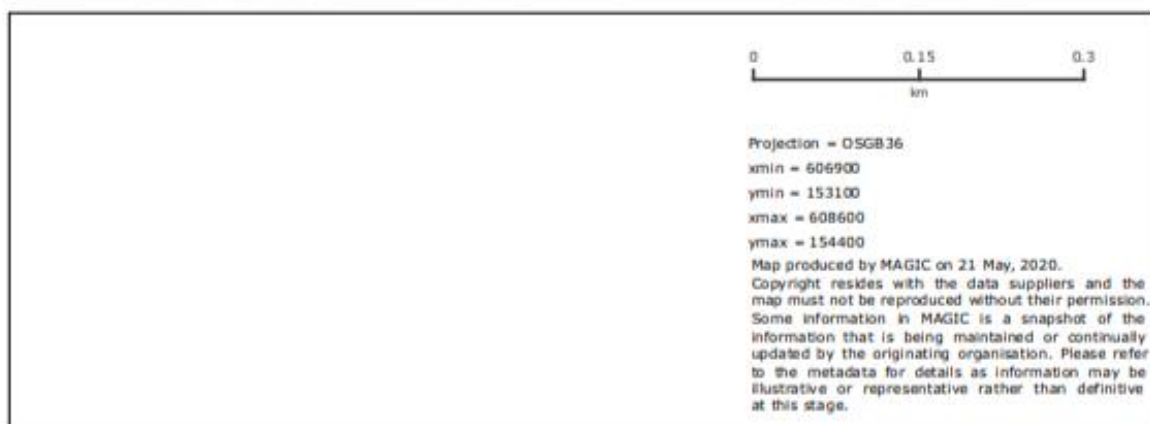
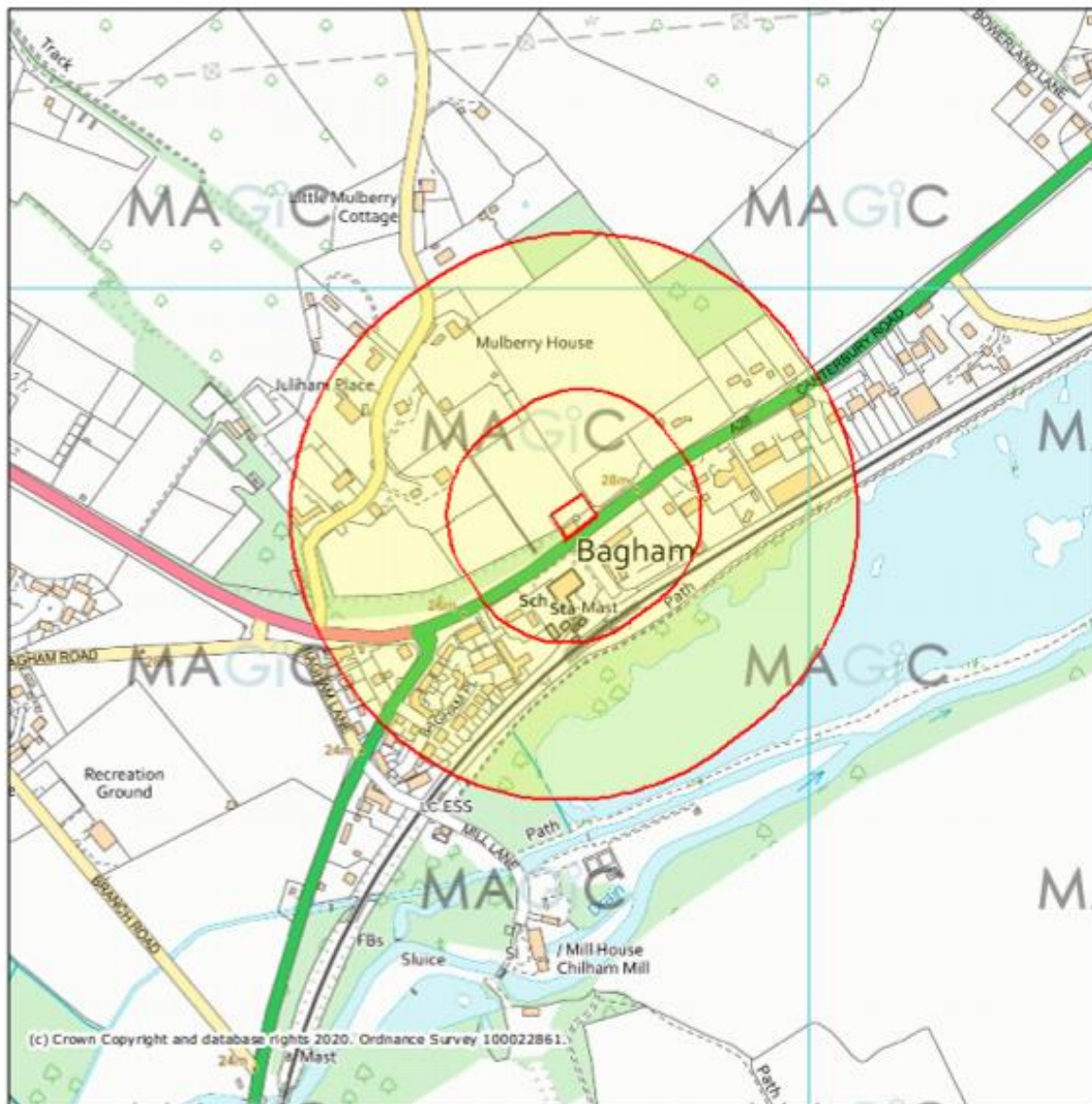
Great crested newts favour areas of high pond density and occupancy levels can exceed 40% of ponds when conditions are favourable. Krag's database risk assessment indicates that the likelihood of presence of great crested newts *in the overall area* is 'Possible'⁶, with only three ponds present within 1km.

Like nearly all amphibians, the great crested newt is dependent on water-bodies for breeding but usually spends most of its life on land.

The 'Great Crested Newt Mitigation Guidelines' (English Nature 2001) state the following: *'Great crested newts have been found to move over considerable distances (up to 1.3km from breeding sites). However, the vast majority of newts will inhabit an area much closer to the pond, and the exact distribution and migration patterns of newts on land depends on a variety of factors. The quality of terrestrial habitat near to breeding ponds is important, as are the lack of barriers to dispersal (such as fast-flowing rivers, or very busy roads). The distribution of ponds and hibernation opportunities may also influence movements. [...] Several studies have been conducted which reveal a great deal of variation, but great crested newts commonly move between ponds that are within around 250m of each other.'*

⁶ Likelihood of Presence Scores are described using the following categories:
Unlikely<Possible<Likely<High
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KB Ecology Ltd- May 2020

MAGiC figure 5 - 100m and 250m radii



No ponds were present on site or within 250m. Only a large fishing lake is present, on the other side of the busy A28, which is likely to act as a barrier to amphibian movements.

The Great Crested Newt Conservation Handbook, 2001 states that 'very short pasture is easily traversed by newts, and provides night time foraging, but little in the way of shelter'.

Thus, due to the paucity of ponds in the general area, the distance to the nearest pond and the habitats present on site, it is judged unlikely that great crested newts would be present on site.

3.4 Reptiles

The Krag datasearch revealed that the closest recorded reptile is Viviparous Lizard, located at Chilham Railway Station (record id: 12929). The likelihood of reptiles to be present *in the overall area* is judged as per table below:

<u>Reptiles</u>		
	<u>Likelihood of Presence</u>	
	<u>Score</u>	<u>Dist (km)</u>
Viviparous Lizard:	HIGH	0.00
Slow-worm:	HIGH	0.14
Sand Lizard:	unlikely	28.44
Grass Snake:	Possible	1.79
Adder:	HIGH	0.92
Smooth Snake:	n/a	n/a
Reptile survey effort in local area is considered to be relatively high.		

The site is regularly mowed and thus reptiles are unlikely to be present, except in the area of ruderal vegetation present atop a bank difficult of access to the east (however, the adjacent land is improved grassland with trees along the road, therefore the presence of reptiles is also unlikely).

Common reptiles are afforded limited legal protection under Schedule 5 of the Wildlife & Countryside Act 1981 (as amended). They are also listed as species of principal conservation importance (See Appendix A).

For more information, guidance from Natural England is available at <https://www.gov.uk/reptiles-protection-surveys-and-licences>

3.5 Birds

It is considered that the site has potential to support breeding birds within the tree.

All species of bird whilst actively nesting are afforded legal protection under the Wildlife & Countryside Act 1981 (as amended) and special penalties are available for offences related to birds listed on Schedule 1. Some species are also listed as species of principal

conservation importance, including sky lark, common cuckoo, house sparrow, tree sparrow and song thrush (See Appendix A).

For more information, guidance from Natural England is available at <https://www.gov.uk/wild-birds-protection-surveys-and-licences>

3.6 Hazel Dormouse

There is no suitable habitat for the hazel dormouse *Muscardinus avellanarius* on site.

3.7 Badger

No setts or signs of badgers *Meles meles* were identified during the survey⁷.

3.8 Bats

No bats nor signs of bats were found during the external inspection of the buildings.

The main building was judged as offering moderate suitability for roosting bats as crevice-dwelling bats (such as pipistrelle bats) could be roosting between the tiles and membrane present below⁸. It should be noted that the south elevation of the roof is covered in solar panels, thus bats are unlikely to be present underneath this section of roof.

The air raid shelter merely consisted of an open, well-mortared, brick cavity with negligible suitability for roosting bats.

None of the trees present on site offered potential for roosting bats. But the surrounding area is likely to be used by foraging and commuting bats.

All species of bat are afforded full legal protection under Schedule 5 of the Wildlife & Countryside Act 1981 (as amended). They are also listed under Schedule 2 of the Conservation of Habitats and Species Regulations 2017 and are therefore a “European Protected Species” (EPS). Some species of bats (noctule, soprano pipistrelle, brown long-eared bat, barbastelle) are also listed as species of principal conservation importance.

Bats rarely use the same roosting place all year round as they need different conditions for breeding and hibernating. But bats are creatures of habit and tend to return to the same sites at the same time year after year. For this reason, roosts are legally protected even if bats don't seem to be living there at certain times of year.

The legislation makes it a criminal offence to:

- Deliberately capture, injure or kill a bat;
- Intentionally or recklessly disturb a bat in its roost or deliberately disturb a group of bats;
- Damage or destroy a bat roosting place (even if bats are not occupying the roost at the time);
- Possess or advertise/sell/exchange a bat (dead or alive) or any part of a bat;
- Intentionally or recklessly obstruct access to a bat roost.

⁷ please note that only the site was inspected; access to areas up to 30m from the site could not be done because of access restrictions

⁸ and there wouldn't be any external signs of such roosting usage

For more information, guidance from Natural England is available at <https://www.gov.uk/bats-protection-surveys-and-licences>

3.9 Other Species

It is considered that the surroundings have potential to support hedgehogs (*Erinaceus europaeus*), which are a Species of Principal Importance under Section 41 of the NERC Act (2008 updated list).

All mammals are afforded protection against unnecessary suffering by the Wild Mammals (Protection) Act 1996 (see Appendix A).

4 Ecological constraints and opportunities, recommendations for mitigation, compensation and further survey

The details of the proposed development were as below at the time of writing this report.



Should the scope of the proposed works be amended following the completion of this scoping survey, or be deferred for an extended period of time, there may be a requirement to update this scoping report and its recommendations.

4.1 Designated Nature Conservation Sites

A site check report was generated for the site using the Impact Risk Zones on the Magic website⁹:

⁹ The Impact Risk Zones (IRZs) dataset is a GIS tool which maps zones around each SSSI according to the particular sensitivities of the features for which it is notified and specifies the types of development that have the potential to have adverse impacts.

Natural England uses the IRZs to make an initial assessment of the likely risk of impacts on SSSIs and to quickly determine which consultations are unlikely to pose risks and which require more detailed consideration. Publishing the IRZs will allow LPAs, developers and other partners to make use of this key evidence tool.

<http://www.naturalengland.org.uk/ourwork/planningdevelopment/impactriskzonesgistoolfeature.aspx>

21/05/2020

Site Check Report generated on Thu May 21 2020
You selected the location: Centroid Grid Ref: TR07785377
The following features have been found in your search area:

SSSI Impact Risk Zones - to assess planning applications for likely impacts on SSSIs/SACs/SPAs & Ramsar sites (England)

1. DOES PLANNING PROPOSAL FALL INTO ONE OR MORE OF THE CATEGORIES BELOW? 2. IF YES, CHECK THE CORRESPONDING DESCRIPTION(S) BELOW. LPA SHOULD CONSULT NATURAL ENGLAND ON LIKELY RISKS FROM THE FOLLOWING:

All Planning Applications

Infrastructure

Airports, helipads and other aviation proposals.

Wind & Solar Energy

Minerals, Oil & Gas

Rural Non Residential

Residential

Rural Residential

Air Pollution

Any industrial/agricultural development that could cause AIR POLLUTION (incl: industrial processes, livestock & poultry units with floorspace > 500m², slurry lagoons > 200m² & manure stores > 250t).

Combustion

General combustion processes >20MW energy input. Incl: energy from waste incineration, other incineration, landfill gas generation plant, pyrolysis/gasification, anaerobic digestion, sewage treatment works, other incineration/ combustion.

Waste

Landfill. Incl: inert landfill, non-hazardous landfill, hazardous landfill.

Composting

Any composting proposal with more than 75000 tonnes maximum annual operational throughput. Incl: open windrow composting, in-vessel composting, anaerobic digestion, other waste management.

Discharges

Water Supply

Notes 1

Notes 2

GUIDANCE - How to use the Impact Risk Zones

[/Metadata_for_magic/SSSIIRZ User Guidance MAGIC.pdf](#)

The type of development proposed is not listed as being a category for which the LPA should consult Natural England. The proposal is not judged detrimental to any protected sites.

4.2 Habitats

Trees to be retained should be protected during any construction work and guidance is given in the 'BS 5837:2012 Trees in relation to design, demolition and construction. Recommendations' document. This standard requires a tree protection plan to be developed which involves erecting physical barriers to prevent damage to existing trees, with an exclusion area around the trees. It also looks at defining a root protection area and requires consideration when compulsory work is carried out within the root protection area.

4.3 Amphibians

No further work is recommended with regards to amphibians, and great crested newts in particular.

4.4 Reptiles

The following precautionary mitigation strategy is proposed to minimise any potential impacts: it is recommended to prepare the development site using habitat manipulation as below:

- The works area should be mowed using hand held machinery only¹⁰ (to 15cm height minimum), during sunny conditions, during the reptile active season (April to October), in order to force the animals out of the area;
- A second cut should be given to ground level, 2 days following the first cut, during sunny conditions.

¹⁰ strimmer, brush-cutter

4.5 Birds

Although a breeding bird survey is not deemed to be necessary, on the basis that the site contains suitable habitat for breeding birds, consideration must be given to the timing of the clearance works, if any is to take place.

The effect on birds can be avoided by undertaking any vegetation clearance outside of the nesting season (which extends from March – August inclusive¹¹) or only after a survey has confirmed the absence of nesting birds¹². New hedgerow/trees/scrub planted and bird nesting boxes erected as part of the proposed development can replace the habitat lost.

4.6 Hazel Dormouse

No further work is recommended with regards to dormice.

4.7 Badger

No further work is recommended with regards to badgers.

4.8 Bats

Should bats be roosting in the building, the proposed development would lead to a loss of habitat and animals could be killed or injured during the works.

The Bat Conservation Trust's guidelines provide a table stating the 'minimum number of presence/absence survey visits required to provide confidence in negative preliminary roost assessment from buildings, built structures and trees in summer.

Table 7.3 Recommended minimum number of survey visits for presence/absence surveys to give confidence in a negative result for structures (also recommended for trees but unlikely to give confidence in a negative result).		
Low roost suitability	Moderate roost suitability	High roost suitability
One survey visit. One dusk emergence or dawn re-entry survey ^a (structures). No further surveys required (trees).	Two separate survey visits. One dusk emergence and a separate dawn re-entry survey. ^b	Three separate survey visits. At least one dusk emergence and a separate dawn re-entry survey. The third visit could be either dusk or dawn. ^b

^a Structures that have been categorised as low potential can be problematic and the number of surveys required should be judged on a case-by-case basis (see Section 5.2.9). If there is a possibility that quiet calling, late-emerging species are present then a dawn survey may be more appropriate, providing weather conditions are suitable. In some cases, more than one survey may be needed, particularly where there are several buildings in this category.

^b Multiple survey visits should be spread out to sample as much of the recommended survey period (see Table 7.1) as possible; it is recommended that surveys are spaced at least two weeks apart, preferably more. A dawn survey immediately after a dusk one is considered only one visit.

¹¹ It should be noted however that certain species are known to breed throughout the year (e.g. collard dove) and remain protected.

¹² Inspection by a qualified ecologist must first be completed a maximum of 48hrs before clearance works commence. If during the inspection a nest considered to be in use is discovered, works must be delayed until the young have fledged.

Table 7.1 Recommended timings for presence/absence surveys to give confidence in a negative result for structures (also recommended for trees but unlikely to give confidence in a negative result).

Low roost suitability	Moderate roost suitability	High roost suitability
May to August (structures) No further surveys required (trees)	May to September ^a with at least one of surveys between May and August ^b	May to September ^a with at least two of surveys between May and August ^b

It is therefore recommended that two night-time surveys are undertaken between May and August. Two surveyors will be necessary to cover all sides of the building with potential access points. The surveys should be carried out at 3 weeks interval as a minimum in order to sample a long enough period of bats' active season¹³.

Besides, as lighting can be detrimental to roosting, foraging and commuting bats¹⁴, the recommendations from the Bat Conservation Trust and the Institution of Lighting Professionals, titled 'Guidance Note 8 Bats and Artificial Lighting'¹⁵, should be considered, when designing any lighting scheme for the proposed development.

4.9 Other Species

There is some potential for hedgehogs to be present on site. Therefore any areas where mammals could be sheltering should be hand searched prior to disturbance. Excavations should not be left open for animals to fall into, or planks of wood should be placed to enable any animals which may fall into such a hole to escape.

4.10 Additional Recommendations: Enhancements

Ecological enhancements should where possible be incorporated into the proposed development to contribute towards the objectives of planning legislation below:

In July 2018, the UK Government published the revised National Planning Policy Framework (NPPF) which states that "opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity" (Para 175).

In May 2019, the Chancellor confirmed that the government will use the forthcoming Environment Bill to mandate 'biodiversity net gain' – meaning the delivery of much-needed infrastructure and housing is not at the expense of vital biodiversity. Biodiversity net gain requires developers to ensure habitats for wildlife are enhanced and left in a measurably better state than they were pre-development. They must assess the type of habitat and its condition before submitting plans, and then demonstrate how they are improving biodiversity – such as through the creation of green corridors, planting more trees, or forming local nature spaces. Green improvements on site would be encouraged, but in the rare circumstances where they are not possible, developers will need to pay a levy for habitat creation or improvement elsewhere¹⁶.

¹³ General guidance for carrying out bat surveys suggests that they only take place in optimum weather conditions in order to maximise the likelihood of recording bats if they use the site being surveyed. It is usually advised to avoid very heavy rain, strong winds, mists and dusk temperatures below 7oC.

¹⁴ <https://www.bats.org.uk/about-bats/threats-to-bats/lighting>

¹⁵ <https://www.theilp.org.uk/documents/guidance-note-8-bats-and-artificial-lighting/>

¹⁶ <https://deframedia.blog.gov.uk/2019/03/13/government-to-mandate-biodiversity-net-gain/>

The design and implementation of habitat enhancements could also be used to contribute towards the 'Home Quality Mark' or similar accreditation, should this be a consideration for this site.

Biodiversity enhancements for the site could include the following:

- Provision of 12cm square gaps under any new fencing to allow hedgehogs access onto all garden areas¹⁷.
- Provision of ready-made bird boxes¹⁸.
- Provision of integrated bat boxes on new buildings¹⁹.
- Provision of integrated bee brick or bee block in the structure of the new building²⁰;
- Planting of hedges with dormouse friendly species (using native species)²¹.
- Establish climbing plants on walls and other vertical structures²².
- Establish wildflower plug/bulb planting in private gardens²³.
- Establish Fruit Espaliers²⁴.

Priority should be given to species present on the Kent BAP species list, which include great crested newt, common toad, viviparous lizard, slow-worm, grass snake, adder, house sparrow, tree sparrow, hedgehog, noctule, soprano pipistrelle, brown long-eared bat, brown hare, water vole, harvest mouse, dormouse, otter as well as many more species (see <http://www.kentbap.org.uk/habitats-and-species/priority-species/>).

¹⁷ <https://www.hedgehogstreet.org/wp-content/uploads/2019/03/Hedgehogs-and-developers-ZR.pdf>

¹⁸ Integrated nest boxes in new buildings are preferred as they provide longer term nesting opportunities.

¹⁹ <https://www.bats.org.uk/our-work/buildings-planning-and-development/bat-boxes>

²⁰ https://www.nhbs.com/bee-brick?bkfno=244137&ca_id=1495&gclid=EAlaIQobChMIjYSHmKXa5AIVyLHtCh3sgwh8EAQYASABEgl-7PD_BwE

²¹ Possible species, which also provide food for dormice and grow relatively quickly, include bramble *Rubus fruticosus* agg., hawthorn *Crataegus monogyna*, honeysuckle *Lonicera* species, and hornbeam *Carpinus betulus*. Other species include include hazel *Corylus avellana*, oak *Quercus* species, blackthorn *Prunus spinosa* and ivy *Hedera helix* (English Nature, 2006).

²² More information can be found here: <http://www.greenblueurban.com/climbing-plant-guide.php> and <http://www.london.gov.uk/priorities/environment/urban-space/parks-green-spaces/green-roofs-walls>

²³ Spring flowering bulbs and plugs of nectar rich flowering plants should be embedded into amenity grassland to increase the biodiversity and amenity value of the grassland and to provide early sources of nectar for insects. Suitable bulbs include Snake's head fritillary *Fritillaria meleagris*, Ramsons *Allium ursinum*, Snowdrop *Galanthus nivalis*, Primrose *Primula vulgaris*, Bluebell *Hyacinthoides non-scriptus*, Wild daffodil *Narcissus pseudonarcissus*, Lesser celandine *Ranunculus ficaria*

²⁴ <http://apps.rhs.org.uk/advicesearch/profile.aspx?PID=319> for more information

5 References and Bibliography

- Joint Nature Conservation Committee (2003). *Handbook for Phase 1 Habitat Survey: A Technique for Environmental Audit*. JNCC, Peterborough.²⁵
- English Nature (2004). *Research Reports Number 576: An assessment of the efficiency of capture techniques and the value of different habitats for the great crested newt Triturus cristatus*. English Nature, Peterborough

Websites Visited:

- <http://webapps.kent.gov.uk/KCC.KLIS.Web.Sites.Public/ViewMap.aspx>
- <http://www.magic.gov.uk/magicmap.aspx>
- <http://www.kentbap.org.uk/species/>

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²⁵ http://www.jncc.gov.uk/pdf/pub90_HandbookforPhase1HabitatSurveyA5.pdf

Appendix A – Wildlife Legislation & Policy

The following is a summary of wildlife legislation and planning policy which affords protection to plants and animals and seeks to conserve, enhance and restore biodiversity. This section is provided for general guidance only. While every effort has been made to ensure accuracy, this section should not be relied upon as a definitive statement of the law.

For further information, please see:

<https://www.gov.uk/protected-species-and-sites-how-to-review-planning-proposals>

and

<https://www.gov.uk/government/policies/protecting-biodiversity-and-ecosystems-at-home-and-abroad/supporting-pages/species-protection>

Commonly encountered protected species

Many species of plants, invertebrates and animals receive protection under the legislation detailed above. However, of these, the following are the most likely to be affected by development in the southeast:

Species	Legislation
Bats (all species) Dormice Great crested newts Otters Sand lizards and smooth snakes	<p>The Wildlife and Countryside Act 1981 (as amended) & The Conservation of Habitats and Species Regulations 2017. These make it an offence to:</p> <ul style="list-style-type: none">• Deliberately or recklessly capture, injure or kill any wild animal of a European protected species• Deliberately or recklessly disturb wild animals of any such species• Damage or destroy their breeding site or resting place• Keep, transport, sell or exchange, or offer for sale or exchange, any live or dead animal, or any part of, or anything derived from these species. <p>Disturbance of animals includes in particular any disturbance which is likely</p> <ul style="list-style-type: none">• to impair their ability:<ul style="list-style-type: none">- to survive, to breed or reproduce, or to rear or nurture their young, or- in the case of animals of a hibernating or migratory species, to hibernate or migrate;• to affect significantly the local distribution or abundance of the species to which they belong.
Breeding birds	The Wildlife and Countryside Act 1981 (as amended). This makes it

Species	Legislation
(in particular barn owls)	illegal to intentionally kill, injure or take any wild bird and to take, damage or destroy the nest (whilst being built or in use) or eggs.
Adders, grass snakes, common lizards and slow worms	The Wildlife and Countryside Act 1981 (as amended) (intentional killing and injuring only). This makes it illegal to kill or injure these animals.
Water voles	The Wildlife and Countryside Act 1981 (as amended). This makes it illegal to intentionally damage, destroy or obstruct access to any structure or place which water voles use for shelter or protection; it is also an offence to intentionally disturb water voles while they are using these places.
White clawed crayfish	The Wildlife and Countryside Act 1981 (as amended). This makes it an offence to: <ul style="list-style-type: none"> intentionally, or recklessly, kill or injure any of the above species, and/or; sell, or attempt to sell, any part of the species, alive or dead. Advertises that he buys or sells, or intends to buy or sell.
Badgers	The Protection of Badgers Act 1992. This makes it an offence to: <ul style="list-style-type: none"> Willfully killing, injures or takes, or attempts to kill, injure or take, a badger. Cruelly ill-treating a badger, digging for badgers, using badger tongs, using a firearm other than the type specified under the exceptions within the Act. Interfering with a badger sett by damaging, destroying, obstructing, causing dog a dog to enter a sett, disturbing an occupied sett - either by intent or by negligence. Selling or offering for sale a live badger, having possession or control of a live badger. Marking a badger or attaching any ring, tag, or other marking device to a badger.

The Wildlife and Countryside Act 1981 (as amended)

The Wildlife and Countryside Act 1981 (as amended) implements the Birds Directive (1979) and the Berne Convention (1979) into national legislation. The Wildlife and Countryside Act 1981 (as amended) includes a number of Schedules which are reviewed (usually every five years) on which details of the protected species, and their level of protection, are detailed. A detailed summary of the sections of the Wildlife and Countryside Act, along with the

protection afforded under them can be found within Paragraphs 118-122 of ODPM Circular 06/2005 (Circular06/2005)

Full details of the legislation can be found at www.jncc.gov.uk/page-3614 and details of the species listed on the Schedules can be found at:

- Birds www.jncc.gov.uk/PDF/waca1981_schedule1.pdf
- Animals www.jncc.gov.uk/page-1815
- Plants www.jncc.gov.uk/page-1816

There are no licensing functions within the Wildlife and Countryside Act for development activities which may affect a species protected under The Wildlife and Countryside Act 1981 (as amended) and works need to proceed following good practice and if appropriate rely on the 'incidental result of an otherwise lawful operation defence'. However, with regards to the water vole, where translocation of animals is proposed, Natural England does not feel this could be considered the incidental result of other activities and so would not be covered by the defence in the legislation. If there is no alternative to translocation, Natural England may be able to issue a licence to trap and translocate the water voles for the purpose of conservation.

The Countryside and Rights of Way Act 2000

The Wildlife and Countryside Act 1981 was amended by the Countryside and Rights of Way Act (CRoW Act) in 2000. The CRoW Act strengthened the protection afforded to species listed within the Schedules of the Wildlife and Countryside Act by adding 'reckless' to several of the offences and increased the penalties for wildlife offences.

In addition, Section 74 of the CRoW Act introduced a new duty on Government Ministers and Department to further the conservation of biodiversity for habitats and species of principal importance. This was superseded by Sections 40 and 41 of the Natural Environment and Rural Communities (NERC) Act of 2006. Section 40 provides that every public authority must, in exercising its functions, have regard to the purpose of conserving biodiversity. Details of the lists of habitats and species provided for at Section 41 of the NERC act can be found at www.ukbap-reporting.org.uk/news/details.asp?X=45. The ODPM Circular 06/2005 (Circular06/2005) place a clear responsibility on Local Planning Authorities to further the conservation of habitats and species of principal importance where a planning proposal may adversely affect them.

Full details of the legislation contained within the Countryside and Rights of Way Act can be found at www.opsi.gov.uk/acts/acts2000/ukpga_20000037_en_1.

The Protection of Badgers Act 1992

The legislation affording protection to badgers is primarily concerned with animal welfare and the need to protect badgers from activities such as baiting and deliberate harm. The Protection of Badgers Act 1992 makes it an offence to:

- Wilfully kill, injure, take, possess or cruelly ill-treat a badger, or attempt to do so;
- To intentionally or recklessly interfere with a sett (this includes disturbing badgers whilst they are occupying a sett, as well as damaging or destroying a sett or obstructing access to it).

As with The Wildlife and Countryside Act 1981 (as amended), there are several defences to prosecution in the legislation and the text should be consulted for details of these. Penalties

for offences include fines up to £5,000, plus up to six months imprisonment for each illegal sett interference, or badger death or injury.

Full Details of the legislation can be found at www.opsi.gov.uk/ACTS/acts1992/ukpga_19920051_en_1.

Conservation of Habitats and Species Regulations 2017 (SI 2010/490) came into force (the "2010 Regulations").

The Conservation of Habitats and Species Regulations 2017 provides safeguards for European Protected Sites and Species (as listed in the Habitats Directive). The **Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (SI 2019/579)** were made on 14 March 2019 and come into force on exit day. The Regulations ensure that the habitat and species protection and standards derived from EU law will continue to apply after Brexit. <http://www.legislation.gov.uk/ukdsi/2019/9780111176573>

From 1st April 2010, these are now the principal means by which the Habitats Directive is transposed in England and Wales. This updates and consolidates all the amendments to the Regulations since they were first made in 1994.

The 2010 Regulations implement the European Habitats Directive into national legislation. Details of those species (often referred to as European protected species or EPS) which receive protection under these regulations can be found in Schedule 2 of the 2010 Regulations.

Full details of the legislation can be found at http://www.opsi.gov.uk/si/si2010/ukxi_20100490_en_1

The Regulations state that:

Part 3 - 41.—

(1) A person who:

- (a) deliberately captures, injures or kills any wild animal of a European protected species,
- (b) deliberately disturbs wild animals of any such species,
- (c) deliberately takes or destroys the eggs of such an animal, or
- (d) damages or destroys a breeding site or resting place of such an animal,

is guilty of an offence.

(2) For the purposes of paragraph (1)(b), disturbance of animals includes in particular any disturbance which is likely:

(a) to impair their ability:

- (i) to survive, to breed or reproduce, or to rear or nurture their young, or
- (ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate;

Or

(b) to affect significantly the local distribution or abundance of the species to which they belong.

(3) It is an offence for any person:

- (a) to be in possession of, or to control,
- (b) to transport,
- (c) to sell or exchange, or
- (d) to offer for sale or exchange, anything to which this paragraph applies.

(4) Paragraph (3) applies to—

- (a) any live or dead animal or part of an animal—
 - (i) which has been taken from the wild, and
 - (ii) which is of a species or subspecies listed in Annex IV(a) to the Habitats Directive; and
- (b) anything derived from such an animal or any part of such an animal.

(5) Paragraphs (1) and (3) apply regardless of the stage of the life of the animal in question.

(6) Unless the contrary is shown, in any proceedings for an offence under paragraph (1) the animal in question is presumed to have been a wild animal.

(7) In any proceedings for an offence under paragraph (3), where it is alleged that an animal or a part of an animal was taken from the wild, it is presumed, unless the contrary is shown, that that animal or part of an animal was taken from the wild.

(8) A person guilty of an offence under this regulation is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.

(9) Guidance as to the application of the offences in paragraph (1)(b) or (d) in relation to particular species of animals or particular activities may be published by—

- (a) the appropriate authority; or
- (b) the appropriate nature conservation body, with the approval of the appropriate authority.

(10) In proceedings for an offence under paragraph (1)(b) or (d), a court must take into account any relevant guidance published under paragraph (9).

(11) In deciding upon the sentence for a person convicted of an offence under paragraph (1)(d), the court must in particular have regard to whether that person could reasonably have avoided the damage to or destruction of the breeding site or resting place concerned.

Licences may be obtained to permit activities that would otherwise be unlawful, but they can only be granted for certain purposes. Those purposes include that of preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment (Regulation 42(10)). It is the imperative reasons of overriding public interest element of this that is relied upon by those seeking to carry out development where those activities affect a European protected species or their places used for shelter or protection. Even where that purpose is met, however a licence may only be granted where:

- There is “no satisfactory alternative”; and
- The action authorised “will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range”

Natural England issues licences for this purposes under Regulation 44(2)(e).

It is not the responsibility of Natural England staff to decide when a licence is required/recommended. This decision is down to the proposer of the operation who should

consider whether, on balance and usually with the assistance of an ecological consultant, the operation would be reasonably likely to result in the commission of an offence under these Regulations. This view should be formed in the light of survey information and specialist knowledge. A licence simply permits an action that is otherwise unlawful. A licence should be applied for if, on the basis of survey information and specialist knowledge, it is considered that the proposed activity is reasonably likely to result in an offence (killing, breeding site destruction, etc – see above).

It should be noted that the protection afforded to species under the UK and EU legislation referred to here is in addition to that provided by the planning system and the applicant must ensure that any activity they undertake on the application site (regardless of whether or not planning permission has been obtained) complies with the appropriate wildlife legislation. Failure to do so may result in fines and, potentially, a custodial sentence.

Biodiversity Action Plans

Biodiversity Action Plans (BAPS) set out actions for the conservation and enhancement of biological diversity at various spatial scales. They consist of both Habitat Action Plans (HAPs) and Species Action Plans (SAPs).

The UK BAP was the UK's response to the 1992 Convention on Biological Diversity in Rio de Janeiro. Following a review in 2007 a list of 1149 priority species and 65 priority habitats has been adopted, which are given a statutory basis for planning consideration under Section 40 of the NERC Act 2006.

The UK Post-2010 Biodiversity Framework was published on 17 July 2012. It covers the period from 2011 to 2020, and was developed in response to two main drivers: the Convention on Biological Diversity's (CBD's) Strategic Plan for Biodiversity 2011-2020 and its 5 strategic goals and 20 'Aichi Biodiversity Targets', published in October 2010; and the EU Biodiversity Strategy (EUBS), released in May 2011. <http://jncc.defra.gov.uk/page-6189>

Further information about Kent BAP can be found here: <http://www.kentbap.org.uk/habitats-and-species/priority-species/>

Red Data Books

British Red Data Books (RDB) are an additional method for classifying the rarity of species, and are often seen as a natural progression from Biodiversity Action Plans.

RDB species have no automatic legal protection (unless they are protected under any of the legislation previously mentioned). Instead they provide a means of assessing rarity and highlight areas where resources may be targeted. Various categories of RDB species are recorded, based on the IUCN criteria and the UK national criteria based on presence within certain numbers of 10x10km grid-squares (see <http://www.jncc.gov.uk/page-3425>). As with Biodiversity Action Plans, where possible, steps should be taken to conserve RDB species which are to be affected by development.

Appendix B – Plates



IMG_2241



IMG_2243



IMG_2244



IMG_2245



IMG_2246



IMG_2247



IMG_2248



IMG_2249



IMG_2251



IMG_2252 Air raid shelter



IMG_2253 Air raid shelter



IMG_2254 Air raid shelter



IMG_2256



IMG_2257