

LHB Ecology

Preliminary Ecological Appraisal

Site: Cherry Tree Nursery, Eastergate Lane, Walberton,
West Sussex BN18 0BA

Client: Alex Baker

Report Author: Joe Slade BSc (Hons) MRSB,
Principal Ecologist

Report Date and Version: 28/08/25 Final

Limitations

This report has been prepared exclusively for the use of the above-named client or their agents. Site assessment and reports have been carried out for the client in accordance with written agreement and with the diligence and skills that are typical of an ecological consultant.

The conclusions and subsequent recommendations contained in this report are partly based upon information provided by third parties. Information obtained from third parties has not been independently verified by LHB Ecology.

Any third-party usage of the report will require prior written agreement from LHB Ecology.

Any assessments made are based upon current site condition with the assumption that the site will continue to be used for the current purpose without significant change prior to any development. Findings and recommendations within this report are based on the professional opinion of qualified and experienced ecological consultants and do not constitute professional legal advice.

Guidelines

This assessment has been designed to meet:

- Bat Conservation Trust (2023): Bat Surveys for Professional Ecologists — Good Practice Guidelines, 4th edition; and
- British Standard 42020 (2013) 'Biodiversity – Code of Practice for Planning and Development'.
- Chartered Institute of Ecology and Environmental Management (2017). Guidelines for Preliminary Ecological Appraisal. 2nd edition. Chartered Institute of Ecology and Environmental Management, Winchester.
- Chartered Institute of Ecology and Environmental Management (2017). Guidelines on Ecological Report Writing. Chartered Institute of Ecology and Environmental Management, Winchester.

© (2022) LHB Ecology. All rights reserved.

Contents

1.0	Executive Summary.....	4
1.1	Summary.....	4
2.0	Introduction and Context	5
2.1	Background.....	5
2.2	Project Description.....	5
2.3	Site Context	5
2.4	Scope of the Report.....	5
3.0	Methodology.....	7
3.1	Desk study methodology	7
3.2	Extended Phase 1 habitat survey methodology	7
3.3	Protected and notable species	8
3.4	Limitations – evaluation of the methodology	8
4.0	Results and Evaluation	9
4.1	Desk Study Results	9
4.2	Designated sites	9
4.3	Landscape	9
4.4	European Protected Species Licencing.....	10
4.5	Survey Results.....	10
4.5.2	Phase 1 habitat survey	11
5.0	Ecological constraints, conclusions and recommendations.....	14
6.0	Enhancements	20
7.0	Bibliography.....	21
	Appendix 1 – Preliminary Ecological Appraisal Survey Map.....	22
	Appendix 2 – Proposed plan	23
	Appendix 3 – Legislation	24

1.0 Executive Summary

1.1 Summary

- 1.1.1 LHB Ecology undertook an extended Phase 1 habitat survey (JNCC, 2010) to inform a Preliminary Ecological Appraisal (PEA) at Cherry Tree Nursery, Eastergate Lane, Walberton, West Sussex BN18 0BA (hereinafter referred to as 'the site') on 18 August 2025. This survey was completed to assess the habitats on site, to establish an ecological baseline and to determine whether ecological receptors such as protected species were likely to be present.
- 1.1.2 The site consists of a static caravan and garden. Residential development, private gardens and arable fields surround the site and there are scattered trees within the vicinity of the site.
- 1.1.3 The development proposals the demolition of the existing static caravan and construction of a dwelling.
- 1.1.4 Existing trees could be impacted during development and should be protected in line with BS5837:2012.
- 1.1.5 Nesting birds could be present within trees. It is recommended that construction works are undertaken outside the nesting bird season (i.e. September – February inclusive). If this timeframe cannot be avoided, a nesting bird check will need to be completed and any active nests retained until the young have fledged.
- 1.1.6 If external lighting is proposed: To avoid and minimise the impacts of new lighting on bat foraging and commuting habitat, sensitive lighting measures will be implemented on the developed site (in line with Institute of Lighting Professionals (ILP) and the Bat Conservation Trust (BCT) bats and artificial lighting guidance note 08/23).
- 1.1.7 Working methods will need to consider the presence of hedgehogs and badgers. Taking a best practice approach, any deep excavations should be covered overnight during works. Shallow excavations should have a scaffold board or equivalent placed in them overnight to allow any hedgehogs to escape, should they fall in.

Full details are provided in Table 5.1: Ecological constraints, conclusions and recommendations

2.0 Introduction and Context

2.1 Background

- 2.1.1 LHB Ecology undertook an extended Phase 1 habitat survey (JNCC, 2010) to inform a Preliminary Ecological Appraisal (PEA) at Cherry Tree Nursery, Eastergate Lane, Walberton, West Sussex BN18 0BA (hereinafter referred to as 'the site') on 18 August 2025. This survey was carried out to assess the habitats on site, to establish an ecological baseline and to determine whether ecological receptors such as protected species were likely to be present.
- 2.1.2 All land within the red line boundary was surveyed. The survey area consisted of the land that will be impacted by the proposed development including an expected zone of influence.
- 2.1.3 No previous ecological surveys have been undertaken at the site, to the author's knowledge.
- 2.1.4 This report details the findings of the site survey and desk-based assessment.

2.2 Project Description

- 2.2.1 The development proposals the demolition of the existing static caravan and construction of a dwelling.

2.3 Site Context

- 2.3.1 The site is centred on National Grid Reference SU 9577 0619 and has an area of approximately 0.08 ha. The site consists of a static caravan and garden. Residential development, private gardens and arable fields surround the site and there are scattered trees within the vicinity of the site.
- 2.3.2 A review of the designated sites, aerial photographs, the MAGIC database and OS maps shows that the site is situated within the village of Walberton, in the Arun District of West Sussex. The local and immediate landscape, consists of residential development with private gardens and areas of arable land. There is a traditional orchard located within the vicinity of the site, situated approximately 160 m to the north of the site. The orchard provides habitat connectivity between other habitats in the wider landscape that are important for nature conservation.
- 2.3.3 A landscape map is provided in section 4.3 and shows the context of the site in the wider landscape.

2.4 Scope of the Report

- 2.4.1 This report evaluates the habitats at the site and their value to protected species. It also documents any evidence of protected species and identifies any constraints to the proposals. The report provides recommendations for further surveys and mitigation measures to comply with wildlife legislation.
- 2.4.2 The aim of the survey was to assess the types of habitats and the likelihood of protected species being present. This was achieved by:
 - Carrying out a desk study using freely available resources such as Google Earth and the MAGIC online

database.

- Identifying the survey site, site boundary and the zone of influence of the proposed development.
- Recording baseline information on the site and surrounding area through an extended Phase 1 habitat survey.
- Providing an outline of likely impacts on ecological receptors, based on the current development proposals.
- Providing recommendations for further surveys, such as protected species surveys, mitigation measures and ecological enhancements.

2.4.3 A Phase 1 habitat map of the site is presented in Appendix 1. The proposed plan is included in Appendix 2. A summary of relevant legislation can be found in Appendix 3.

3.0 Methodology

3.1 Desk study methodology

- 3.1.1 A biological records data search relating to the site and a surrounding 1 km radius (the study area) was not commissioned from the Local Records Centre. This was due to the small scale of the proposed development.
- 3.1.2 A review of aerial imagery from Google Earth, magic.defra.gov.uk data and OS Opendata 2023 has also been undertaken to inform the assessment. Information from these sources is referenced within the report, where necessary.

3.2 Extended Phase 1 habitat survey methodology

- 3.2.1 The survey was undertaken by Joe Slade BSc (Hons) MRSB, principal ecologist (Natural England protected species licence numbers: bats 2017-32515-CLS-CLS; great crested newt 2016-26549-CLS-CLS). The survey was undertaken in accordance with industry guidelines (JNCC, 2010) on 18 August 2025 during suitable weather conditions.
- 3.2.2 All areas of the survey site that were accessible were covered during the survey. Areas that were not accessible, either due to safety concerns or in cases where access was not provided to the surveyor were assessed based on what was observable. Any limitations that relate to a lack of access are addressed in 3.4 Limitations.
- 3.2.3 The survey looked at the vegetation present which was recorded and used to classify the habitats on site. The recorded habitats were mapped during the survey and were later digitised using GIS software to create a master map for inclusion within the PEA report. Target notes on maps provide supporting information which relates to any evidence of protected species, areas that were too small to map, habitat conditions and species composition.
- 3.2.4 The aim of the Phase 1 habitat survey is not to record all plant species present on site. A Phase 2 survey may be required in some cases to assess priority habitats.
- 3.2.5 The value and sensitivity of ecological features present on site were assessed based on the guidance given in Chartered Institute of Ecology and Environmental Management (CIEEM) Guidelines for Preliminary Ecological Appraisal (CIEEM, 2017).
- 3.2.6 Where present, any sightings of invasive / non-native plant species listed on Schedule 9 of the Wildlife and Countryside Act (1981) were recorded including their extent.
- 3.2.7 Protected species and habitats that could be affected by the proposed development were assigned levels of importance for nature conservation. The following terms are used for each level of importance (in descending importance): international, national, regional, county, local and site level.

3.3 Protected and notable species

- 3.3.1 Evidence of protected species and species of nature conservation importance was recorded if present at the time of the survey. Additionally, habitats on site were assessed for their suitability to support protected species. The findings of the desk study and the condition of the habitats on site were used along with the field survey findings to determine the presence or likely absence of protected species on site.
- 3.3.2 In accordance with the Bat Conservation Trust's best practice guidelines (Collins, 2023), the suitability of habitat features on site to support roosting bats, such as trees and buildings, was categorised as negligible, low, moderate or high. The bat suitability assessment was based on the number and type of roosting features and surrounding landscape character.

3.4 Limitations – evaluation of the methodology

- 3.4.1 The survey and subsequent evaluation of the site is preliminary and does not form a complete characterisation of the site in terms of protected and notable habitats and species. This survey provides a preliminary view of the likelihood of protected habitats and species being present and is not a replacement for detailed vegetation or protected species surveys (where necessary).
- 3.4.2 An internal inspection of B1 was not carried out. This is not considered to be a significant limitation because there are no external gaps in the building that bats could use to enter the building.

4.0 Results and Evaluation

4.1 Desk Study Results

4.1.1 A summary of desk study results is provided below.

4.1.2 The desk study methodology as outlined in 3.1 has been carried out, and any relevant findings regarding sites, habitats or species are outlined below. The findings of the desk study are incorporated into 5.0 Ecological constraints, Conclusions and Recommendations section of this report.

4.2 Designated sites

4.2.1 The MAGIC database search revealed that the South Downs National Park is situated approximately 1 km to the north of the site.

European sites

Duncton to Bignor Escarpment Special Area of Conservation is a European designated site and is located approximately 7 km to the north of the site.

4.3 Landscape

4.3.1 The MAGIC database search indicated the presence of priority habitats present within 1 km of the site. The closest of these habitats consists of traditional orchard located approximately 160 m to the north of the site, and deciduous woodland priority habitat grassland is located further to the north. Several small ponds are located within the vicinity of the site.

4.3.2 There is limited habitat connectivity between the site and priority habitats in the form of residential gardens with scattered trees which connect to woodland.

4.3.3 Figure 1 (below) is the reviewed aerial imagery for the site showing the surrounding landscape and the context of the site within the landscape.



4.4 European Protected Species Licencing

The MAGIC database search revealed three granted European protected species mitigation licence (EPSML) site within a 1 km radius of the development site. Each EPSML involved impacts on hazel dormouse.

4.5 Survey Results

4.5.1 The weather conditions recorded at the time of the survey are shown in Table 4.5.

Table 4.5: Weather conditions during the survey.

Survey Date: 18/08/25	
Temperature	21°C
Relative Humidity	51%
Cloud Cover	10%
Wind	2 mph
Precipitation	None

4.5.2 Phase 1 habitat survey

4.5.3 Habitats

The site habitats and supporting photographs are provided below along with their descriptions.

Amenity grassland, hard standing, fence

The site consists of a static caravan on hard standing with an amenity grass lawn located towards the south of the site. The grass is short-mown and consists of perennial ryegrass *Lolium perenne*, dandelion *Taraxacum officinale* agg. and daisy *Bellis perennis*.

A closed-panel, timber fence lines the site boundary.



Scattered trees

Small whitebeam *Sorbus aria* trees are located within the garden (pictured opposite).

A storage container is located adjacent to the trees.



Boundary cherry *Prunus* sp. tree (pictured opposite).

A semi-mature cherry tree is located on the western boundary, adjacent to Eastergate Lane.



Area of gravel hard standing located adjacent to the static caravan.



View of lawn, facing south (pictured opposite)



4.5.1 Building B1

B1 is a static caravan with a pitched roof clad in concrete roof tiles. No raised or missing roof tiles are present that bats could roost in. A small porch area is located on the southern side of the building which has a flat roof clad in bitumen felt. No gaps are present on the porch or around the bitumen felt that bats could roost in. The eaves are closed and no gaps are present that bats could use to enter the building. The doors and windows are UPVC framed and there are no gaps around the sides that bats could roost in.

B1 – exterior, southern elevation (pictured opposite).



B1 – exterior, eastern elevation (pictured opposite).



B1 – exterior, northern and western elevations (pictured opposite).



B1 – exterior, northwestern side of pitched roof (pictured opposite).



4.5.2 Evidence of protected or notable species

No evidence of protected species activity was present during the survey.

5.0 Ecological constraints, conclusions and recommendations

5.1.1 Table 5.1 below details the identified ecological constraints based on the proposed development. Recommendations are provided such as further survey work and mitigation measures to address any foreseen impacts.

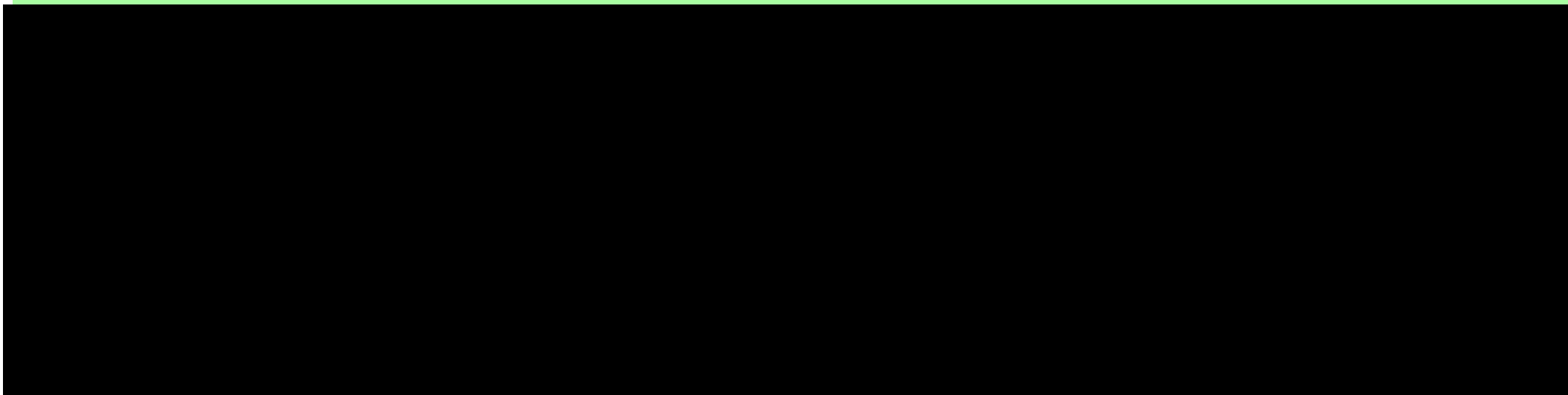
5.1.2 The findings of the survey are valid for a period of two years from the date the survey was completed. After two years the site may need to be resurveyed to determine whether there have been any significant changes and to inform the planning process.

Table 5.1: Ecological constraints, conclusions and recommendations

Ecological receptor	Ecological constraints and conclusions	Recommendations
Designated sites		
South Downs National Park is situated approximately 1 km to the north of the site.	The proposed development is considered to be beyond the zone of influence for impacts on the South Downs National Park and Duncton to Bignor Escarpment Special Area of Conservation.	No further ecological surveys are recommended.
Duncton to Bignor Escarpment Special Area of Conservation is a European designated site and is located approximately 7 km to the north of the site.	The proposed development will not result in increased recreational pressures on European sites.	
Habitats		

Ecological receptor	Ecological constraints and conclusions	Recommendations
Amenity grassland, hard standing, scattered trees	No priority habitats are located on-site or nearby. No impacts on priority habitats are anticipated. The habitats on-site are widespread and common habitats which are not important for nature conservation. The habitats are considered to have site-level importance. The proposals for the site indicate that the habitats will be retained and enhanced post-development.	No further ecological surveys are recommended. Trees should be protected in line with BS5837:2012.

Protected Species



Ecological receptor	Ecological constraints and conclusions	Recommendations
Bats	The building B1 is in good condition with no external gaps, such as within the roof tiles or around the eaves, that bats could roost in or use to enter the building. B1 was assessed to have negligible habitat value to support roosting bats. The trees within the lawn on-site are small and do not have roosting features that bats could use. The cherry located on the western boundary was found to be in good condition with no features that bats could roost in. All of the surveyed trees were found to have negligible habitat value to support roosting bats. The development site is not considered to have important foraging habitat for bats. If new external lighting is proposed: New external lighting on site could impact bat foraging activity. <i>Bat protection: Bats are protected under The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 and the Wildlife and Countryside Act 1981 (as amended).</i>	If new external lighting is proposed: To avoid and minimise the impacts of new lighting on bat foraging and commuting habitat, the following measures will be implemented on the developed site (in line with Institute of Lighting Professionals (ILP) and the Bat Conservation Trust (BCT) bats and artificial lighting guidance note 08/23): ➤ <i>Avoid lighting along the site boundary.</i> ➤ <i>All luminaires should lack UV elements when manufactured. Metal halide, compact fluorescent sources should not be used.</i> ➤ <i>LED luminaires should be used where possible due to their sharp cut-off, lower intensity, good colour rendition and dimming capability.</i> ➤ <i>A warm white spectrum (ideally <2700Kelvin) should be adopted to reduce blue light component.</i> ➤ <i>Luminaires should feature peak wavelengths higher than 550nm to avoid the component of light most disturbing to bats (Stone, 2012).</i> ➤ <i>Internal luminaires can be recessed where installed in proximity to windows to reduce glare and light spill.</i> ➤ <i>The use of specialist bollard or low-level downward directional luminaires to retain darkness above can be considered. However, this often comes at a cost of unacceptable glare, poor illumination efficiency, a high upward light component and poor facial recognition, and their use should only be as directed by the lighting professional.</i>

Ecological receptor	Ecological constraints and conclusions	Recommendations
		➤ Column heights should be carefully considered to minimise light spill. ➤ Only luminaires with an upward light ratio of 0% and with good optical control should be used – See ILP Guidance for the Reduction of Obtrusive Light. ➤ Luminaires should always be mounted on the horizontal, i.e. no upward tilt.
Birds	No active bird nests were present on site during the survey. Birds could nest within the trees on site. The site was assessed to have low habitat value for nesting birds. Active bird nests could be impacted by hedgerow management or predevelopment enabling works resulting in nest abandonment. <i>Bird protection: It is an offence to damage or destroy active nests under the WCA 1981.</i>	All in-use bird's nests and their contents are protected from damage or destruction, any building works should be undertaken outside the period 1st March to 31st August. If this time frame cannot be avoided, a close inspection of the vegetation on site should be undertaken immediately prior to works commencing. Work should not be carried out within 5 m of any in-use nest and with an Ecological Clerk of Works present. Standard planning conditions can be applied to ensure this.
Hazel dormouse	There is no suitable dormouse habitat present on site or nearby. This species is therefore scoped out from the assessment. <i>Hazel dormouse protection: Hazel dormouse is protected in the UK under the Wildlife and Countryside Act, 1981. It's a Priority Species under the UK Post-2010 Biodiversity Framework and is listed as a European Protected Species under Annex IV of the European Habitats Directive.</i>	No further surveys required.

Ecological receptor	Ecological constraints and conclusions	Recommendations
Reptiles	The grassland is short-mown and is not considered to be suitable for reptiles. The site was assessed to have negligible habitat value for reptiles. No suitable reptile habitat will be impacted by the proposed development and no impacts on reptiles are foreseen. <i>Reptile protection: Protected under the WCA 1981.</i>	No further surveys. In the unlikely event that of a reptile being found, works must cease and advice must be sought from a suitably qualified ecologist.
Amphibians	The grassland is short-mown and is not considered to be suitable for amphibians. No ponds or other suitable amphibian habitat is present or site or adjacent to the site. The MAGIC database search revealed that there is one small pond located approximately 100 m to the south of the site. The pond could not be surveyed because it is located on private land. Other small ponds are located within 500 m of the site, but are considered to be outside of the typical commuting range for amphibians. Although the nearby pond could be suitable for protected species of amphibians, including great crested newts, amphibians are highly unlikely to disperse towards the development site due to an absence of suitable habitat within the site. In addition, there is close panel fencing surrounding the site which provides a barrier to dispersing amphibians.	No further surveys required. In the unlikely event of an amphibian being found, works must cease and advice must be sought from a suitably qualified ecologist.

Ecological receptor	Ecological constraints and conclusions	Recommendations
	The site was assessed to have negligible habitat value for amphibians. No suitable amphibian habitat will be impacted by the proposed development and no impacts on amphibians are foreseen. <i>Amphibian protection: Smooth newt, palmate newt, common frog and common toad are included in Section 9(5) of the Wildlife and Countryside Act 1981 ("the WCA 1981"). Common toad is also a Priority Species under the Natural Environment and Rural Communities Act 2006 ("the NERC Act"). Great crested newts (GCN) are protected under WCA 1981 and The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 ("the Habitats Regulations") and are a European Protected Species (EPS). GCN is a Priority Species under the NERC Act.</i>	
Hedgehog	The grass on-site appears to be regularly managed and does not provide suitable habitat for hedgehogs. Hedgehogs could become trapped in excavations during the proposed development should they pass through the site. The site was assessed to have low habitat value to support hedgehogs. <i>Hedgehog protection: Protected under WCA 1981 (as amended).</i>	Working methods will need to consider the presence of hedgehogs. Taking a best practice approach, any deep excavations should be covered overnight during works. Shallow excavations should have a scaffold board or equivalent placed in them overnight to allow any hedgehogs to escape, should they fall in, and all chemicals should be stored securely.

Ecological receptor	Ecological constraints and conclusions	Recommendations
Invertebrates	The habitats on-site are common and widespread. The site has little value for common invertebrate species.	No further surveys.
Invasive non-native species		
None.	None.	None.

6.0 Enhancements

6.1.1 The following enhancements have been designed to benefit protected species post-development. The following enhancements are suitable, achievable and are specific to the site:

- Installation of a bat box on the dwelling or similar bat roosting feature. Bat boxes should be made from woodcrete which is durable and has a long lifespan. Bat boxes must be installed high on the building, close to the eaves and away from artificial sources of light. Bat boxes on trees must be installed ~ 3 m high, facing south or southwest, with a clear flight path to the entrance.
- 2x swift nest boxes. Swift nest boxes are best positioned under the eaves or on walls facing north, northeast or north-west out of direct sunlight, five metres above the ground, with clear adjacent airspace so swifts can access them in a high-speed direct flight.
- New native tree and shrub planting.

7.0 Bibliography

BS 42020, Biodiversity – Code of practice for planning and development (2013) <http://www.eoebiodiversity.org/pdfs/BS42020.pdf>

BS 42020, Biodiversity – Code of practice for planning and development (2013) <http://www.bsigroup.com/LocalFiles/en-GB/biodiversity/BS-42020-Smart-Guide.pdf>

CIEEM (2017) Guidelines for Preliminary Ecological Appraisal, 2nd edition. Chartered Institute of Ecology and Environmental Management, Winchester.

Collins, J (ed.) (2023) Bat Surveys for Professional Ecologists: Good Practice Guidelines (4th edn). The Bat Conservation Trust, London.

HMSO: Wildlife and Countryside Act 1981 (as amended) <http://jncc.defra.gov.uk/page-1377>

Google Earth (2025)

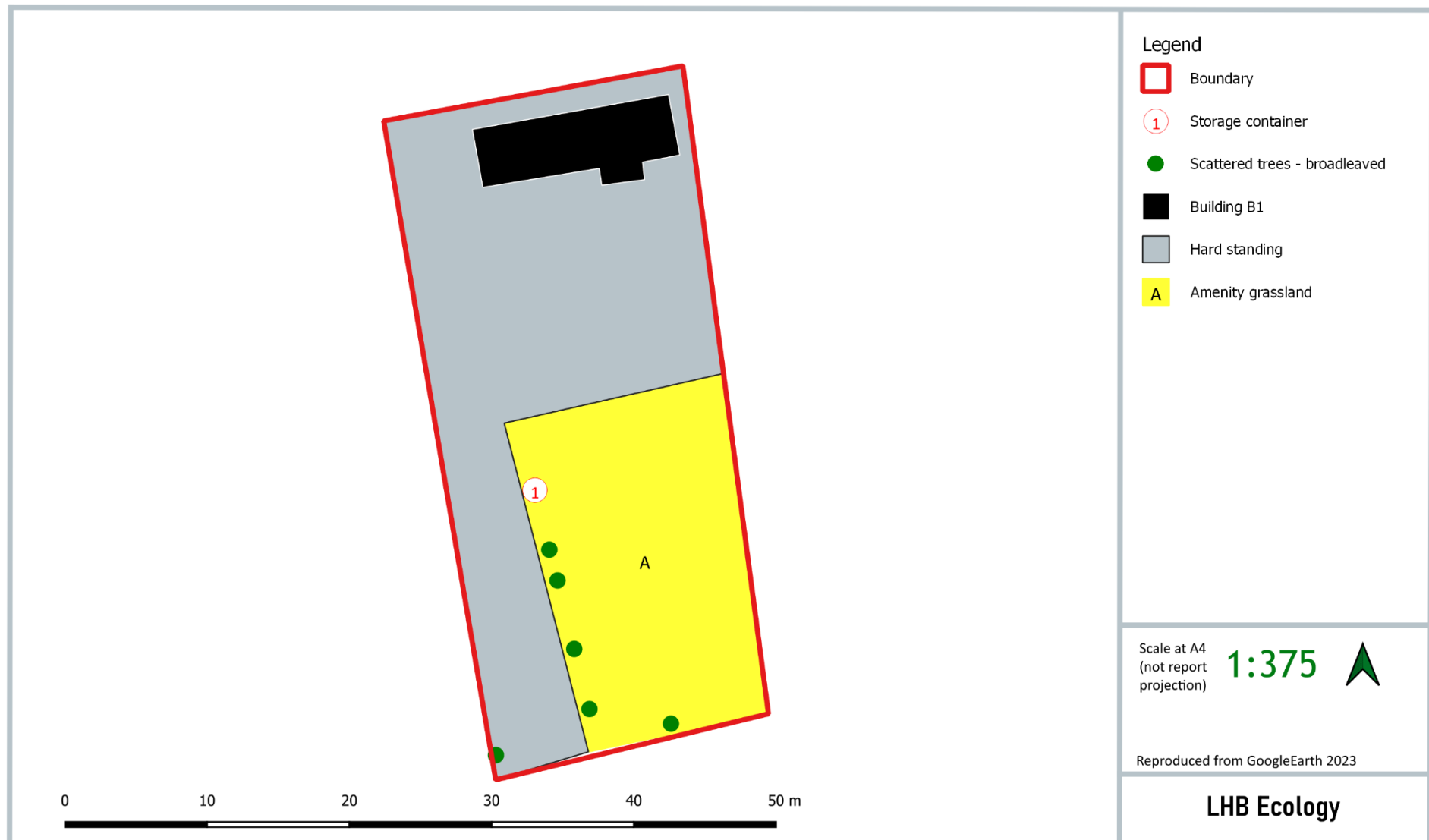
Joint Nature Conservation Committee (2010). Handbook for Phase 1 habitat survey a technique for environmental audit.

MAGIC database (2025) <http://www.magic.gov.uk/MagicMap.aspx>

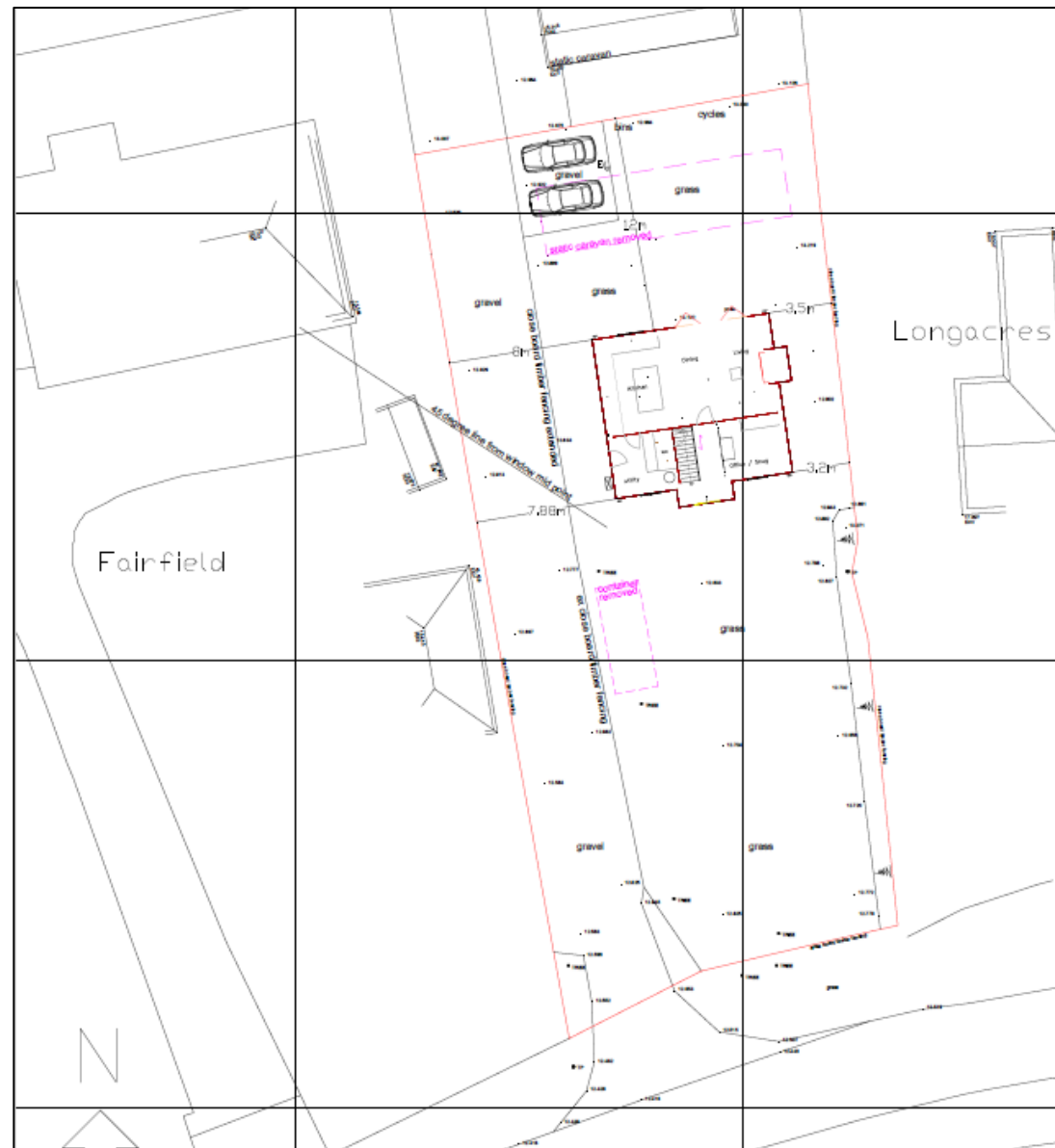
National Planning Policy Framework, 2024 <https://www.gov.uk/guidance/national-planning-policy-framework>

Natural England (2007). Badgers and Development a Guide to Best Practice and Licensing. Natural England. Bristol.

Appendix 1 – Preliminary Ecological Appraisal Survey Map



Appendix 2 – Proposed plan



Appendix 3 – Legislation

Legal protection

The Wildlife and Countryside Act (WCA) 1981 (as amended)

The Wildlife and Countryside Act (WCA) 1981 (as amended) implements the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention) and implements the species protection requirements of EC Birds Directive 2009/147/EC on the conservation of wild birds in Great Britain (the birds Directive). The WCA 1981 has been subject to a number of amendments, the most important of which are through the Countryside and Rights of Way (CRoW) Act (2000) and Nature Conservation (Scotland) Act 2004.

Bats

All species are fully protected by Habitats Regulations 2010 as they are listed on Schedule 2. Regulation 41 prohibits:

- Deliberate killing, injuring or capturing of Schedule 2 species (e.g. all bats)
- Deliberate disturbance of bat species in such a way as:
 - To impair their ability to survive, breed, or reproduce, or to rear or nurture young;
 - To impair their ability to hibernate or migrate
 - To affect significantly the local distribution or abundance of the species
- Damage or destruction of a breeding site or resting place

Bats are afforded the following additional protection through the WCA as they are included on Schedule 5:

- Intentional or reckless disturbance (at any level)
- Intentional or reckless obstruction of access to any place of shelter or protection

Significance for developments:

Works which are liable to affect a bat roost or an operation which are likely to result in an illegal level of disturbance to the species will require a European protected species mitigation licence. The licence is to allow derogation from the legislation through the application of appropriate mitigation measures.

Birds

With certain exceptions, all birds, their nests and eggs are protected under Sections 1-8 of the WCA. Among other things, this makes it an offence to:

- Intentionally (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.
- Intentionally or recklessly obstruct or prevent any wild bird from using its nest (Scotland only)

Certain species of bird, for example the barn owl, bittern and kingfisher receive additional protection under Schedule 1 of the WCA and Annex 1 of the European Community Directive on the Conservation of Wild Birds (2009/147/EC) and are commonly referred to as “Schedule 1” birds.

This affords them protection against:

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

Significance for developments:

Works should be planned to avoid the possibility of killing or injuring any wild bird or damaging or destroying their nests. The most effective way to reduce the likelihood of nest destruction in particular is to undertake work outside the main bird nesting season which typically runs from March to August. Where this is not feasible, it will be necessary to have any areas of suitable habitat thoroughly checked for nests prior to vegetation clearance.

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

Herpetofauna (Amphibians and reptiles)

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

Deliberate killing, injuring or capturing of Schedule 2 species

Deliberate disturbance of species in such a way as:

to impair their ability to survive, breed, or reproduce, or to rear or nurture young;

to impair their ability to hibernate or migrate

to affect significantly the local distribution or abundance of the species

Damage or destruction of a breeding site or resting place

With the exception of the pool frog, these species are also listed on Schedule 5 of the WCA and they are additionally protected from:

Intentional or reckless disturbance (at any level)

Intentional or reckless obstruction of access to any place of shelter or protection

Selling, offering or exposing for sale, possession or transporting for purpose of sale.

Other native species of herpetofauna are protected solely under Schedule 5, Section 9(1) & (5) of the WCA, i.e. the adder *Vipera berus*, grass snake *Natrix natrix*, common lizard *Zootoca vivipara* and slow-worm *Anguis fragilis*. It is prohibited to intentionally or recklessly kill or injure these species.

Effects on development works

A European Protected Species Mitigation (EPSM) 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 amphibian and reptile species protected under Habitats Regulations. A licence will also be required for operations liable to result in a level of disturbance which might impair their ability to undertake those activities mentioned above (e.g. survive, breed, rear young and hibernate). The licences are to allow derogation from the relevant legislation, but also to enable appropriate mitigation measures to be put in place and their efficacy to be monitored.

Although not licensable, appropriate mitigation measures may also be required to prevent the intentional killing or injury of adder, grass snake, common lizard and slow worm, thus avoiding contravention of the WCA.

Hazel dormouse

Hazel dormouse *Muscardinus avellanarius* is protected under Schedule 5 of the WCA 1981 against intentional killing or injuring, and under Schedule 2 of the Habitats Regulations, making them an EPS. It is an offence to damage, destroy or block access to their places of shelter or disturb them at their places of shelter. Hazel dormouse is also listed as a Priority Species under the NERC Act.

Significance for developments:

Works which are liable to affect a dormice habitat or an operation which are likely to result in an illegal level of disturbance to the species will require a European Protected Species Licence (EPSL) issued by the relevant countryside agency. The licence is to allow derogation from the legislation through the application of appropriate mitigation measures and monitoring.

NATIONAL PLANNING POLICY (ENGLAND)

National Planning Policy Framework

The National Planning Policy Framework promotes sustainable development. The Framework specifies the need for protection of designated sites and priority habitats and species. An emphasis is also made on the need for ecological infrastructure through protection, restoration and re-creation. The protection and recovery of priority species (considered likely to be those listed as UK Biodiversity Action Plan priority species) is also listed as a requirement of planning policy.

In determining a planning application, planning authorities should aim to conserve and enhance biodiversity by ensuring that: designated sites are protected from harm; there is appropriate mitigation or compensation where significant harm cannot be avoided; opportunities to incorporate biodiversity in and around developments are encouraged; and planning permission is refused for development resulting in the loss or deterioration of irreplaceable habitats including aged or veteran trees and also ancient woodland.

The Natural Environment and Rural Communities Act 2006 and the Biodiversity Duty

Section 40 of the Natural Environment and Rural Communities (NERC) Act, 2006, requires all public bodies to have regard to biodiversity conservation when carrying out their functions. This is commonly referred to as the 'biodiversity duty'.

Section 41 of the Act (Section 42 in Wales) requires the Secretary of State to publish a list of habitats and species which are of 'principal importance for the conservation of biodiversity.' This list is intended to assist decision makers such as public bodies in implementing their duty under Section 40 of the Act. Under the Act these habitats and species are regarded as a material consideration in determining planning applications. A developer must show that their protection has been adequately addressed within a development proposal.

[BACK PAGE]

LHB Ecology

Contact details:

