

## Land adjoining Turner Court, Romney Avenue, Folkestone, Kent

# Preliminary Ecological Appraisal

01<sup>st</sup> February 2019 / Ref No 2019/01/07

Client: Village Homes Folkestone Ltd



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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 land adjoining Turner Court, Romney Avenue, Folkestone Kent, in support of a planning application for the erection of a number 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 206 360. 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.

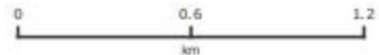
Figure 1



(c) Crown Copyright and database rights 2019. Ordnance Survey 100022861.

Legend

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



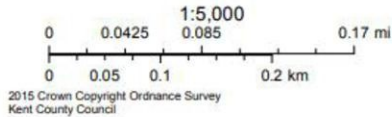
Projection = OSGB36  
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 ymin = 133200  
 xmax = 624200  
 ymax = 138000

Map produced by MAGiC on 1 February, 2019.  
 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



February 1, 2019



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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<sup>1,2</sup>.

### 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 24<sup>th</sup> January 2019 by Katia Bresso CEnv MCIEEM, a qualified professional consultant ecologist with over 15 years of experience<sup>3</sup>, licensed bat surveyor (Class Licence CL19, Level 3, Registration Number: 2016-27133-CLS-CLS<sup>4</sup>) 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 (Class Licence CL08, Level 1, Registration Number: 2015-16268-CLS-CLS and licence 2017-30955-SCI-SCI for box traps). 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)'.

All trees were also checked for potential for roosting.

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

<sup>2</sup> Due to the scale of the project, it was judged disproportionate to undertake a costly data search with the Kent and Medway Biological Record Centre KMBRC as the data would be unlikely to be relevant to this site.

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

<sup>4</sup> This licence allows the holder to disturb or capture bats using: torches, endoscopes, hand nets, static hand-held nets, mist nets for development surveys (can be used for a maximum of 3 days at any one site), acoustic lures and to disturb but not handle hibernating bats.



### 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.

#### 3.2 Habitats

The site is within a residential area, surrounded by dwellings.

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

- *Improved grassland,*
- *Broadleaved, mixed, and yew woodland.*

The site is on a steep slope covered in scrub (bramble, butterfly bush, cherry laurel, elder, shrubby honeysuckle, traveller's joy), with trees located on the upper parts of the slope (sycamore, holly). At the time of the site visit, the lower plateau of the site was mainly bare earth with some grassland at the lowest point along the South boundary (with alexanders, willowherb, nettles, horsetail); it seems that machinery had tracked on the ground recently prior to the site visit. There was also an area of dumped stones to the back and some poles dug into the ground. It seems the lower part of the site may have been used to access a building site to the east of the site, where some houses are being built (fronting Southernwood Rise).

Historical aerial photos suggest that the site was more open in 1990, with grassland on the lower plateau and along the slope and trees only at the top. It is expected that lack of management meant that scrub became more and more dense throughout over the years.

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

Legend of Phase 1 habitat survey map hereafter:


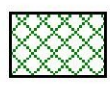
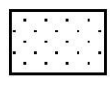

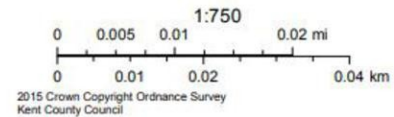
	Site boundary
	Scrub
	Bare ground (recent) / dumped stones
	Individual tree (number and location approximate)

Figure 4



February 1, 2019



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### 3.3 Amphibians

The data search carried out with Krag (Enquiry No: CES/19/009) revealed that the closest recorded Great Crested Newt *Triturus cristatus* site is a historical record located at Channel Tunnel Terminal, Newington, 1.7 km to the NW (record id: 2375).

Great crested newts favour areas of high pond density. Krag's database risk assessment indicates that the likelihood of presence of great crested newts *in the overall area* is 'Possible'<sup>5</sup>, with only four ponds present within 1km.

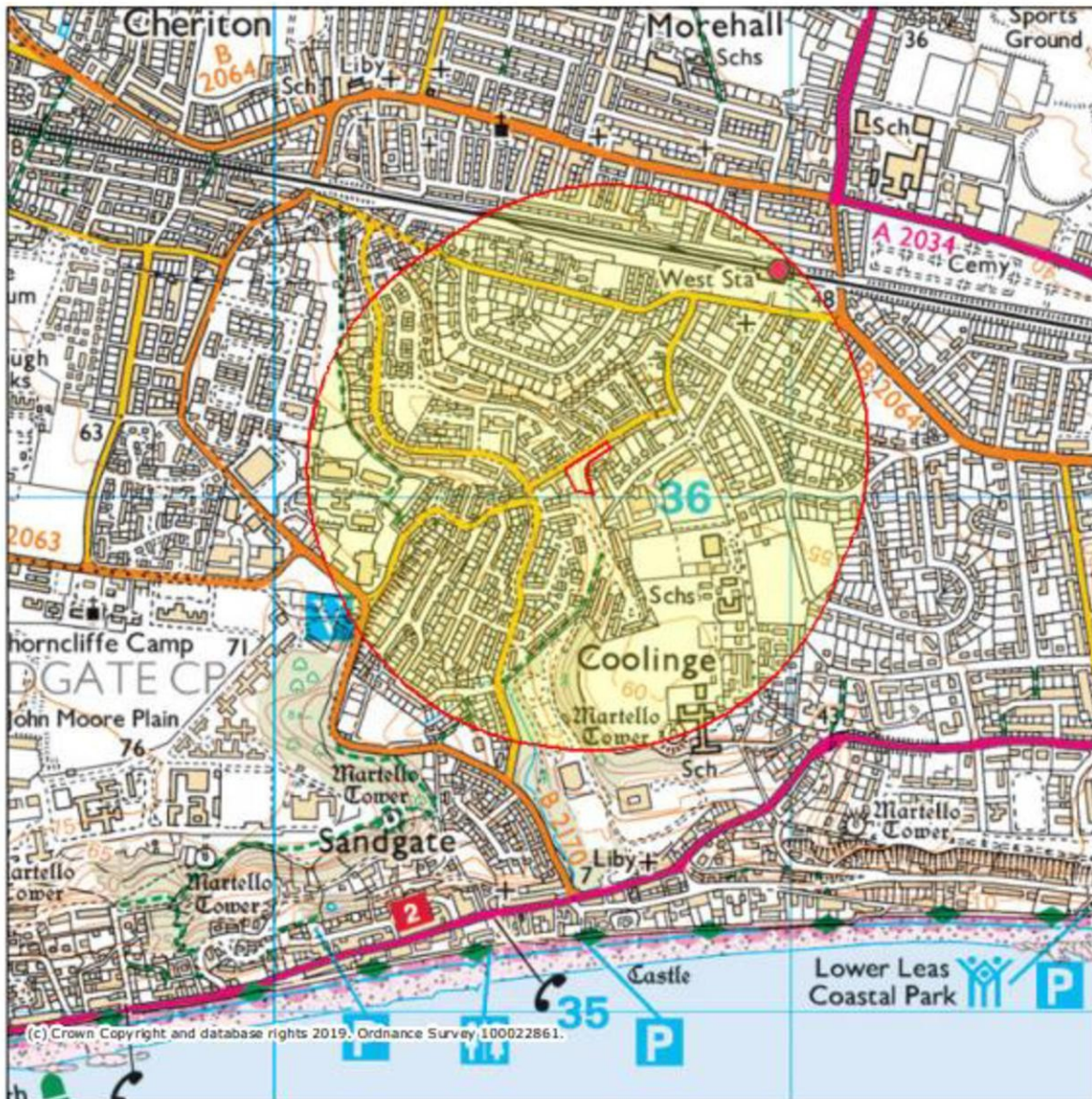
The 'Great Crested Newt Mitigation Guidelines' (English Nature 2001) state the following: *'Great crested newts have been found to move over considerable distances (up to 1.3km from breeding sites). However, the vast majority of newts will inhabit an area much closer to the pond, and the exact distribution 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.'*

No ponds were present on site or within 500m. Thus, due to the paucity of ponds in the general area and the distance to the nearest pond, it is judged unlikely that great crested newts would be present on site.

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<sup>5</sup> Likelihood of Presence Scores are described using the following categories: Unlikely<Possible<Likely<High  
 Preliminary Ecological Appraisal  
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 KB Ecology Ltd- February 2019 6/23

Figure 5 - 500m radius



### 3.4 Reptiles

The KRAG datasearch revealed that the closest recorded reptile is Viviparous Lizard, located at Sandgate, 0.2 km to the S (record id: 67592). The likelihood of reptiles to be present *in the overall area* is judged as per table below:

	Likelihood of Presence	
	Score	Dist (km)
Viviparous Lizard:	HIGH	0.20
Slow-worm:	HIGH	0.20
Sand Lizard:	<i>unlikely</i>	29.47
Grass Snake:	Possible	2.31
Adder:	Possible	1.03
Smooth Snake:	n/a	n/a

Reptile survey effort in local area is considered to be above average.

The areas of unmanaged scrub and grass offer suitable habitat for reptiles (the recent machinery movement on site could have impacted the population, should they indeed be present).

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 high potential to support breeding birds within the trees and scrub.

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

It is considered that the site has no potential to support the hazel dormouse *Muscardinus avellanarius* due to lack of connection to suitable woodlands.

### 3.7 Badger

A number of burrows are present on site, which have been identified as being part of a main badger sett by 'Martin Newcombe Wildlife Management Consultancy' in July 2018. The present report will not go into any more details about badgers and the reader is referred to

the report 'LAND AT ROMNEY AVENUE –FOLKESTONE – KENT - BADGER SURVEY- BY MARTIN NEWCOMBE - 18th July 2018 - D134. Folkestone (TR206360).R'

However, it should be noted that one burrow had been part excavated in the lower slope and a dead fox was present near-by. It seems that this was a burrow identified as 'Level 0 activity. Sett entrance not in use and either filled with soil, or woody debris and leaves.'

The Protection of Badgers Act 1992 was introduced in recognition of the additional threats that badgers face from illegal badger digging and baiting. Under the Act, it is an offence inter alia to:

- Wilfully kill, injure or take a badger, or to attempt to do so;
- Cruelly ill-treat a badger; or
- Intentionally or recklessly interfere with a badger sett by (a) damaging a sett or any part of one; (b) destroying a sett; (c) obstructing access to or any entrance of a sett; (d) causing a dog to enter a sett; or (e) disturbing a badger when it is occupying a sett.

For more information, guidance from Natural England is available at

<https://www.gov.uk/badgers-protection-surveys-and-licences>

### **3.8 Bats**

None of the trees had features of high suitability for roosting bats (i.e. cavities) but a number had thick ivy underneath which single bats could be roosting in the active season. Street lighting is present along the road and thus the site is only expected to be used by foraging and commuting of non- light sensitive bat species.

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.

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 website<sup>6</sup>:

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<sup>6</sup> 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>



01/02/2019

Site Check Report Report generated on Fri Feb 01 2019  
You selected the location: Centroid Grid Ref: TR20583605  
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 2. IF YES, CHECK THE CORRESPONDING DESCRIPTION(S) BELOW. LPA SHOULD CONSULT THE CATEGORIES BELOW? NATURAL ENGLAND ON LIKELY RISKS FROM THE FOLLOWING:**

**All Planning Applications**

**Infrastructure**

Pipelines, pylons and overhead cables. Any transport proposal including road, rail and by water (excluding routine maintenance). Airports, helipads and other aviation proposals.

**Wind & Solar Energy**

**Minerals, Oil & Gas**

Planning applications for quarries, including: new proposals. Review of Minerals Permissions (ROMP), extensions, variations to conditions etc. Oil & gas exploration/extraction.

**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 > 500m<sup>2</sup>, slurry lagoons > 200m<sup>2</sup> & 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**

**Composting**

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

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**

Large infrastructure such as warehousing / industry where total net additional gross internal floorspace following development is 1,000m<sup>2</sup> or more.

**Notes**

**GUIDANCE - How to use the Impact Risk Zones**

[/Metadata\\_for\\_magic/SSSI IRZ 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

Should reptiles be present, the proposal would result in killing and injuring of reptiles and loss of habitat. It is thus necessary to undertake further surveys to fully understand the impact.

The survey would consist of placing artificial refuges (i.e. 0.5 m<sup>2</sup> tins or roofing felt) in areas of suitable reptile habitat and leaving them in place for at least 1 week prior to the survey commencing. The refuges would be checked on seven separate occasions, over four weeks at least, to establish presence / likely absence during suitable weather conditions (i.e. cool weather with no heavy rain but sunny intervals between showers, and ambient air temperatures between 10-20°C).

Reptile surveys can be undertaken between March and October, the optimal months being April, May, June and September. Mid-summer temperatures and general activity levels are usually too high for refuges to be successfully used (surveys are highly weather dependent).

#### **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 inclusive<sup>7</sup>) or only after a survey has confirmed the absence of nesting birds<sup>8</sup>.

#### **4.6 Hazel Dormouse**

No further work is recommended with regards to dormice.

#### **4.7 Badger**

The advice given in the report by 'Martin Newcombe Wildlife Management Consultancy' in July 2018 should be followed.

#### **4.8 Bats**

The ivy present on trees to be removed should be cut at its base ASAP. Once it has died off, it should be removed from the trees and the trees should be re-assessed for suitability for roosting bats at this stage, prior to cutting.

#### **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).

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:

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<sup>7</sup> It should be noted however that certain species are known to breed throughout the year (e.g. collard dove) and remain protected.

<sup>8</sup> 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.

- Provision of hedgehog nesting boxes<sup>9</sup>.
- Provision of ready-made bird boxes (sparrow terrace timber boxes or house martin nests for instance<sup>10</sup> or mix of open-fronted and hole-nesting boxes and constructed from woodcrete)<sup>11</sup>.
- Provision of ready-made bat boxes (such as Kent Bat Box<sup>12</sup>, Habibat<sup>13</sup>, EcoSurv Bat Box or Schwegler Bat tube<sup>14</sup>)<sup>15</sup>.
- Establish climbing plants on walls and other vertical structures<sup>16</sup>.
- Establish wildflower plug/bulb planting in amenity grassland and private gardens<sup>17</sup>.
- Establish Fruit Espaliers<sup>18</sup>.

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/> ).

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<sup>9</sup> <http://www.hedgehogstreet.org/pages/hedgehog-homes.html>

<sup>10</sup> to benefit these declining urban bird species

<sup>11</sup> In order not to damage trees, free-hanging nesting boxes can be hung from a loop or hook over a branch. This method avoids the use of nails. It is also helpful to avoid predation.

<sup>12</sup> [http://www.teach-organic.org.uk/uploadedfiles/CMS/pdf/bat\\_box.pdf](http://www.teach-organic.org.uk/uploadedfiles/CMS/pdf/bat_box.pdf)

<sup>13</sup> Habibat is a large, solid bat box made of concrete with an internal roost space, which can be incorporated into the fabric of a building <http://www.habibat.co.uk/>

<sup>14</sup> [http://www.bats.org.uk/publications\\_download.php/1109/BCT\\_BatBoxProductList\\_v4a.pdf](http://www.bats.org.uk/publications_download.php/1109/BCT_BatBoxProductList_v4a.pdf)  
[http://www.bats.org.uk/pages/accommodating\\_bats\\_in\\_buildings.html](http://www.bats.org.uk/pages/accommodating_bats_in_buildings.html) <http://www.habibat.co.uk/about-habibat>

<sup>15</sup> It is highly recommended to install bird boxes near bat boxes to avoid birds from using the bat boxes to the detriment to bats.

<sup>16</sup> 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>

<sup>17</sup> 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*

<sup>18</sup> <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.<sup>19</sup>

### 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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<sup>19</sup> [http://www.jncc.gov.uk/pdf/pub90\\_HandbookforPhase1HabitatSurveyA5.pdf](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	The Wildlife and Countryside Act 1981 (as amended) & The Conservation of Habitats and Species Regulations 2017. These make it an offence to: <ul style="list-style-type: none"> <li>• Deliberately or recklessly capture, injure or kill any wild animal of a European protected species</li> <li>• Deliberately or recklessly disturb wild animals of any such species</li> <li>• Damage or destroy their breeding site or resting place</li> <li>• 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.</li> </ul> Disturbance of animals includes in particular any disturbance which is likely <ul style="list-style-type: none"> <li>• to impair their ability:                             <ul style="list-style-type: none"> <li>-to survive, to breed or reproduce, or to rear or nurture their young, or</li> <li>-in the case of animals of a hibernating or migratory species, to hibernate or migrate;</li> </ul> </li> <li>• to affect significantly the local distribution or abundance of the species to which they belong.</li> </ul>
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	<p>The Wildlife and Countryside Act 1981 (as amended). This makes it an offence to:</p> <ul style="list-style-type: none"> <li>• intentionally, or recklessly, kill or injure any of the above species, and/or;</li> <li>• 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.</li> </ul>
Badgers	<p>The Protection of Badgers Act 1992. This makes it an offence to:</p> <ul style="list-style-type: none"> <li>• Willfully killing, injures or takes, or attempts to kill, injure or take, a badger.</li> <li>• 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.</li> <li>• 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.</li> <li>• Selling or offering for sale a live badger, having possession or control of a live badger.</li> <li>• Marking a badger or attaching any ring, tag, or other marking device to a badger.</li> </ul>

### **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](http://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](http://www.jncc.gov.uk/PDF/waca1981_schedule1.pdf)
- Animals [www.jncc.gov.uk/page-1815](http://www.jncc.gov.uk/page-1815)
- Plants [www.jncc.gov.uk/page-1816](http://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](http://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](http://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](http://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").**

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/uksi\\_20100490\\_en\\_1](http://www.opsi.gov.uk/si/si2010/uksi_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.

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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 these 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\_6506



IMG\_6507



IMG\_6508



IMG\_6509



IMG\_6511



IMG\_6512



IMG\_6513



IMG\_6514



IMG\_6515



IMG\_6516



IMG\_6517



IMG\_6518



IMG\_6519



IMG\_6520



IMG\_6521



IMG\_6522



IMG\_6523



IMG\_6524



IMG\_6525



IMG\_6526



IMG\_6527



IMG\_6528



IMG\_6529



IMG\_6530