

Preliminary Ecological Appraisal

Pizza Hut Redevelopment, Arun Retail Park, Shripney Road,
Bognor Regis (1006360)

January 2022

1. INTRODUCTION

- 1.1. Aspect Ecology was commissioned by BBC Pension Trust Ltd in September 2021 to undertake a Preliminary Ecological Appraisal in respect of proposed works to an existing Pizza Hut located in Arun Retail Park, Shripney Road, Bognor Regis, centred at grid reference SU 94101 00813. The proposals are for minor external alterations to the existing building associated with the change of use from Class E Restaurant to Sui Generis (consisting of a coffee shop / restaurant selling food and drink for consumption on and off the premises), alterations to car park (including the creation of a drive-thru lane, relocation of cycle hoops, new pedestrian crossings, and the reduction in the number of car parking spaces), relocation of footpath, removal of 4 x TPO trees (to be replaced), landscaping, and associated works.
- 1.2. The following report provides an appraisal of the potential ecological effects of the proposals, further survey requirements (where relevant), and scope of ecological mitigation for the proposed works. Given the very limited ecological interest present within the site, this PEA has been based solely on desktop information.
- 1.3. The site comprises an existing Pizza Hut restaurant and associated parking, access and soft landscaping. The site is surrounded by existing areas of parking and buildings associated with the other units within the retail park, and by Shripney Road.

2. METHODOLOGY

Desktop Study

- 2.1. In order to compile background information on the site and its immediate surroundings background data was obtained from the Multi-Agency Geographic Information for the Countryside (MAGIC) database, managed by Natural England. This involved a search for any statutory ecological designations within 1km of the site¹. The MAGIC database was also searched to identify the known presence of any Priority Habitats within or adjacent the site.
- 2.2. In addition, the Woodland Trust database was searched for any records of ancient, veteran or notable trees within or adjacent to the site. Furthermore, existing online aerial photography and Ordnance Survey mapping was reviewed for the site and surrounding area. A review was also carried out of a number of project-specific documents and drawings, including Aspect Arboriculture's 'Tree Protection Plan' and Aspect Landscape Planning's 'Landscape Plan', both dated January 2022.

¹ In accordance with Appendix 2 of CIEEM (2017) Guidelines for Preliminary Ecological Appraisal, Second Edition

Ecological Evaluation Methodology

- 2.3. The evaluation of ecological features and resources is based on professional judgement whilst also drawing on the latest available industry guidance and research. The approach taken in this report is based on that described by the Chartered Institute of Ecology and Environmental Management (CIEEM, 2018)², which involves identifying 'important ecological features' within a defined geographical context (i.e. international, national, regional, county, district, local or site importance), see Appendix 6360/1 for further details.

National Policy

- 2.4. The National Planning Policy Framework (NPPF)³ describes the Government's national policies on 'conserving and enhancing the natural environment' (Chapter 15). NPPF is accompanied by Planning Practice Guidance on 'Biodiversity, ecosystems and green infrastructure' and ODPM Circular 06/2005⁴.
- 2.5. The approach to dealing with biodiversity in the context of planning applications is set out at Paragraph 180:

'When determining planning applications, local planning authorities should apply the following principles:

- a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;.....'*

- 2.6. The above approach encapsulates the 'mitigation hierarchy' described in British Standard BS 42020:2019⁵ which involves the step-wise process of avoidance, mitigation, compensation and enhancement, proportionate to the predicted degree of risk to biodiversity and to the nature and scale of the proposed development.

3. LOCAL POLICY

- 3.1. Local policy is set out within the Adoption Arun Local Plan 2011-2031, adopted in July 2018. Of relevance to ecology, the Arun Local Plan includes **Policy ENV SP1** considering the natural environment, **Policy ENV DM1**, which relates to 'designated Sites of biodiversity or geological importance', **Policy ENV DM2** which is specifically concerned with Pagham Harbour Special Protection Area (SPA) and Ramsar site, **Policy ENV DM3** which relates to Biodiversity Opportunity Areas, **Policy ENV DM4** which is concerned with the protection of trees, and **Policy ENV DM5** in relation to 'development and biodiversity'. Policy ENV DM5 states that *'Development schemes shall, in the first instance, seek to achieve a net gain in biodiversity and protect existing habitats on site'*.

4. ECOLOGICAL DESIGNATIONS⁶

Statutory Designations

- 4.1. The desktop study confirms the site is not subject to or adjacent any statutory ecological designations. The nearest statutory designation is the Brooks Local Nature Reserve (LNR), located approximately 0.5km north-west of the site. The site is located approximately 5.6km north-east of Pagham Harbour SPA and Ramsar site, however the proposals would not result

² CIEEM (2018) 'Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and Marine', ver. 1.1

³ Ministry of Housing, Communities & Local Government (2021) 'National Planning Policy Framework'

⁴ ODPM (2006) 'Circular 06/2005: Planning for Biodiversity and Geological Conservation – A Guide to Good Practice'

⁵ British Standards Institution (2013) 'Biodiversity – Code of practice for planning and development', BS 42020:2019

⁶ See Appendix 6360/2 for mapping of nearby statutory ecological designations

in increased recreational disturbance to this designation and no significant effects on the interest features are likely. Given the nature and scale of the proposals, and physical separation involved, no adverse effects on the LNR, or any other statutory designations, are anticipated.

Non-statutory Designations

- 4.2. Reference to the Arun Local Plan Policy Map indicates that the site is not subject to, or adjacent, any non-statutory ecological designations, e.g. Sites of Nature Conservation Importance (SNCI). Given the nature and scale of the proposals, no non-statutory designations are likely to be affected by the proposals.

5. HABITATS

- 5.1. Based on a review of aerial imagery, site photographs, and existing survey drawings and mapping, the site appears to be dominated by an existing restaurant (Pizza Hut), surrounded by hard-surfaced parking areas and access roads. Small areas of ornamental planting and mown amenity grassland are also present, particularly to the east of the Pizza Hut building. Based on a review of the tree survey, the trees present on-site are early-mature to semi-mature Sycamore *Acer pseudoplatanus*, Crack Willow *Salix fragilis*, Horse Chestnut *Aesculus hippocastanum*, Whitebeam *Sorbus aria*, London Plane *Platanus x hispanica*, English Oak *Quercus robur* and Ash *Fraxinus excelsior*. None of the existing habitats present constitute important ecological features.

6. PROTECTED SPECIES⁷

- 6.1. Based on a desktop review of the habitats present within the site, the potential for protected species to be present can be summarised as follows.
- 6.2. **Bats – Roosting.** The existing Pizza Hut building is a red brick building with a glazed entrance porch (see Photograph 1). The building has a domed metal sheet roof. The building is located within an urban setting with flood lights present within the car park and on adjacent roads such that it is highly likely to be well illuminated at night. Overall, the building appears to offer negligible suitability for roosting bats.



Photograph 1. Existing pizza hut building

⁷ See Appendix 6248/3 for a summary of the legislation relevant to protected species

- 6.3. Tree T4 is an early-mature Horse Chestnut, found by the tree survey to suffer from a bleeding canker which has stripped the bark over approximately 3m of one stem (see Photograph 2). In addition, major deadwood was noted on the north side and dieback of branches was visible. From a review of the Tree Schedule and photographs, there appears to be minor potential for roosting bats under dead and lifted bark associated with T4, however these features are likely to be heavily impacted by street lighting. As such, T4 appears to provide negligible to low suitability to support roosting bats, in the form of single opportunistic individuals. Trees T5, T6 and T7, which would also be impacted by the proposals, appear to offer negligible suitability for roosting bats from a review of photographs and the Tree Schedule.



Photograph 2. Tree T4

- 6.4. **Bats – Commuting and foraging.** The site offers negligible suitable habitat for foraging or commuting bats, being dominated by buildings and hardstanding, with ornamental planting and a small number of trees, set within a well-lit urban environment.
- 6.5. **Other mammals.** Given the habitat types present, no other notable or protected mammals are likely to use the site.
- 6.6. **Great Crested Newts.** No waterbodies are recorded on OS mapping with 250m of the site. The habitats within the site provide negligible habitat for amphibians such as Great Crested Newt. As such, it is unlikely that any GCN populations, or other amphibians, would rely on the habitats present within the site.
- 6.7. **Reptiles.** The habitats within the site provide negligible habitat for reptiles, therefore it is unlikely that any reptile populations are present within the site.
- 6.8. **Birds.** The trees and amenity planting may potentially be suitable for nesting birds, however overall the site is not expected to be of significant ornithological interest.

7. PRELIMINARY APPRAISAL OF ECOLOGICAL EFFECTS

Designations

- 7.1. The site is not ecologically designated and no ecological designations in the surrounding area will be adversely affected by the proposals.

Habitats

- 7.2. The habitats within the site are of negligible ecological value, with no important ecological features present. The proposals will involve the loss of areas of amenity grassland and ornamental planting, and four early-mature/semi-mature trees. These losses are not of ecological significance and similar habitat will continue to be present post-development, including planting of new trees of the same species. Suitable protection measures will be implemented during site clearance / construction to safeguard retained trees (see Section 8 below).

Fauna

- 7.3. **Bats.** Tree T4 which is a Category U tree requiring felling for health and safety reasons has negligible to low suitability to support single crevice dwelling bats. Precautionary safeguards are therefore recommended during felling in the unlikely event any bats are present at this time. The site provides negligible suitability for commuting and foraging bats. Subject to the implementation of safeguards during felling of tree T4, no adverse effects on bats are anticipated.
- 7.4. **Birds.** Nesting birds may potentially use suitable habitat at the site, e.g. amenity planting and trees, during the relevant season (typically March to August inclusive). It is therefore proposed that suitable precautions are implemented to minimise the risk of harm to nesting birds (see Section 8 below).

8. MITIGATION MEASURES & ECOLOGICAL ENHANCEMENTS

- 8.1. In accordance with the mitigation hierarchy, a number of measures are set out below to avoid or minimise adverse effects on retained habitats and associated fauna. No compensation measures are required, however, in accordance with Policy ENV DM5 a number of ecological enhancements are proposed to deliver biodiversity net gain, which are appropriate and proportionate to the development.

Mitigation

- 8.2. **Tree protection.** All trees retained on-site and adjacent to the proposed development shall be protected during construction in line with standard arboriculturalist best practice (BS5837:2012) or as otherwise directed by a suitably competent arboriculturalist. This will involve the use of protective fencing where appropriate, or other methods appropriate to safeguard the root protection areas of retained trees. Refer to the Arboricultural Impact Assessment for further details.
- 8.3. **Roosting bat safeguards.** Tree T4 appears to have negligible to low suitability to support roosting bats in the form of crevices under lifted bark, albeit the presence of a roost is highly unlikely given the size of potential roost features and the urban well-lit environment. Prior to felling a competent ecologist will carry out an inspection of these features to confirm absence of roosting bats. The areas of lifted bark would then be removed immediately. In the unlikely event a roosting bat is discovered, works would need to cease and consideration given to the need for a Natural England mitigation licence.

- 8.4. **Nesting bird safeguards.** To avoid a potential offence under the relevant legislation, no clearance of suitable vegetation shall be undertaken during the bird-nesting season (1st March to 31st August inclusive). If this is not practicable, any potential nesting habitat to be removed shall first be checked by a competent ecologist in order to determine the location of any active nests. Any active nests identified will then need to be cordoned off (minimum 5m buffer) and protected until the end of the nesting season or until the birds have fledged. These checking surveys would need to be carried out no more than three days in advance of vegetation clearance.

Enhancements

- 8.5. Development of the site presents a number of opportunities to deliver benefits for biodiversity, namely:

- **Flowering lawn:** An area of flowering lawn will be created at the north-east of the site and areas of existing amenity grassland that are disturbed through construction activities will also be re-sown with a native flowering lawn mix (e.g. Emorsgate EL1 or equivalent), as shown on the Planting Plan (Aspect Landscape Planning, Drawing 7610.LP.1.0 Rev. C). The flowering lawn will contain slow growing grasses with a variety of wildflowers that respond well to regular short mowing. In addition, early spring bulbs will be sown within the new area of flowering lawn. This will provide an increase in botanical diversity compared to the existing amenity grassland.
- **Wildlife-friendly planting** – new areas of shrub planting are proposed as part of the landscape planting scheme, which includes a high proportion of plants for pollinators⁸ such as *Hebe*, *Lavandula*, *Skimmia*, etc. This will provide enhanced habitat for pollinating insects such as bees, beetles and hoverflies.

9. SUMMARY AND CONCLUSIONS

- 9.1. The site is not subject to any ecological designations and no designations are likely to be adversely affected by the proposed development. No important ecological features are present within the site and the proposed habitat losses are of negligible ecological significance. The site is unlikely to support any protected or notable faunal species, however the site provides some very limited opportunities for roosting bats and nesting birds, therefore appropriate safeguards will be adopted.
- 9.2. Subject to the implementation of appropriate avoidance and mitigation measures, it is concluded that the proposed development of the site would be unlikely to result in significant harm to biodiversity.

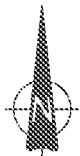
ENCLOSED:

- Site Location Plan
- Appendix 6360/1 – Evaluation Methodology
- Appendix 6360/2 – Desktop Study Results (relevant extracts)
- Appendix 6360/3 – Legislation Summary

⁸ RHS Plants for Pollinators

Plans

Site Location Plan



Copyright of this drawing is the property of Urban Edge Architecture Limited. It must not be reproduced or amended nor used in the execution of any works whether in conjunction with the proposed works for which it is prepared or otherwise without the express consent in writing of Urban Edge Architecture Limited.

Urban Edge Architecture Limited
One Scotgate Mews, Scotgate,
Stamford, Lincolnshire, PE9 2FX.

Tel. ++44 (0)1780 755 665
Fax. ++44 (0)1780 755 360

THIS DRAWING IS FOR PLANNING PURPOSES ONLY AND IS NOT TO BE USED FOR TENDER OR CONSTRUCTION

DRAWING TO BE READ IN COLOUR

SITE ADDRESS

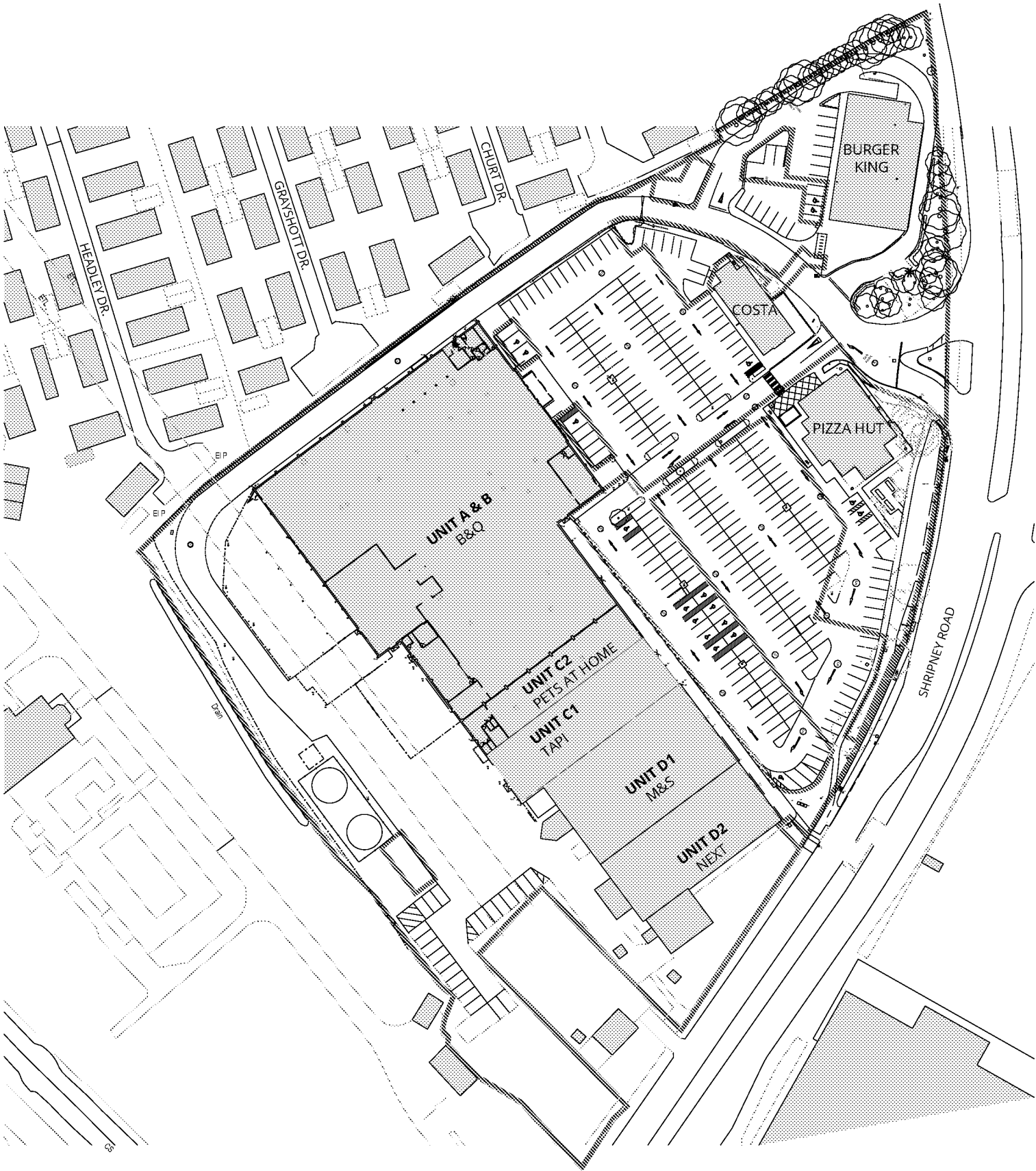
ARUN RETAIL PARK,
SHRIPNEY ROAD,
BOGNOR REGIS
PO22 9NF

KEY

- SITE OWNERSHIP BOUNDARY
- PLANNING APPLICATION AREAS OF WORK / SITE BOUNDARIES
4296.35 m2 / 46245 sq ft

Refer to detailed drawings for further information.

Refer to Landscape Architect & Highways consultant reports/drawings for additional information



Revision	Description	Date
----------	-------------	------

URBANEDGE
architecture / landscape / masterplanning

Client **BBC PENSION TRUST LIMITED**

Project **ARUN RP - BOGNOR REGIS DRIVE THRU & SITE LAYOUT AMENDMENTS**

Drawing **SITE LOCATION PLAN**

Scale	1:1250 @ A3	Drawn	RPP
-------	-------------	-------	-----

Date	JAN 2022	Revision	
------	----------	----------	--

Project No.	Drawing No.	Revision
2456	URB DT[08] 00 01	D00

SCALE 1:1250
SCALE 1:1

0m 10m 20m 40m 60m 80m 100m 120m
0mm 10mm 20mm 40mm 60mm 80mm 100mm

PLANNING

Appendix 6360/1:

Evaluation Methodology

Evaluation Methodology

1. The evaluation of ecological features and resources is based on professional judgement whilst also drawing on the latest available industry guidance and research. The approach taken in this report is based on that described by the Chartered Institute of Ecology and Environmental Management (CIEEM) 'Guidelines for Ecological Impact Assessment in the UK and Ireland' (2018)¹.

Importance of Ecological Features

2. Ecological features within the site/study area have been evaluated in terms of whether they qualify as 'important ecological features'. In this regard, CIEEM guidance states that *"it is not necessary to carry out detailed assessment of features that are sufficiently widespread, unthreatened and resilient to project impacts and will remain viable and sustainable"*.
3. Various characteristics contribute to the importance of ecological features, including:
 - Naturalness;
 - Animal or plant species, sub-species or varieties that are rare or uncommon, either internationally, nationally or more locally, including those that may be seasonally transient;
 - Ecosystems and their component parts, which provide the habitats required by important species, populations and/or assemblages;
 - Endemic species or locally distinct sub-populations of a species;
 - Habitat diversity;
 - Habitat connectivity and/or synergistic associations;
 - Habitats and species in decline;
 - Rich assemblages of plants and animals;
 - Large populations of species or concentrations of species considered uncommon or threatened in a wider context;
 - Plant communities (and their associated animals) that are considered to be typical of valued natural/semi-natural vegetation types, including examples of naturally species-poor communities; and
 - Species on the edge of their range, particularly where their distribution is changing as a result of global trends and climate change.
4. As an objective starting point for identifying important ecological features, European, national and local governments have identified sites, habitats and species which form a key focus for biodiversity conservation in the UK, supported by policy and legislation. These are summarised by CIEEM guidance as follows:

Designated Sites

- Statutory sites designated or classified under international conventions or European legislation, for example World Heritage Sites, Biosphere Reserves, Wetlands of International Importance (Ramsar sites), Special Areas of Conservation (SAC), Special Protection Areas (SPA);

¹ CIEEM (2018) 'Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and Marine', Chartered Institute of Ecology and Environmental Management, Winchester

- Statutory sites designated under national legislation, for example Sites of Special Scientific Interest (SSSI), National Nature Reserves (NNR) and Local Nature Reserves (LNR);
- Locally designated wildlife sites, e.g. Local Wildlife Sites (LWS).

Biodiversity Lists

- Habitats and species of principal importance for the conservation of biodiversity in England and Wales (largely drawn from UK BAP priority habitats and priority species), often referred to simply as Priority Habitats / Species;
- Local BAP priority species and habitats.

Red Listed, Rare, Legally Protected Species

- Species of conservation concern, Red Data Book (RDB) species;
- Birds of Conservation Concern;
- Nationally rare and nationally scarce species;
- Legally protected species.

5. In addition to this list, other features may be considered to be of importance on the basis of local rarity, where they enable effective conservation of other important features, or play a key functional role in the landscape.

Assigning Level of Importance

6. The importance of an ecological feature should then be considered within a defined geographical context. Based on CIEEM guidance, the following frame of reference is used:
 - International (European);
 - National;
 - Regional;
 - County;
 - District;
 - Local (e.g. Parish or Neighbourhood);
 - Site (not of importance beyond the immediate context of the site).
7. Features of 'local' importance are those considered to be below a district level of importance, but are considered to appreciably enrich the nature conservation resource or are of elevated importance beyond the context of the site.
8. Where features are identified as 'important' based on the list of key sites, habitats and species set out above, but are very limited in extent or quality (in terms of habitat resource or species population) and do not appreciably contribute to the biodiversity interest beyond the context of the site, they are considered to be of 'site' importance.
9. In terms of assigning the level of importance, the following considerations are relevant:

Designated Sites

10. For designated sites, importance should reflect the geographical context of the designation (e.g. SAC/SPA/Ramsar sites are designated at the international level whereas SSSIs are designated at the national level). Consideration should be given to multiple designations as appropriate (where an area is subject to differing levels of nature conservation designations).

Habitats

11. In certain cases, the value of a habitat can be measured against known selection criteria, e.g. SAC selection criteria, 'Guidelines for the selection of biological SSSIs' and the Hedgerows Regulations 1997. However, for the majority of commonly encountered sites, the most relevant habitat evaluation will be at a more localised level and based on relevant factors such as antiquity, size, species-diversity, potential, naturalness, rarity, fragility and typicalness (Ratcliffe, 1977). The ability to restore or re-create the habitat is also an important consideration, for example in the case of ancient woodland.
12. Whether habitats are listed as priorities for conservation at a national level in accordance with Sections 41 and 42 of the Natural Environment and Rural Communities Act (NERC) 2006, so called 'Habitats of Principal Importance' or 'Priority Habitats', or within regional or local Biodiversity Action Plans (BAPs) is also relevant, albeit the listing of a particular habitat under a BAP does not in itself imply any specific level of importance.
13. Habitat inventories (such as habitat mapping on the MAGIC database) or information relating to the status of particular habitats within a district, county or region can also assist in determining the appropriate scale at which a habitat is of importance.

Species

14. Deciding the importance of species populations should make use of existing criteria where available. For example, there are established criteria for defining nationally and internationally important populations of waterfowl. The scale within which importance is determined could also relate to a particular population, e.g. the breeding population of common toads within a suite of ponds or an otter population within a catchment.
15. When determining the importance of a species population, contextual information about distribution and abundance is fundamental, including trends based on historical records. For example, a species could be considered particularly important if it is rare and its population is in decline. With respect to rarity, this can apply across the geographic frame of reference and particular regard is given to populations where the UK holds a large or significant proportion of the international population of a species.
16. Whether species are listed as priorities for conservation at a national level in accordance with Sections 41 and 42 of the Natural Environment and Rural Communities Act (NERC) 2006, so called 'Species of Principal Importance' or 'Priority Species', or within regional or local Biodiversity Action Plans (BAPs) is also relevant, albeit the listing of a particular species under a BAP does not in itself imply any specific level of importance.
17. Species populations should also be considered in terms of the potential zone of influence of the proposals, i.e. if the entire species population within the site and surrounding area were to be affected by the proposed development, would this be of significance at a local, district, county or wider scale? This should also consider the foraging and territory ranges of individual species (e.g. bats roosting some distance from site may forage within site whereas other species such as invertebrates may be more sedentary).

Appendix 6360/2:

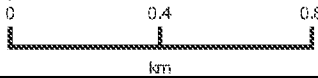
Desktop Study Results (relevant extracts)



Legend

- Local Nature Reserves (England)
- National Nature Reserves (England)
- Ramsar Sites (England)
- Proposed Ramsar Sites (England)
- Sites of Special Scientific Interest (England)
- Special Areas of Conservation (England)
- Possible Special Areas of Conservation (England)
- Special Protection Areas (England)
- Potential Special Protection Areas (England)

Projection = OSGB36
xmin = 489000
ymin = 98140
xmax = 499200
ymax = 103000



Map produced by MAGIC on 26 October, 2021.
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.

Appendix 6360/3:

Legislation Summary

LEGISLATION SUMMARY

1. In England and Wales primary legislation is made by the UK Parliament, and in Scotland by the Scottish Parliament, in the form of Acts. The main piece of legislation relating to nature conservation in the UK is the Wildlife and Countryside Act 1981 (as amended).
2. Acts of Parliament confer powers on Ministers to make more detailed orders, rules or regulations by means of secondary legislation in the form of statutory instruments. Statutory instruments are used to provide the necessary detail that would be too complex to include in an Act itself¹. The provisions of an Act of Parliament can also be enforced, amended or updated by secondary legislation.
3. In summary, the key pieces of legislation relating to nature conservation in the UK are:
 - Wildlife and Countryside Act 1981 (as amended)
 - Protection of Badgers Act 1992
 - Hedgerows Regulations 1997
 - Countryside and Rights of Way (CROW) Act for England and Wales 2000
 - Natural Environment and Rural Communities Act 2006
 - Conservation of Habitats and Species Regulations 2017
4. A brief summary of the relevant legislation is provided below. The original Acts and instruments should be referred to for the full and most up to date text of the legislation.
5. **Wildlife and Countryside Act 1981 (as amended)**. The WCA Act provides for the notification and confirmation of Sites of Special Scientific Interest (SSSIs) identified for their flora, fauna, geological or physiographical features. The Act contains strict measures for the protection and management of SSSIs.
6. The Act also refers to the treatment of UK wildlife including protected species listed under Schedules 1 (birds), 5 (mammals, herpetofauna, fish, invertebrates) and 8 (plants).
7. Under Section 1(1) of the Act, all wild birds are protected such that it is an offence to intentionally:
 - Kill, injure or take any wild bird;
 - Take, damage or destroy the nest of any wild bird whilst in use* or being built;
 - Take or destroy an egg of any wild bird.

* The nests of birds that re-use their nests as listed under Schedule ZA1, e.g. Golden Eagle, are protected against taking, damage or destruction irrespective of whether they are in use or not.
8. Offences in respect of Schedule 1 birds are subject to special, i.e. higher, penalties. Schedule 1 birds also receive greater protection such that it is an offence to intentionally or recklessly:
 - Disturb any wild bird included in Schedule 1 while it is building a nest or while it is in, on or near a nest containing eggs or young;
 - Disturb dependent young of such a bird.

¹ <http://www.parliament.uk/business/bills-and-legislation/secondary-legislation/statutory-instruments/>

9. Under Section 9(1) of the Act, it is an offence to:
 - Intentionally kill, injure or take any wild animal included in Schedule 5.
10. In addition, under Section 9(4) it is an offence to intentionally or recklessly:
 - Obstruct access to, any structure or place which any wild animal included in Schedule 5 uses for shelter or protection; or
 - Disturb any wild animal included in Schedule 5 while occupying a structure or place which it uses for that purpose.
11. Under Section 13(1) it is an offence:
 - To intentionally pick, uproot or destroy any wild plant listed in Schedule 8; or
 - Unless the authorised person, to intentionally uproot any wild plant not included in Schedule 8.
12. The Act also contains measures (S.14) for preventing the establishment of non-native species that may be detrimental to native wildlife, prohibiting the introduction into the wild of animals (releases or allows to escape) and plants (plants or causes to grow) listed under Schedule 9.
13. **Protection of Badgers Act 1992.** The Act aims to protect the species from persecution, rather than being a response to an unfavourable conservation status, as the species is in fact common over most of Britain. It should be noted that the legislation is not intended to prevent properly authorised development. Under the Act it is 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).

* the intentional elimination of sufficient foraging area to support a known social group of Badgers may, in certain circumstances, be construed as an offence

A sett is defined as “any structure or place which displays signs indicating current use by a Badger”. Natural England advice (June 2009) is that a sett is protected so long as such signs remain present, which in practice could potentially be for some time after the last actual occupation by Badger. Interference with a sett includes blocking tunnels or damaging the sett in any way
14. Licences can be obtained from the Statutory Nature Conservation Organisation (SNCO) for development activities that would otherwise be unlawful under the legislation, provided there is suitable justification. The SNCO for England is Natural England.
15. **Hedgerows Regulations 1997.** ‘Important’ hedgerows (as defined by the Regulations) are protected from removal (up-rooting or otherwise destroying). Various criteria specified in the Regulations are employed to identify ‘important’ hedgerows for wildlife, landscape or historical reasons.
16. **Countryside and Rights of Way (CROW) Act for England and Wales 2000.** The CROW Act provides increased measures for the management and protection of SSSIs and strengthens wildlife enforcement legislation. Schedule 12 of the Act amends the species provisions of the WCA 1981, strengthening the legal protection for threatened species. The Act also introduced a duty on Government to have regard to the conservation of biodiversity and maintain lists of species and habitats for which conservation steps should be taken or promoted, in accordance with the Convention on Biological Diversity.

17. **Natural Environment and Rural Communities Act 2006.** Section 41 of the NERC Act requires the Secretary of State to publish a list of habitats and species that are of principal importance for the conservation of biodiversity in England. The S41 list is used to guide decision-makers such as local planning authorities, in implementing their duty under Section 40 of the Act, to have regard to the conservation of biodiversity in England, when exercising their normal functions. 56 habitats and 943 species of principal importance are included on the S41 list. These are all the habitats and species in England that were identified as requiring action in the UK Biodiversity Action Plan (BAP).
18. **Conservation of Habitats and Species Regulations 2017 (as amended).** The Regulations enact the European Union's Habitats Directive (92/43/EEC) in the UK. The Habitats Directive was designed to contribute to the maintenance of biodiversity within member states through the conservation of sites, known in the UK as Special Areas of Conservation (SACs), containing habitats and species selected as being of EC importance (as listed in Annexes I and II of the Habitats Directive respectively). Member states are required to take measures to maintain or restore these natural and semi-natural habitats and wild species at a favourable conservation status.
19. The Regulations also require the compilation and maintenance of a register of European sites, to include SACs and Special Protection Areas (SPAs)² classified under Council Directive 79/409/EEC on the Conservation of Wild Birds (the Birds Directive). These sites constitute the Natura 2000 network. The Regulations impose restrictions on planning decisions likely to significantly affect SPAs or SACs.
20. The Regulations also provide protection to European Protected Species of animals that largely overlaps with the WCA 1981, albeit the provisions are generally stricter. Under Regulation 43 it is an offence, *inter alia*, to:
 - Deliberately capture, injure or kill any wild animal of a European Protected Species;
 - Deliberately disturb any wild animals of any such species, including in particular any disturbance likely to impair their ability to survive, to breed or reproduce, to rear or nurture their young, to hibernate or migrate, or which is likely to affect significantly their local distribution or abundance;
 - Deliberately take or destroy the eggs of such an animal;
 - Damage or destroy a breeding site or resting place of such an animal.
21. Similar protection is afforded to European Protected Species of plants, as detailed under Regulation 47.
22. The Regulations do provide a licensing system that permits otherwise illegal activities in relation to European Protected Species, subject to certain tests being fulfilled.

² Special Protection Areas (SPAs) are protected sites classified in accordance with Article 4 of the EC Directive on the Conservation of Wild Birds (79/409/EEC) (aka the Birds Directive), which came into force in April 1979. SPAs are classified for rare and vulnerable birds (as listed on Annex I of the Directive), and for regularly occurring migratory species.

ecology • landscape planning • arboriculture

aspect

Aspect Ecology Ltd
West Court
Hardwick Business Park
Noral Way
Banbury
Oxfordshire OX16 2AF

