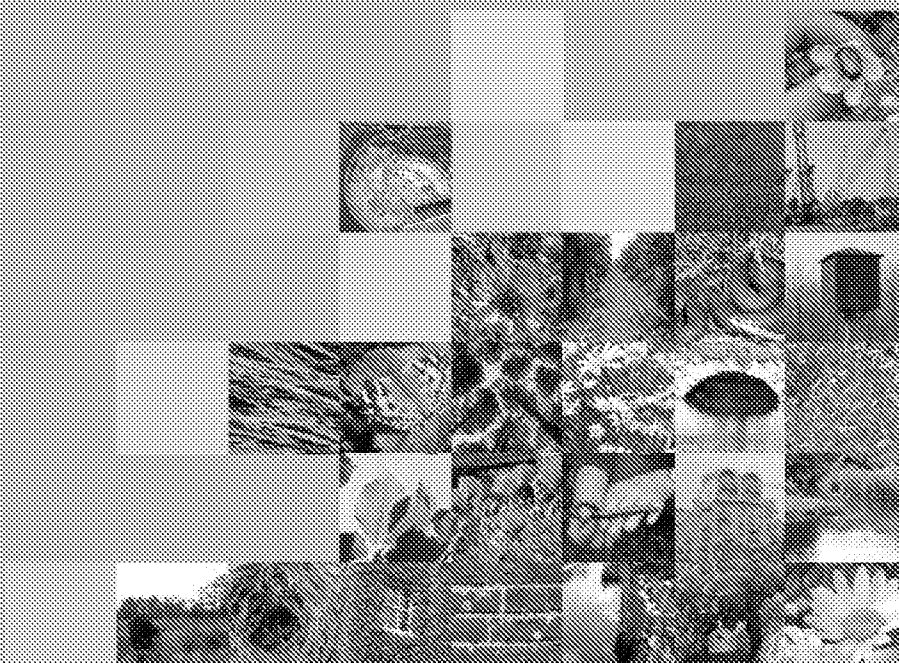




The Vinery A27 Works, Poling West Sussex

Walkover Survey

Fargro Ltd

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1 Introduction

BACKGROUND

- 1.1 The Ecology Consultancy was commissioned by Fargro Ltd to carry out an ecological scoping survey at the A27 works area that is to provide a larger access into The Vinery, Poling, West Sussex.
- 1.2 The aim of the survey was to identify the broad habitat types present at the site and the potential of these habitats to support protected species, in order to identify any ecological constraints to future development works.
- 1.3 An extended Phase 1 habitat survey (The Ecology consultancy 2012a), a reptile survey (The Ecology Consultancy, 2012b) and a great crested newt survey (The Ecology consultancy, 2013) have been carried out at The Vinery site since 2012. No reptiles were recorded during the survey, however a single great crested newt was recorded under a reptile felt. The great crested newt pond surveys recorded a medium population of great crested newts in a pond 400m to the west of the site. As such, a great crested newt European Protected Species Mitigation (EPSM) licence was granted by Natural England to capture great crested newts from the development area and release them to the adjacent receptor site. No great crested newts were captured during the trapping programme, however.

SCOPE OF REPORT

- 1.4 This report details the results of the ecological scoping assessment and provides recommendations to minimise the risk of negatively impacting any legally protected and/or ecologically notable species.

SITE CONTEXT AND STATUS

- 1.5 The survey area comprises an area of grassland, scrub and hard-standing at the entrance to The Vinery, on the westbound carriageway of A27. The grid reference for the centre of the site is TQ053 057. The site is situated in a largely rural landscape, with residential and commercial buildings adjacent.
- 1.6 Within the wider surrounds, parcels of ancient woodland are present to the north, north east and east, the closest being an unnamed parcel on the opposite side of the A27 dual carriageway to the site.

DESCRIPTION OF THE DEVELOPMENT

- 1.7 The proposed works for the site involve improvement works for the access road into The Vinery from the westbound carriageway of the A27. The increased splay is necessary to facilitate the development of a new business premises for Fargro Ltd. The proposals involve the removal and/or the disturbance to the semi-natural habitats within the works area.

2 Methodology

OVERVIEW

- 2.1 An ecological scoping assessment of the survey area was carried out on 22nd July 2014. A protected species assessment was conducted concurrently, assessing the potential presence of protected species and recording any field signs.

HABITAT ASSESSMENT

- 2.2 Brief descriptions of the principle habitat types present within the site were made following standard Phase 1 habitat survey methodology (JNCC 2010). This approach is designed to identify broad habitat types at a site and to assist in providing an overview of the ecological interest at a site. It is generally the most widely used and professionally recognised method for initial ecological site appraisal.
- 2.3 The potential of the site to provide habitat for protected species was assessed using field observations made at the same time as the habitat survey. The site was inspected for indications of the presence of legally protected species as follows:
- » Inspection for the presence of features in and on trees indicating potential for roosting bats, such as fissures, holes, loose bark and ivy *Hedera helix*, as well as any direct evidence of the presence of roosting bats staining, droppings and feeding remains;
 - » Scrub/grassland mosaic and potential hibernation sites suitable for great crested newts *Triturus cristatus* and common reptile species;
 - » Assessment of the presence of nesting habitat suitable for breeding birds, such as mature trees, dense scrub, hedgerows, and recording of evidence of previous nesting, including old nests, faecal marks, etc; and
 - » Inspection for the presence of badger *Meles meles* setts and field signs, such as pathways, latrines, snuffle holes and scratching posts. Assessment criteria - buildings
- 2.4 The likelihood of occurrence is ranked as follows and relies on the findings of the current survey and an evaluation of existing data.
- » Negligible – while presence cannot be absolutely discounted, the site includes very limited or poor quality habitat for a particular species or species group. Surrounding

habitat considered unlikely to support wider populations of a species/species group. The site may also be outside or peripheral to known national range for a species.

- » Low – on-site habitat of poor to moderate quality for a given species/species group but presence cannot be discounted on the basis of national distribution, nature of surrounding habitats, habitat fragmentation, recent on-site disturbance, etc.
- » Moderate – on-site habitat of moderate quality, providing all of the known key requirements of given species/species group and suitable surrounding habitat. Factors limiting the likelihood of occurrence may include small habitat area, habitat severance and disturbance.
- » High – on-site habitat of high quality for given a species/species group. The site is within/peripheral to a national or regional stronghold. Good quality surrounding habitat and good connectivity.
- » Present – presence confirmed from the current survey or by recent, confirmed records.

LIMITATIONS

- 2.5 It should be noted that whilst every effort has been made to provide a comprehensive description of the site, no investigation can ensure the complete characterisation of the natural environment. Plant species with an earlier phenology may have been under-recorded, meaning some plant species were unidentifiable and others were not visible at this time of year. This scoping survey does not constitute a full preliminary ecological appraisal or a full botanical survey.
- 2.6 The protected species assessment provides a preliminary view of the likelihood of protected species occurring on the site. This is based on the suitability of the habitat and any direct evidence on the site. It should not be taken as providing a full and definitive survey of any species group. It is only valid at the time the survey was carried out.
- 2.7 Additional surveys may be recommended if, on the basis of the preliminary assessment or during subsequent surveys, it is considered reasonably likely that protected species may be present (see Section 4).

3 Results

HABITAT ASSESSMENT

Overview

- 3.1 The broad habitat types within the site included: scattered trees, dense scrub, semi-improved grassland, tall ruderal vegetation, tall ruderal vegetation/semi-improved grassland mosaic, hedgerow, amenity grassland, introduced shrub and hard standing.
- 3.2 The habitats surrounding the site comprised roads and hard-standing, industrial units, residential houses and gardens, scattered trees, dense scrub and areas of roadside verge and vegetation.
- 3.3 Photographs of the site are provided in Appendix 2 and a habitat map can be found in Appendix 1. Scientific names are given after the first mention of a species, thereafter, common names only are used. Nomenclature follows Stace (2010) for vascular plant species.

Scattered trees

- 3.4 A small number of semi-mature trees was present within the dense scrub, which included hawthorn *Crataegus monogyna*, and field maple *Acer campestre*. Two mature oaks *Quercus robur* were also present, locations of which are shown on the map in Appendix 1.

Dense Scrub

- 3.5 Dense scrub was present adjacent to the tall ruderal vegetation and semi-improved grassland in the eastern section of the site, which was dominated by bramble *Rubus fruticosus* agg. Hawthorn, Elder *Sambucus nigra*, and immature specimens of field maple, oak, ash *Fraxinus excelsior*, plumb *Prunus* sp, and beech *Fagus sylvatica* were also present.
- 3.6 Beneath the scrub was an under storey of ruderal species such as nettle *Urtica dioica*, bristly ox-tongue *Helminthotheca echioides* and hedge bindweed *Calystegia sepium*.

Semi-improved grassland

- 3.7 Poor semi-improved grassland was present along the northern section of the site, along the road verge and footpath. The grassland comprised common couch *Elymus repens*, cock's-foot *Dactylis glomerata* and perennial rye grass *Lolium perenne*. Other species within the grassland included cinquefoil *Potentilla sp*, ribwort plantain *Plantago lanceolata*, yarrow *Acillea millifolium* and common knapweed *Centaurea nigra*. The grassland appeared to be frequently mown or cut as the sward was short and clippings were present.

Tall Ruderal

- 3.8 A small section of tall ruderal vegetation was present adjacent to the scrub and the footpath and comprised nettles with bristly ox tongue, dock *Rumex sp* and hedge bindweed.

Tall Ruderal/Semi-improved Grassland Mosaic

- 3.9 A mosaic of tall ruderal vegetation and semi-improved grassland was present to the north of the footpath, in the eastern section of the site. Bristly ox tongue and perennial rye grass were dominant, with ribwort plantain.

Amenity grassland

- 3.10 Mown amenity grassland was present in the south-western section of the site, and comprised dry, dead grasses that were not possible to identify, red clover *Trifolium pratense*, ribwort plantain, and creeping buttercup *Ranunculus repens*. The grassland was short, and appeared to have been recently mown.

Introduced shrub

- 3.11 A small area of introduced shrub was present within the site boundary, in a garden of a residential property adjacent to The Vinery. Access to this garden had not been obtained so species identification was not possible.

Hard-standing

- 3.12 Hard-standing within the survey area consisted of a footpath, the western bound carriageway of the A27, the access road into The Vinery and the driveway to a residential property.

PROTECTED SPECIES ASSESSMENT

3.13 The habitats at the site were evaluated as to their likelihood to provide sheltering, roosting, nesting and foraging habitat for the following species:

- ✧ Bats;
- ✧ Breeding birds;
- ✧ Reptiles; and
- ✧ Badgers

3.14 These species were selected for further consideration based on the presence of potentially suitable habitat on-site or within close proximity to the site. The results of the field survey are presented in Table 1 below. The relevant legislation relating to protected species is presented within Appendix 3.

Table 1: Assessment of potential presence of protected and/or species of principal importance for biodiversity within the survey area

Species	Main legislation and policy (see Appendix 3)	Reason for consideration	Likelihood of occurrence
Bats	Schedule 5 of the Wildlife and Countryside Act, 1981 (as amended). Schedule 2 of the Conservation of Habitats and Species Regulations 2010.	Several semi-mature/mature trees are present within the site, providing opportunities for bat roosting. Grassland and trees/scrub provide suitable commuting/foraging habitat. The nearest off-site woodlands are connected to the site by tree lines.	LOW (roosting): Several of the on-site trees were mature however, these supported limited features considered suitable for use by roosting bats. MODERATE (foraging): There is potential for bats to use habitats present on-site for commuting/foraging between suitable off-site habitats within the wider surrounds.
Breeding birds	Wildlife and Countryside Act 1981 (as amended).	Trees and scrub within the site are present on-site and may provide foraging and breeding habitat.	HIGH: The trees and areas of scrub within the site provide nesting and foraging opportunities for a range of common species such as robin <i>Erithacus rubecula</i> , blackbird <i>Turdus merula</i> and wren <i>Troglodytes troglodytes</i> .
Reptiles	Schedule 5 of the Wildlife and Countryside Act, 1981 (as amended).	The grassland, ruderal vegetation and scrub provide suitable hibernation, basking and foraging habitat for reptiles.	LOW: On-site habitats provide suitable hibernation, basking and foraging opportunities for widespread reptile species, however the site is highly disturbed as it is adjacent to a busy dual carriageway and footpath.
Badger	Protection of Badgers Act 1992.	Areas of scrub and grassland provide suitable foraging and commuting habitat for badger, and may conceal badger setts.	LOW: The site is limited in extent and isolated from woodland blocks to the north by the main road, with other woodland parcels located some distance away. No direct evidence of badger activity was observed during the survey.

4 Conclusions and Recommendations

CONCLUSIONS

- 4.1 The site comprised an area of scattered trees, dense scrub, grassland, tall ruderal vegetation and hard standing within a predominantly rural area, adjacent to the A27 dual carriageway.
- 4.2 Overall, the site was considered to provide Low potential for roosting bats, High potential for breeding birds, Low potential for reptiles, and Low potential for badgers. Bat potential is specifically associated with the two mature oak trees on the site.
- 4.3 As the works area is small, and the potential for protected species to be present is, with the exception of breeding birds, considered to be low, the works may be carried out using a combination of precautionary measures, careful habitat removal and timing.

RECOMMENDATIONS

Bats

- 4.4 Where possible, it is advised that the two mature oak trees on the site are retained, however it is not known whether this is feasible. If the trees are to be removed or part removed during the works, as a precaution they should be thoroughly inspected by a licenced bat ecologist prior to any removal works taking place. If the trees are to be retained, however, there should be no further constraints to the works with respect to bats.

Birds

- 4.5 To avoid negatively impacting breeding birds, the removal of areas of scrub and trees should take place outside the main breeding bird season, which is taken to run between March and July inclusive. If programming does not allow for this then a search for any nesting birds prior to vegetation clearance should be undertaken. This search should be carried by a suitably qualified ecologist and preceded by a bird survey carried out prior to any other contractors arriving on site. If any active nests are found they should be protected until such time as the young have fledged and left the nest. If any nesting birds are found at any time during clearance works, work should stop immediately and an ecologist consulted.

Reptiles

- 4.6 In order to protect reptiles at the site, areas of scrub, tall ruderal vegetation and grassland should be removed in two phases. The first phase should be carried out in

accordance with the recommendations made for breeding birds above. All vegetation should be cut to approximately 20cm above ground level, leaving any root systems and tree trunks intact. Vegetation should be maintained at this level until the second phase commences.

- 4.7 The second phase should be carried out in the active period for reptiles, which is taken to run from March to October inclusive, and should involve the cutting of vegetation to ground level and the removal of roost and stumps. The above works should be carried out using hand tools such as strimmers, brush cutters and chain saws. Vegetation should be maintained at ground level until works commence.

Badgers

- 4.8 It is recommended that any mammal burrows uncovered by the scrub clearance are inspected by an ecologist prior to any ground works taking place, for evidence of their current use by badgers. No ground works should take place until the ecologist is satisfied the badgers are absent from the works area.

References

Hundt L (2012) Bat Surveys. Good Practise Guidelines, 2nd edition. Bat Conservation Trust.

Her Majesty's Stationery Office (1981). The Wildlife and Countryside Act (WCA) (as amended). HMSO, London.

Her Majesty's Stationery Office (2010). The Conservation of Habitats and Species Regulations 2010. HMSO, London.

JNCC - Joint Nature Conservation Committee. (2010). Handbook for Phase 1 habitat survey - A technique for Environmental Audit. JNCC, Peterborough. [On-line]. Available from <http://www.jncc.gov.uk/page-2468> [Accessed: 28.07.2014]

Stace, C.A. (2010). New Flora of the British Isles (3rd Ed.). Cambridge University Press, Cambridge.

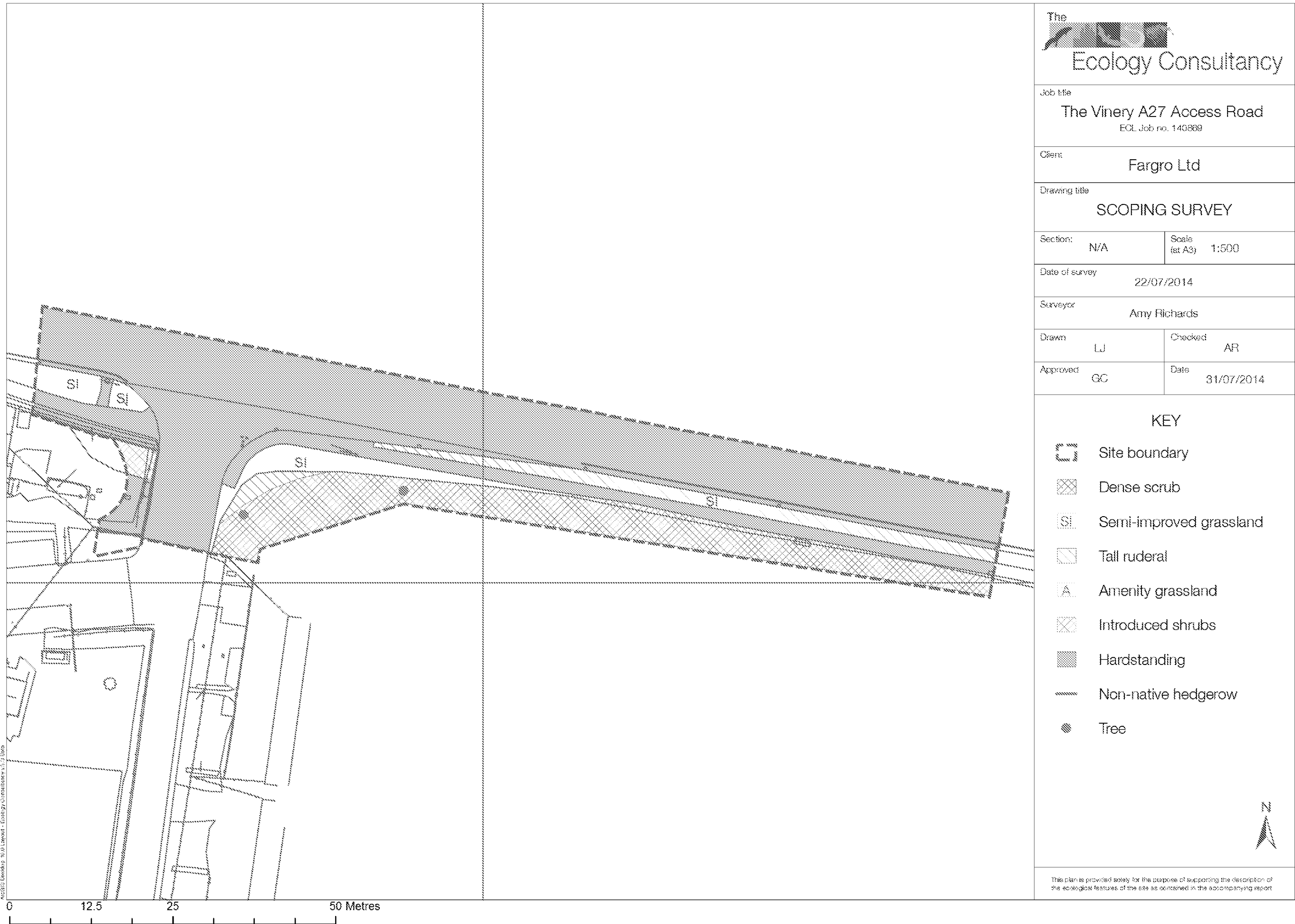
Mitchell-Jones, A.J. & McLeish, A.P. (2004) *The Bat Workers' Manual* 3rd Edition. Joint Nature Conservation Committee, Peterborough.

The Ecology Consultancy (2012a). *Initial Ecological Appraisal for The Vinery, Poling, West Sussex*. Unpublished report for Fargro. Lewes, East Sussex: The Ecology Consultancy.

The Ecology Consultancy (2012b). *Reptile Survey for The Vinery, Poling, West Sussex*. Unpublished report for Fargro. Lewes, East Sussex: The Ecology Consultancy.

The Ecology Consultancy (2013). *Great Crested Newt Survey for The Vinery, Poling, West Sussex*. Unpublished report for Fargro. Lewes, East Sussex: The Ecology Consultancy.

Appendix 1: Habitat Map



KEY

- Site boundary
- Dense scrub
- Semi-improved grassland
- Tall ruderal
- Amenity grassland
- Introduced shrubs
- Hardstanding
- Non-native hedgerow
- Tree

This plan is provided solely for the purpose of supporting the description of the ecological features of the site as contained in the accompanying report

Appendix 2: Photographs

Photograph 1

Looking west, the tall ruderal vegetation, dense scrub and mature oak tree



Photograph 2

Looking west, the tall ruderal vegetation and tall ruderal/semi-improved grassland mosaic.



Photograph 3

The semi-improved grassland and hedgerow.



Appendix 3: Legislation

Important Notice: This section contains details of legislation and planning policy applicable in Britain only (i.e. not including the Isle of Man, Northern Ireland, the Republic of Ireland or the Channel Islands) and 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.

A NATIONAL LEGISLATION AFFORDED TO SPECIES

The objective of the EC Habitats Directive¹ is to conserve the various species of plant and animal which are considered rare across Europe. The Directive is transposed into UK law by The Conservation of Habitats and Species Regulations 2010 (formerly The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended)) and The Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (as amended).

The Wildlife and Countryside Act 1981 (as amended) is a key piece of national legislation which implements the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention) and implements the species protection obligations of Council Directive 2009/147/EC (formerly 79/409/EEC) on the Conservation of Wild Birds (EC Birds Directive) in Great Britain.

Since the passing of the Wildlife & Countryside Act 1981, various amendments have been made, details of which can be found on www.opsi.gov.uk. Key amendments have been made through the Countryside and Rights of Way (CROW) Act (2000) and Nature Conservation (Scotland) Act 2004.

Other legislative Acts affording protection to wildlife and their habitats include:

- ✧ Deer Act 1991
- ✧ Countryside and Rights of Way (CROW) Act 2000
- ✧ Natural Environment & Rural Communities (NERC) Act 2006
- ✧ Protection of Badgers Act 1992
- ✧ Wild Mammals (Protection) Act 1996

¹ Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora

Species and species groups that are protected or otherwise regulated under the aforementioned domestic and European legislation, and that are most likely to be affected by development activities, include herpetofauna (amphibians and reptiles), badger, bats, birds, dormouse, invasive plant species, otter, plants, red squirrel, water vole and white clawed crayfish.

Explanatory notes relating to species protected under The Conservation of Habitats and Species Regulations 2010 (which includes smooth snake, sand lizard, great crested newt and natterjack toad), all bat species, otter, dormouse and some plant species) are given below. **These should be read in conjunction with the relevant species sections that follow.**

- ✧ In the Directive, the term ‘deliberate’ is interpreted as being somewhat wider than intentional and may be thought of as including an element of recklessness.
- ✧ The Conservation of Habitats and Species Regulations 2010 does not define the act of ‘migration’ and therefore, as a precaution, it is recommended that short distance movement of animals for e.g. foraging, breeding or dispersal purposes are also considered.
- ✧ In order to obtain a European Protected Species Mitigation (EPSM) licence, the application must demonstrate that it meets all of the following three ‘tests’: i) the action(s) are necessary for the purpose of preserving public health or safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequence of primary importance for the environment; ii) that there is no satisfactory alternative and iii) that the action authorised will not be detrimental to the maintenance of the species concerned at a favourable conservation status in their natural range.

Herpetofauna (Amphibians and Reptiles)

The sand lizard *Lacerta agilis*, smooth snake *Coronella austriaca*, natterjack toad *Epidalea calamita* and great crested newt *Triturus cristatus* receive full protection under The Conservation of Habitats and Species Regulations 2010 through their inclusion on Schedule 2. The pool frog *Pelophylax lessonae* is also afforded full protection under the same legislation. Regulation 41 prohibits:

- ✧ Deliberate killing, injuring or capturing of species listed on Schedule 2
- ✧ Deliberate disturbance of any Schedule 2 species as:
 - a) to impair their ability:
 - (i) to survive, breed, or reproduce, or to rear or nurture young;

- (ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate
 - b) to affect significantly the local distribution or abundance of the species
- ❖ Deliberate taking or destroying of the eggs of a Schedule 2 species
- ❖ Damage or destruction of a breeding site or resting place
- ❖ Keeping, transporting, selling, exchanging or offering for sale whether live or dead or of any part thereof.

With the exception of the pool frog, these species are also currently listed on Schedule 5 of the Wildlife and Countryside Act 1981 (as amended). Under this Act, they are additionally protected from:

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

Other native species of herpetofauna are protected solely under Schedule 5 of the Wildlife & Countryside Act 1981 (as amended). Species such as the adder *Vipera berus*, grass snake *Natrix natrix*, common lizard *Zootoca vivipara* and slow-worm *Anguis fragilis* are listed in respect to Section 9(1) & (5). For these species, it is prohibited to:

- Intentionally (or recklessly in Scotland) kill or injure these species
- Sell, offer or expose for sale, possess or transport for purpose of sale these species, or any part thereof.

Common frog *Rana temporaria*, common toad *Bufo bufo*, smooth newt *Lissotriton vulgaris* and palmate newt *L. helveticus* are listed in respect to Section 9(5) only which affords them protection against sale, offering or exposing for sale, possession or transport for the purpose of sale.

How is the legislation pertaining to herpetofauna liable to affect development works?

A European Protected Species (EPS) Licence issued by the relevant countryside agency (e.g. Natural England) will be required for works liable to affect the breeding sites or resting places of those amphibian and reptile species protected under The Conservation Habitats and Species Regulations 2010. A licence will also be required for operations liable to result in a level of disturbance which might impair their ability to undertake those activities mentioned above (e.g. survive, breed, rear young and hibernate). The licences are to allow derogation from the relevant legislation but also to enable appropriate mitigation measures to be put in place and their efficacy to be monitored.

Although not licensable, appropriate mitigation measures may also be required to prevent the intentional killing or injury of adder, grass snake, common lizard and slow worm, thus avoiding contravention of the Wildlife and Countryside Act 1981 (as amended).

Birds

With certain exceptions, all birds, their nests and eggs are protected under Sections 1-8 of the Wildlife and Countryside Act 1981 (as amended). Among other things, this makes it an offence to:

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

Certain species of bird, for example the barn owl, black redstart, hobby, bittern and kingfisher receive additional special protection under Schedule 1 of the Act and Annex 1 of the European Community Directive on the Conservation of Wild Birds (2009/147/EC). This affords them protection against:

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

How is the legislation pertaining to birds liable to affect development works?

To avoid contravention of the Wildlife and Countryside Act 1981 (as amended), works should be planned to avoid the possibility of killing or injuring any wild bird, or damaging or destroying their nests. The most effective way to reduce the likelihood of nest destruction in particular is to undertake work

outside the main bird nesting season which typically runs from March to August². Where this is not feasible, it will be necessary to have any areas of suitable habitat thoroughly checked for nests prior to vegetation clearance.

Those species of bird listed on Schedule 1 are additionally protected against disturbance during the nesting season. Thus, it will be necessary to ensure that no potentially disturbing works are undertaken in the vicinity of the nest. The most effective way to avoid disturbance is to postpone works until the young have fledged. If this is not feasible, it may be possible to maintain an appropriate buffer zone or standoff around the nest.

Badger

Badgers *Meles meles* receive protection under The Protection of Badgers Act 1992 which consolidates the previous Badger Acts of 1973 and 1991. The Act makes it an offence to:

- Wilfully kill, injure, take, or attempt to kill, injure or take a badger
- Cruelly ill-treat a badger, including use of tongs and digging
- Possess or control a dead badger or any part thereof
- Intentionally or recklessly damage, destroy or obstruct access to a badger sett³ or any part thereof
- Intentionally or recklessly disturb⁴ a badger when it is occupying a badger sett

² It should be noted that this is the main breeding period. Breeding activity may occur outwith this period (depending on the particular species and geographical location of the site) and thus due care and attention should be given when undertaking potentially disturbing works at any time of year.

³ A badger sett is defined in the legislation as *"any structure or place which displays signs indicating current use by a badger"*. This includes seasonally used setts. Natural England (2009) have issued guidance on what is likely to constitute current use of a badger sett: www.naturalengland.org.uk/Images/WMLG17_tcm6-11815.pdf

⁴ For guidance on what constitutes disturbance and other licensing queries, see Natural England (2007) Badgers & Development: A Guide to Best Practice and Licensing. www.naturalengland.org.uk/Images/badgers-dev-guidance_tcm6-4057.pdf, Natural England (2009) Interpretation of 'Disturbance' in relation to badgers occupying a sett www.naturalengland.org.uk/Images/WMLG16_tcm6-11814.pdf, Scottish Natural Heritage (2002) Badgers & Development. www.snh.org.uk/publications/online/wildlife/badgersanddevelopment/default.asp and Countryside Council for Wales (undated) Badgers: A Guide for Developers. www.ccw.gov.uk.

- Intentionally or recklessly cause a dog to enter a badger sett
- Sell or offers for sale, possesses or has under his control, a live badger

How is the legislation pertaining to badgers liable to affect development works?

A Development Licence⁵ will be required from the relevant countryside agency (e.g. Natural England) for any development works liable to affect an active badger sett, or to disturb badgers whilst in the sett. Depending on the nature of the works and the specifics of the sett and its environs, badgers could be disturbed by work near the sett even if there is no direct interference or damage to the sett itself. The countryside agencies have issued guidelines on what constitutes a licensable activity. N.B. there is no provision in law for the capture of badgers for development purposes and therefore it is not possible to obtain a licence to translocate badgers from one area to another.

Bats

All species of bat are fully protected under The Conservation of Habitats and Species Regulations 2010 through their inclusion on Schedule 2. Regulation 41 prohibits:

- ✧ Deliberate killing, injuring or capturing of Schedule 2 species (e.g. all bats)
- ✧ Deliberate disturbance of bat species as:
 - a) to impair their ability:
 - (i) to survive, breed, or reproduce, or to rear or nurture young;
 - (ii) to hibernate or migrate³
 - b) to affect significantly the local distribution or abundance of the species
- ✧ Damage or destruction of a breeding site or resting place
- ✧ Keeping, transporting, selling, exchanging or offering for sale whether live or dead or of any part thereof.

Bats are also currently protected under the Wildlife and Countryside Act 1981 (as amended) through their inclusion on Schedule 5. Under this Act, they are additionally protected from:

- ✧ Intentional or reckless disturbance (at any level)

⁵ Natural England will only consider issuing a licence where detailed planning permission (if applicable to operation) has already been granted

- ❖ Intentional or reckless obstruction of access to any place of shelter or protection
- ❖ Selling, offering or exposing for sale, possession or transporting for purpose of sale.

How is the legislation pertaining to bats liable to affect development works?

A European Protected Species (EPS) Licence issued by the relevant countryside agency (e.g. Natural England) will be required for works liable to affect a bat roost or for operations likely to result in a level of disturbance which might impair their ability to undertake those activities mentioned above (e.g. survive, breed, rear young and hibernate). The licence is to allow derogation from the relevant legislation but also to enable appropriate mitigation measures to be put in place and their efficacy to be monitored.

Though there is no case law to date, the legislation may also be interpreted such that, in certain circumstances, important foraging areas and/or commuting routes can be regarded as being afforded *de facto* protection, for example, where it can be proven that the continued usage of such areas is crucial to maintaining the integrity and long-term viability of a bat roost⁶.

⁶ Garland & Markham (2008) Is important bat foraging and commuting habitat legally protected? Mammal News, No. 150. The Mammal Society, Southampton.



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