

KIRKLAND ROAD, ENNERDALE ECOLOGICAL WALKOVER SURVEY REPORT

Survey Date:	13/10/2020
Report by:	Rob Mansbridge
Approved by:	A. Blackshaw
Report Sent to	S. Blacker SRE associates

1 Introduction

1.1 Introduction

Nevis Environmental Ltd (Nevis) was commissioned by SRE Associates in October 2020, to carry out an Ecological Walkover Survey of the site known as Kirkland Road, Ennerdale, hereafter referred to as 'the site'.

This report has been prepared by Nevis ecology consultant, Rob Mansbridge, BSc (Hons) ACIEEM.

1.2 Site Details and Location

The site is located to the north of Ennerdale Bridge village in Cumbria and is centred on Ordnance Survey (OS) grid reference (NY 07061 16205). The survey area is shown on Figure 1 and comprises approximately 1 ha of agricultural land and is currently used as grazing land for livestock.

The site is within an agricultural field with no physical boundary to north. Kirkland Road borders the site to the east and an access track to residential and agricultural properties to the west. A residential property and associated garden borders the site to the south, with the main residential areas of Ennerdale Bridge village beyond. The wider landscape is dominated with agricultural grassland with pockets of broadleaved woodland which are largely associated with the River Ehen and its tributaries.

1.3 Proposals

It is proposed to develop the site for housing. Current development proposals consist of nine residential properties and the creation of an access route onto Kirkland Road. Incorporated into this would be landscaping, and tree and hedgerow planting.

1.4 Objectives of Report

The purpose of the survey was to assess the current baseline conditions of the site with the aim of determining whether the conclusions of the existing extended Phase 1 Habitat Survey report, produced by WYG in 2018, are still valid.

The objectives of the report are to carry out:

- ✔ A desk study to obtain existing information on statutory and non-statutory sites of nature conservation interest and relevant records of protected/notable species within the site and its zone of influence;
- ✔ An Ecological Walkover survey of the site to map and record habitat types and dominant vegetation, including any invasive species, and an assessment for evidence of protected fauna, or habitats capable of supporting such species;
- ✔ An assessment of the potential ecological features present, with reference to the existing WYG report, any constraints they pose to development of the site and any recommendations for further surveys, avoidance, mitigation, compensation, or enhancement measures that are needed (as appropriate).

2 Survey Methods

2.1 Desk Study

Information was requested from Cumbria Biodiversity Data Centre (CBDC) on the following:

- ✔ Non-statutory nature conservation sites i.e. Local Wildlife Sites (LWS);
- ✔ Legally protected plant and animal species;
- ✔ Notable species e.g. Species of Principal Importance (SPI); and
- ✔ Priority habitats and species as listed within the Cumbria Local Biodiversity Action Plan (LBAP).

2.2 Field Survey

An Ecological Walkover survey was undertaken on 13th October 2020 by Nevis consultant ecologist, Rob Mansbridge, BSc (Hons) ACIEEM. The weather conditions were 6 oktas of cloud cover with an air temperature of around 12 °C, light wind and no precipitation.

The following methodologies were used to inform the assessment of habitat types and protected and notable species during the Ecological Walkover survey.

2.2.1 Habitats and Flora

The broad habitat types within the site were mapped in accordance with the categories specified in the *Handbook for Phase 1 Habitat Survey* (Joint Nature Conservation Committee, 2016). Dominant plant species were recorded for each habitat present using nomenclature according to the 4th edition of *New Flora of the British Isles* (Stace, 2019). The site was also appraised for its potential to support notable flora and any stands of invasive plant species, especially those listed on Schedule 9 of the Wildlife and Countryside Act 1981 (as amended), were also mapped.

2.2.2 Protected and Notable Species

The site was assessed for the possible presence of, and the likely importance of its habitats for, protected or notable species, especially those listed under the Schedule 2 of the Habitat Regulations 2017, Schedule 5 of the Wildlife and Countryside Act 1981, the Countryside and Rights of Way (CRoW) Act 2000, those given extra protection under the Natural Environment and Rural Communities Act 2006, and species included in the Cumbria LBAP.

2.3 Limitations

All areas within the site boundary were accessed, and the survey was undertaken during suitable weather conditions. The survey was undertaken towards the end of the optimal season habitat assessment but this did not have a significant effect on the findings of the survey as it was clear that the habitat had not changed significantly since the previous survey in 2017. The previous survey was carried out in August, which is within the optimal season.

To determine presence, or likely absence, of protected species, multiple visits at suitable times of the year are usually required. As a result, this survey focuses on assessing the potential of the site to support species of note, which are considered to be of principal importance for the conservation of biodiversity with

reference to those given protection under UK or European wildlife legislation. This report cannot therefore be considered a comprehensive assessment of the ecological interest of the site. However, it does provide an assessment of the ecological interest present on the day the site was visited and highlights areas where further survey work may be recommended.

2.4 Disclaimer

The details of this report will remain valid for a period of **two years** from the date of the survey, after which the assessment should be reviewed to determine whether any further updates are necessary. Note that the recommendations within this report should be reviewed (and reassessed if necessary) should there be any changes to the red line boundary or development proposals which this report was based on.

3 Results

3.1 Desk Study

All relevant ecological data provided by the consultees was reviewed and the results from these investigations are summarised below. The original desk study data is available upon request. A summary of planning policy and legislation relating to the species highlighted by the desk study and field survey is presented in Appendix 1.

3.1.1 Designated Sites

No additional statutory or non-statutory designated sites were identified from those presented in the Extended Phase 1 Habitat Survey report (WYG, 2018). However, CBDC identified one less Special Roadside Verge (SRV) than was previously reported; this was B3 A2 (2) which in 2018 was located approximately 1.01 km south-east of the site.

Six statutory designated sites and fourteen non-statutory designated sites lie within a 2 km radius of the site (Table 1). In addition, two Local Geological Sites were identified within 2 km of the site; these are Kelton Head Quarry and Stockhowhall Quarry.

Table 1: Statutory and non-statutory sites within 2 km of the site boundary.

Site Name	Designation	Proximity to Survey Area and Direction	Description
Statutory Sites			
River Ehen	SAC	0.26 km SW	The primary reason for the SAC designation is that the River Ehen supports the largest freshwater pearl mussel <i>Margaritifera margaritifera</i> population in England. The full citation can be found at: http://jncc.defra.gov.uk/protectedsites/sacselecti on/sac.asp?eucode=UK0030057
River Ehen (Ennerdale Water to Keele Confluence)	SSSI	0.26 km SW	The site interest includes freshwater pearl mussel and the habitats to support the species, including tree shade along the banks. The full citation can be found at: http://designatedsites.naturalengland.org.uk/Site Detail.aspx?SiteCode=s2000147
High Leys	NNR; SSSI	1.75 km NW	High Leys is designated for supporting a species rich Hay Meadow; which is one of the largest and best examples in Cumbria. Full citation can be found at: https://www.gov.uk/government/publications/cumbrias-national-nature-reserves/cumbrias-national-nature-reserves#high-leys
Lake District High Fells	SAC	1.96 km SE	The primary reason for the SAC designation is for a variety of Annex I habitats, including: Northern Atlantic wet heaths with <i>Erica tetralix</i> , alpine and boreal heaths, and siliceous alpine and boreal grasslands, and blanket bogs. The full citation can

Site Name	Designation	Proximity to Survey Area and Direction	Description
			be found at: http://jncc.defra.gov.uk/protectedsites/sacselection/sac.asp?euocode=UK0012960
Pillar and Ennerdale Fells	SSSI	1.97 km SE	The site is important in exhibiting one of the best-known examples of altitudinal succession in England, from native upland birch-oak woodland, then sub-montane heaths and grassland, to montane heaths. Full citation can be found at: http://designatedsites.naturalengland.org.uk/SiteDetail.aspx?SiteCode=s1001459
Ennerdale	SSSI	1.97 km SE	The site contains a variety of habitats including semi-natural deciduous woodland, wetland and a nutrient-poor lake that is relatively undisturbed and supports a variety of nationally and locally rare freshwater flora and fauna. Full citation can be found at: http://designatedsites.naturalengland.org.uk/SiteDetail.aspx?SiteCode=s1000777
Non-Statutory Designated Sites			
Longmoor Head Meadow	CWS	0.62 km W	No information available
Long Moor	CWS	0.70 km SW	No information available
B3 A2 (1A)	SRV	0.74 km SW	No information available
B3 C4 (1B)	SRV	0.78 km SW	No information available
Far Moorend Pasture	CWS	0.94 km SE	No information available
Salter Wood	CWS and SIS	0.97 km W	No information available
B3 C4 (1A)	SRV	0.99 km SW	No information available
Croasdale Wood	CWS	1.21 km NE	No information available
B3 A2 (1B)	SRV	1.24 km SW	No information available
Dryhurst Meadows	CWS	1.32 km SW	No information available
River Ehen Meadows	CWS	1.45 km W	No information available
Stockhow Hall Quarry	CWS	1.48 km N	No information available
Hunterhow Mire	CWS	1.66 km NE	No information available
Rowrah Hall Quarry	CWS	1.94 km NW	No information available
Key: SSSI: Site of Special Scientific Interest CWS: County Wildlife Site SIS: Site of Invertebrate Significance SRV: Special Roadside Verge			

3.1.2 Protected and Notable Species

The desk study did not provide any additional protected or notable species in the local area to those that were identified in the WYG (2018) report. The only difference in the species identified was that CBDC provided no records of pine marten *Martes martes*; a single record of pine marten was identified 0.69 km north-west of the site in 2006 within the original Extended Phase 1 report (WYG, 2018). It is assumed this record was not validated and therefore pine marten has been excluded from the assessment.

Table 2 provides a summary of protected and notable species records within a 2 km radius of the site. It should be noted that the absence of records should not be taken as confirmation that a species is absent from the search area.

Table 2: Protected and notable species records within 2 km of the site.

Species	No. of Records	Most Recent Record	Proximity of Nearest record to Study Area	Species of Principal Importance	Local BAP	Legislation / Conservation Status
Amphibians						
Great Crested Newt <i>Triturus cristatus</i>	1	2012	1.5 km	✓	✓	Bern-A2; HabDir-A2; HabDir-A4; UKBAP; WACA-Sch5; England NERC; HabReg-Sch2
Common Toad <i>Bufo bufo</i>	11	2012	0.5 km		✓	Bern-A3; UKBAP; WACA-Sch5; England NERC.
Reptiles						
Common Lizard <i>Zootoca vivipara</i>	3	2017	0.8 km	✓	✓	WACA-Sch5; Bern-A3; UKBAP; England NERC
Mammals						
West European Hedgehog <i>Erinaceus europaeus</i>	8	2016	0.1 km	✓	✓	Bern-A3; UKBAP; England NERC
Common pipistrelle <i>Pipistrellus pipistrellus</i>	7	2015	0.3 km	✓	✓	HabDir-A4; WACA-Sch5 England NERC; HabReg-Sch 2
Soprano pipistrelle <i>Pipistrellus pygmaeus</i>	6	2015	0.2 km	✓	✓	HabDir-A4; WACA-Sch5; England NERC; HabReg-Sch 2
Eurasian Red Squirrel <i>Sciurus vulgaris</i>	173	2018	0.0 km	✓	✓	Bern-A3; UKBAP; WACA-Sch5; England NERC
Brown Hare <i>Lepus europaeus</i>	10	2019	0.4 km	✓	✓	UKBAP; England NERC
Eurasian Badger <i>Meles meles</i>	10	2017	0.5 km			Bern-A3;
European otter <i>Lutra lutra</i>	11	2019	0.1 km	✓	✓	Bern-A2; HabDir-A2*, HabDir-A4; UKBAP; WACA-Sch5; England NERC; HabReg-Sch2.
Key:						
WACA-Sch5: Schedule 5 of Wildlife and Countryside Act 1981 (as amended). Protected animals (other than birds).						
HabDir-A2: Species listed in Annex II of the European Communities Council Directive on the Conservation of Natural Habitats and Wild Fauna and Flora. Animal and plant species of community interest whose conservation requires the designation of Special Areas of Conservation.						

Species	No. of Records	Most Recent Record	Proximity of Nearest record to Study Area	Species of Principal Importance	Local BAP	Legislation / Conservation Status
<p>HabDir-A4: Species listed in Annex IV of the European Communities Council Directive on the Conservation of Natural Habitats and Wild Fauna and Flora. Animal and plant species of community interest in need of strict protection.</p> <p>HabReg-Sch2: Species offered European Protection that are listed in Schedule 2 of The Conservation of Habitats and Species Regulations 2017</p> <p>Bern-A2: Protected fauna species listed on Annex II of the Bern Convention.</p> <p>Bern-A3: Protected fauna species listed on Annex III of the Bern Convention.</p> <p>ENGLAND NERC: Listed as species of principal importance on Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006</p> <p>UKBAP: United Kingdom Biodiversity Action Plan.</p> <p>Local BAP: Cumbria Biodiversity Action Plan.</p> <p>Further information on the legislation can be found in Appendix 1</p>						

3.1.3 Invasive non-native plant species

CBDC identified two invasive non-native plant species within 2 km radius of the site: Himalayan balsam *Impatiens glandulifera* and Japanese knotweed *Fallopia japonica*.

Table 3: Invasive non-native plant species within 2 km of the site

Species	No. of Records	Most Recent Record	Proximity of Nearest record to Study Area
Himalayan balsam	2	2014	0.2 km
Japanese knotweed	19	2014	0.3 km

3.2 Field Survey

3.2.1 Habitats

The site consists of an agricultural field which is enclosed on three sides with a combination of fences and hedgerows (Photographs 1-4). The field was being used for grazing sheep at the time of the survey.

The following habitats were recorded on site:

- ✓ Hedgerows
- ✓ Semi-improved Acid Grassland / Marshy Grassland
- ✓ Running Water
- ✓ Tall Ruderal



Photograph 1: Semi-improved Acid Grassland/Marshy Grassland



Photograph 2: Hawthorn hedgerow which borders the south of the site



Photograph 3: Species-rich hedgerow which borders the eastern edge of the site along Kirkland Road



Photograph 4: Patches of tall ruderal vegetation (nettles and spear thistle) along the eastern margin of the site

The habitat types recorded on site, including their extent and species composition, were predominantly the same as those recorded during the original Extended Phase 1 Habitat survey (WYG, 2018). The only notable change has been the colonisation of tall ruderal habitat along the eastern margin of the site, with stands of common nettle *Urtica dioica* and spear thistle *Cirsium vulgare* being present. The presence these species was noted in this area during the original report. However, due to its scattered presence it was considered incorporated into the semi-improved acid grassland/marshy grassland habitat.

3.2.2 Protected and Notable Species

No individuals or field signs of protected or notable species, with the exception of birds were identified within, or adjacent to, the site during the field survey. In addition, the desk study did not identify any additional protected or notable species in the local area that may be utilising the site.

However, the habitat features on site and connectivity to the wider landscape remain consistent with those identified in the original Extended Phase 1 report (WYG, 2018). It is therefore considered that the following species, or species/groups of species, are continuing to use, or may potentially use, the site:

- ✓ Bats
- ✓ Badger
- ✓ Otter
- ✓ Red Squirrel
- ✓ Breeding Birds
- ✓ Polecat
- ✓ West European Hedgehog
- ✓ Common toad
- ✓ Brown hare
- ✓ Invertebrates

Birds and bats are the only groups of species that are potentially breeding within, or adjacent to, the site. All other species identified are considered unlikely to be breeding due to a lack of suitable breeding habitat for these species. These species may be using the site for commuting and/or foraging only.

An assessment of the habitats suitable to support breeding birds, bats and invertebrates was undertaken and is summarised below:

Breeding Birds

The hedgerows and semi-improved acid grassland/marsh grassland habitats both provide suitability to support breeding birds. The hedgerows continue to provide suitable breeding habitat to support a variety of passerines, including yellowhammer *Emberiza citrinella*, blackbird *Turdus merula*, robin *Erithacus rubecula*, tree sparrow *Passer montanus* and willow warbler *Phylloscopus trochilus*. The grassland has maintained its potential to support low numbers of ground-nesting species including meadow pipit *Anthus pratensis*, snipe *Gallinago gallinago* and curlew *Numenius arquata*.

Bats

One building and two trees on, or adjacent to, the site were identified as having potential to support roosting/breeding bats. These were the same features identified during the original Extended Phase 1 report and included: two semi-mature ash trees within the species-rich hedgerow (Figure 1, target notes 4 & 5) and an occupied house and attached outbuilding which forms part of the southern boundary of the site (Figure 1, target note 6). Each was assessed during the field survey with reference to the methods outlined in *Bat Surveys for Professional Ecologists: Good Practice Guidelines (3rd ed, 2016)* (Collins 2016). The house and attached outbuilding were assessed as having 'Moderate' roost suitability for bats. The potential roost features observed included lifted slates and gaps under ridge tiles. These features were also reported in the

original report (WYG, 2018) with a 'Moderate' suitability also given. Both semi-mature ash trees were assessed as having 'Low' roost suitability for bats. No potential roost features were observed from the ground. However, the trunk and some limbs were covered in ivy which potentially could be obscuring potential roost features from view. Due to the small size of the trunk and limbs, it is considered likely that if any potential roost features are present they would be only able to support low numbers of individuals in a transient or opportunistic roost. These trees were both assessed as having 'Low' suitability in the original report (WYG, 2018).

3.2.3 Invasive non-native Plant Species

No invasive non-native species were observed within, or adjacent to, the site during the field survey.

4 Discussion and Recommendations

Except for the greater extent of tall ruderal vegetation at the eastern margin, the site and its connectivity to the wider landscape has remained the same since the original Extended Phase 1 habitat survey undertaken in 2018 by WYG. In addition to this, the desk study and field survey did not identify the potential presence of any additional protected or notable species.

The continuation of these features has meant that the potential effects of the proposed development on habitats, designated sites and protected and notable species are assessed being the same as those previously identified. It is therefore recommended that the proposed works adhere to the recommendations outlined in Section 5.0 of the original Extended Phase 1 report (WYG, 2018) in respect of avoidance and mitigation measures.

5 References

Collins, J. 2016. *Bat Surveys for Professional Ecologists: Good Practice Guidelines (3rd edn)*. The Bat Conservation Trust, London. Available at: <https://www.bats.org.uk/resources/guidance-for-professionals/bat-surveys-for-professional-ecologists-good-practice-guidelines-3rd-edition>

Joint Nature Conservation Committee, 2016. *Handbook for Phase 1 Habitat Survey: A technique for environmental audit*. Joint Nature Conservation Committee, Peterborough.

Stace, 2019. *New Flora of the British Isles: Fourth Edition*. C&M Floristics, Stowmarket.

WYG, 2018. *Land Adjacent to Kirkland Road, Ennerdale: Ecological Appraisal*

Figures

Figure No.	Title
Figure 1	Phase 1 habitat map

Kirkland Road, Ennerdale

Legend

- Site Boundary [187]
- Target Note
- Target Note
- Phase 1 Habitats
- B1.2 - Acid grassland - semi-improved
- B5 - Marsh/marshy grassland
- C3.1 - Other tall herb and fern - ruderal
- E G2.1 - Running water eutrophic
- V J2.1.1 - Intact hedge native species-rich
- J2.1.2 - Intact hedge species-poor
- J2.4 - Fence

Target Note	Description
1	Small ash tree - negligible bat roost suitability
2	Small stream adjacent to lay-by
3	Species-rich verge
4	Semi-mature ash tree - low bat roost suitability
5	Semi-mature ash tree - low bat roost suitability
6	Off-site house moderate bat roost suitability

Figure 1 - Extended Phase 1 Results 2020



Scale: 1:738

Drawn by: KA
 Checked by: AB
 Approved by: AB
 Ref Number: ENVd1110A
 Project Number: 16303
 Issue Date: 22/10/2020
 Projection: OSGB 1936/British National Grid - EPSG 27700
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Appendix 1 Policy and Legislation

National Planning Policy Framework

In early 2012, the National Planning Policy Framework (NPPF) replaced much previous planning policy guidance, including Planning Policy Statement 9: Biological and Geological Conservation. The government circular 06/05: Biodiversity and Geological Conservation - Statutory Obligations and Their Impact within the Planning System, which accompanied PPS9, still remains valid. A presumption towards sustainable development is at the heart of the NPPF. This presumption does not apply, however, where developments require appropriate assessment under the Birds or Habitats Directives.

Chapter 15, entitled 'Conserving and enhancing the natural environment', sets out how the planning system should contribute to and enhance the natural and local environment by minimising impacts on biodiversity and, where possible, provide net gains in biodiversity. Opportunities to incorporate biodiversity gains into a development should be encouraged.

If a proposed development would result in significant harm to the natural environment which cannot be avoided (through the use of an alternative site with less harmful impacts), mitigated or compensated for (as a last resort) then planning permission should be refused.

The Ministry of Housing, Communities and Local Government has released guidance to support the National Planning Policy Framework (NPPF), known as the National Planning Practice Guidance (NPPG). This has been produced to provide guidance for planners and communities which will help deliver high quality development and sustainable growth in England. The guidance includes a section entitled 'Natural Environment: Biodiversity, geodiversity and ecosystems' which sets out information with respect to the following:

- ✔ the statutory basis for minimising impacts on biodiversity and providing net gains where possible;
- ✔ the local planning authority's requirements for planning for biodiversity;
- ✔ what local ecological networks are and how to identify and map them;
- ✔ the sources of ecological evidence;
- ✔ the legal obligations on local planning authorities and developers regarding statutory designated sites and protected species;
- ✔ the considerations for local (non-statutory) designated sites;
- ✔ definition of green infrastructure;
- ✔ where biodiversity should be taken into account in preparing a planning application;
- ✔ how development can enhance biodiversity;
- ✔ how policy is applied to avoid, mitigate or compensate for significant harm to biodiversity and how mitigation and compensation measures can be ensured; and,
- ✔ the consideration of ancient woodlands and veteran trees in planning decisions.

Biodiversity 2020: A strategy for England's wildlife & ecosystem services

Biodiversity 2020 replaces the previous UK Biodiversity Action Plan and sets national targets to be achieved. The intent of Biodiversity 2020, however, is much broader than the protection and enhancement of less common species, and is meant to embrace the wider countryside as a whole.

The priority species and habitats considered under Biodiversity 2020 are the SPI & HPI detailed under NERC Act (see below for further details).

Local Biodiversity Action Plan

Local Biodiversity Action Plans (LBAPs) identify habitat and species conservation priorities at a local level (typically County by County) and are usually drawn up by a consortium of local Government organisations and conservation charities. Although they are no-longer managed at a national level many are still reviewed and updated at a local level.

It should be noted that the existence of a Species Action Plan (SAP) or Habitat Action Plan (HAP) does not always infer an elevated level importance for those features. These plans may be designed to encourage an increase in these habitats/species, rather than to protect a county-scarce feature.

The Cumbria Biodiversity Action Plan (CBAP) was launched in 2001; species action plans (SAPs) were drawn up for 21 species and habitat action plans (HAPs) were drawn up for 19 habitats. Following the UKBAP review in 2007, the CBAP was reviewed in 2009 and it was decided to include all habitats and species which are listed as HPI and SPI under the NERC Act 2006. A list of all 268 SPI which occur in Cumbria is provided at:

<https://www.cumbriawildlifetrust.org.uk/sites/default/files/cumbria%20bap%20species%20updated%20list%202009%20web.pdf>

The original action plans for Cumbria were further reviewed as part of the Cumbria Biodiversity Evidence Base (CBEB) and detailed statements have been prepared for 11 species/species groups (Table 5) and 21 habitats (Table 6). For the purposes of this report, the species and habitats listed in the following tables are considered to represent the current CBAP.

Species Action Plans	
Barn Owl	Red Squirrel
Bats	Reptiles
Great Crested Newt	Small Blue
Hen Harrier	Water Vole
Natterjack Toad	Wintering Geese and Swans
Otter	-

Habitat Action Plans	
Bogs	Hedgerows
Calaminarian Grasslands	Lakes, Ponds and Tarns
Calcareous Grassland	Lowland Dry Acid Grassland
Coastal and Floodplain Grazing Marsh	Montane Habitats
Coastal Habitats Above High Water	Open Mosaic Habitats on Previously Developed Land
Coastal Intertidal Habitats	Rivers

Habitat Action Plans	
Coastal Subtidal Habitats	Rock Habitats
Fen, Marsh and Swamp	Saline Lagoons
Hay Meadows and Pastures	Semi-Natural Woodland
Heathland	Traditional Orchards
Wood-Pasture and Parkland	-

Local Plan

The site lies within Copeland Borough. Chapter 7 of the adopted Local Plan for Copeland (LPC) (2013-2028) Environmental Protection and Enhancement incorporates one policy covering Biodiversity and Geodiversity.

Policy ENV3 – Biodiversity and Geodiversity

The Council will contribute to the implementation of the UK and Cumbria Biodiversity Action Plan within the plan area by seeking to:

- ✔ Improve the condition of internationally, nationally and locally designated sites.
- ✔ Ensure that development incorporates measures to protect and enhance any biodiversity interest.
- ✔ Enhance, extend and restore priority habitats and look for opportunities to create new habitat.
- ✔ Protect and strengthen populations of priority or other protected species.
- ✔ Boost the biodiversity value of existing wildlife corridors and create new corridors, and stepping stones that connect them, to develop a functional Ecological Network.
- ✔ Restrict access and usage where appropriate and necessary in order to conserve an area’s biodiversity value.

Policy DM25 supports this policy, setting out the detailed approach towards managing development proposals that are likely to have an effect on nature conservation sites, habitats and protected species.

The core strategy policies are supported by Development Mitigation Policies, one of which relates to ‘Nature Conservation, Habitat and Species Protection:

Policy DM25 – Protecting Nature Conservation Sites, Habitats and Species

A All development proposals should:

- ✔ Protect the biodiversity value of land and buildings.
- ✔ Minimise fragmentation of habitats.
- ✔ Maximise opportunities for conservation, restoration, enhancement and connection of natural habitats and creation of habitats for species listed in UK and Cumbria Biodiversity Action Plans. Special consideration should also be given to those European habitats that lie outside the boundaries of European designated sites.

B Development proposals that would cause a direct or indirect adverse effect on locally recognised sites of biodiversity and geodiversity importance, including County Wildlife Sites, Local Nature Reserves and Regionally Important Geological/Geomorphological Sites or protected species will not be permitted unless:

- ✓ the benefits of the development clearly outweigh the impacts on the features of the site and the wider network of natural habitats, and;
- ✓ prevention, mitigation and/or compensation measures are provided. An appropriate long-term management plan will be sought and arrangements to provide adequate funding will be made in accordance with a formal planning agreement or obligation.

C Where compensatory habitat is created, it should be of equal or greater size than the area lost as a result of the development.

D Development proposals where the principal objective is to conserve or enhance biodiversity or geodiversity interests will be supported in principle.

E Where there is evidence to suspect the presence of protected species any planning application should be accompanied by a survey assessing their presence and, if present, the proposal must be sensitive to, and make provision for, their needs.

F All development proposals must take into account any likely significant effects on the internationally important sites both within the Borough and within a 20km radius of the Borough boundary as well as those that are hydrologically linked to the development plan area.

General Legislation

The following presents accounts present a summary of the legislation relevant to the site and proposals. It is recommended that the reader also refer to the original legislation for definitive interpretation.

Conservation of Habitats and Species Regulations 2017, (as amended)

The Conservation of Habitats and Species Regulations 2017 (as amended), henceforth referred to as the Habitats Regulations 2017, consolidate and update the Conservation (Natural Habitats, &c.) Regulations 1994 and 2010 and all its various amendments. The Habitats Regulations 2017 are the principal means by which the European Union's ECC Directive 92/43 (The Habitats Directive) as amended is transposed into English and Welsh law.

The Habitats Regulations 2017 place duty upon the relevant authority of government to identify sites which are of importance to the habitats and species listed in Annexes I and II of the Habitats Directive. Those sites which meet the criteria are, in conjunction with the European Commission, designated as Sites of Community Importance, which are subsequently identified as Special Areas of Conservation (SAC) by the European Union member states. The regulations also place a duty upon the government to maintain a register of European protected sites designated as a result of EC Directive 79/409/EEC on the Conservation of Wild Birds (The Birds Directive). These sites are termed Special Protection Areas (SPA) and, in conjunction with SACs, form the Natura 2000 network of sites. The Habitats Directive introduces for the first time for protected areas, the precautionary principle; that is that projects can only be permitted having ascertained no adverse effect on the integrity of the site. Projects may still be permitted if there are no alternatives, and there are imperative reasons of overriding public interest.

The Habitats Regulations 2017 also provide for the protection of individual species of fauna and flora of European conservation concern listed in Schedules 2 and 5 respectively. These are commonly referred to as

European Protected Species. Schedule 2 includes species such as otter and great crested newt for which the UK population represents a significant proportion of the total European population. It is an offence to deliberately kill, injure, disturb or trade these species. Schedule 5 plant species are protected from unlawful destruction, uprooting or trade under the regulations.

It is also an offence under the Habitats Regulations 2017 for any person to have in their possession or control, to transport, to sell or exchange, or to offer for sale, any live or dead protected species, part of a protected species or anything derived from a protected species, which has been unlawfully taken from the wild.

The Wildlife and Countryside Act (WCA) 1981

The WCA, as amended, consolidates and amends pre-existing national wildlife legislation in order to implement the Bern Convention and the Birds Directive. It complements the Conservation (Natural Habitats. &c.) Regulations 2017 (as amended), offering protection to a wider range of species. The Act also provides for the designation and protection of national conservation sites of value for their floral, faunal or geological features, termed Sites of Special Scientific Interest (SSSIs).

Schedules of the act provide lists of protected species, both flora and fauna, and detail the possible offences that apply to these species. All relevant species-specific legislation is detailed later in this Appendix.

The Countryside rights of Way (CROW) Act 2000

The CROW Act, introduced in England and Wales in 2000, amends and strengthens existing wildlife legislation detailed in the WCA 1981. It places a duty on government departments and the National Assembly for Wales to have regard for biodiversity and provides increased powers for the protection and maintenance of SSSIs. The Act also contains lists of habitats and species (Section 74) for which conservation measures should be promoted, in accordance with the recommendations of the Convention on Biological Diversity (Rio Earth Summit) 1992.

The Natural Environment and Rural Communities (NERC) Act 2006

Section 40 of the NERC Act places a duty upon all local authorities and public bodies in England and Wales to promote and enhance biodiversity in all of their functions. Sections 41 (England) and 42 (Wales) list habitats and species of principal importance (HPI and SPI) to the conservation of biodiversity. These lists supersede

Section 74 of the CROW Act 2000. These species and habitats are a material consideration in the planning process.

Wild Mammals Protection Act 1996

This Act offers protects a form of protection to all wild species of mammals, irrespective of other legislation, and focussed on animal welfare, rather than conservation.

Unless covered by one of the exceptions, a person is guilty of an offence if he mutilates, kicks, beats, nails or otherwise impales, stabs, burns, stones, crushes, drowns, drags or asphyxiates any wild mammal with intent to inflict unnecessary suffering.

Its application is typically restricted to preventing deliberate harm to wildlife (in general) during construction works etc.

Birds

The Wildlife and Countryside Act (WCA) 1981, as amended, protects all breeding birds in the UK with a few exceptions (i.e. sporting birds listed in Schedule 2 and for certain specified purposes under licence). The WCA makes it an offence to intentionally or recklessly:

- ✔ kill, injure or take a wild bird;
- ✔ take, damage, destroy or interfere with the nest of any wild bird whilst it is in use or being built (or at any time for a nest habitually used by any listed in Schedule A I);
- ✔ obstruct or prevent any wild bird from using its nest;
- ✔ take or destroy an egg of any wild bird;
- ✔ disturb any wild bird listed on Schedule 1 whilst it is building a nest or is in, on, or near a nest containing eggs or young, or whilst lekking; or
- ✔ disturb the dependent young of any wild bird listed on Schedule 1.

Recklessly in this context is to be understood as pursuing a course of action while consciously disregarding the fact that the action gives rise to a substantial and unjustifiable risk.

Schedule 1 is a list of rare breeding species that are specially protected in the UK. Two additional Schedules (Schedule 1A and A1) have been created to afford further protection to some species included on Schedule 1. This additional protection makes it an offence to intentionally or recklessly:

- ✔ at any time, damage, destroy or interfere with any nest habitually used by any wild bird included in Schedule A1; or
- ✔ at any time harass any wild bird included in Schedule 1A.

Forty-nine bird species are listed as SPI in England within Section 41 of the NERC Act 2006. This makes them capable of being material considerations in the planning process.

Bats

Bats and the places they use for shelter or protection (i.e. roosts) receive European protection the Habitats Regulations 2017. They receive further legal protection under the Wildlife and Countryside Act (WCA) 1981, as amended. This protection means that bats, and the places they use for shelter or protection, are capable of being a material consideration in the planning process.

Regulation 41 of the Habitats Regulations 2017 (as amended), states that a person commits an offence if they:

- ✔ deliberately capture, injure or kill a bat;
- ✔ deliberately disturb bats; or
- ✔ damage or destroy a bat roost (breeding site or resting place).

Disturbance of animals includes in particular any disturbance which is likely to impair their ability to survive, to breed or reproduce, or to rear or nurture their young, or in the case of animals of a hibernating or migratory

species, to hibernate or migrate; or to affect significantly the local distribution or abundance of the species to which they belong.

It is an offence under the Habitats Regulations 2017 (as amended) for any person to have in their possession or control, to transport, to sell or exchange or to offer for sale, any live or dead bats, part of a bat or anything derived from bats, which has been unlawfully taken from the wild.

Whilst broadly similar to the above legislation, the WCA 1981 (as amended) differs in the following ways:

- ✔ Section 9(1) of the WCA makes it an offence to intentionally kill, injure or take any protected species.
- ✔ Section 9(4)(a) of the WCA makes it an offence to intentionally or recklessly damage or destroy, or obstruct access to, any structure or place which a protected species uses for shelter or protection.
- ✔ Section 9(4)(b) of the WCA makes it an offence to intentionally or recklessly* disturb any protected species while it is occupying a structure or place which it uses for shelter or protection.

As bats re-use the same roosts (breeding site or resting place) after periods of vacancy, legal opinion is that roosts are protected whether or not bats are present.

Seven bat species are listed as 'SPI' in England under Section 41 of the NERC Act 2006. These are:

- ✔ Barbastelle bat *Barbastella barbastellus*.
- ✔ Bechstein's bat *Myotis bechsteinii*.
- ✔ Noctule *Nyctalus noctule*.
- ✔ Soprano pipistrelle *Pipistrellus pygmaeus*.
- ✔ Brown long-eared bat *Plecotus auritus*.
- ✔ Greater horseshoe bat *Rhinolophus ferrumequinum*.
- ✔ Lesser horseshoe bat *Rhinolophus hipposideros*.

Badger

Badgers (are protected in Britain by the Protection of Badgers Act 1992. The purpose of this Act is to protect the animals from deliberate cruelty and from the incidental effects of lawful activities which could cause them harm. Under this legislation it is an offence to:

- ✔ wilfully kill, injure or take a badger (or attempt to do so);
 - ✔ cruelly ill-treat a badger;
 - ✔ dig for a badger;
 - ✔ intentionally or recklessly damage or destroy a badger sett, or obstruct access to it;
 - ✔ cause a dog to enter a badger sett;
 - ✔ disturb a badger when it is occupying a sett;
 - ✔ have in their possession, or under their control, any dead badger or any part of, or anything derived from, a dead badger;
 - ✔ use, for the purpose of killing or taking a badger, badger tongs or any firearm (see legislation for exceptions);
 - ✔ sell a live badger or offers one for sale or has a live badger in their possession or under their control;
- or

- ✔ mark, or attaches any ring, tag or other marking device to, a badger (other than one which is lawfully in their possession by virtue of such a licence).

If any of the offences listed above resulted from a person being reckless, even if they had no intention, their action would still be considered an offence.

Otter

Otters are protected under sections 9 and 11 of the Wildlife and Countryside Act 1981 and also under the Habitats Regulations 2017, making them a European protected species. Under this legislation, it's an offence to:

- ✔ capture, kill, disturb or injure otters (on purpose or by not taking enough care);
- ✔ damage or destroy a breeding or resting place (deliberately or by not taking enough care);
- ✔ obstruct access to their resting or sheltering places (deliberately or by not taking enough care); or
- ✔ possess, sell, control or transport live or dead otters, or parts of otters.

Otters are listed as SPI in England under Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006 and therefore are material consideration for Local Planning Authorities (LPAs) during the planning process.

Red Squirrel

Red squirrels are protected species, listed under Schedules 5 and 6 of the Wildlife and Countryside Act 1981 (as amended). Under this legislation it is an offence to intentionally or recklessly:

- ✔ kill or injure a red squirrel;
- ✔ damage or destroy any structure or place a red squirrel uses for shelter or protection; or
- ✔ disturb a red squirrel while it is occupying a structure or place for shelter or protection.

Red squirrels are listed as SPI in England under Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006 and therefore are material consideration for Local Planning Authorities (LPAs) during the planning process.

West European Hedgehog

West European hedgehogs are listed under Schedule 6 of the Wildlife and Countryside Act 1981 and protected under the Wild Mammals Protection Act (1996). Under this legislation it is an offence to:

- ✔ kill or capture west European hedgehogs using certain methods; or
- ✔ deliberately commit an act of cruelty.

West European hedgehogs are listed as SPI in England under Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006 and therefore are material consideration for Local Planning Authorities (LPAs) during the planning process.