

# **Ethos Environmental Planning**



## **Preliminary Ecological Appraisal**

### **Land at East Cullompton**

**November 2016**

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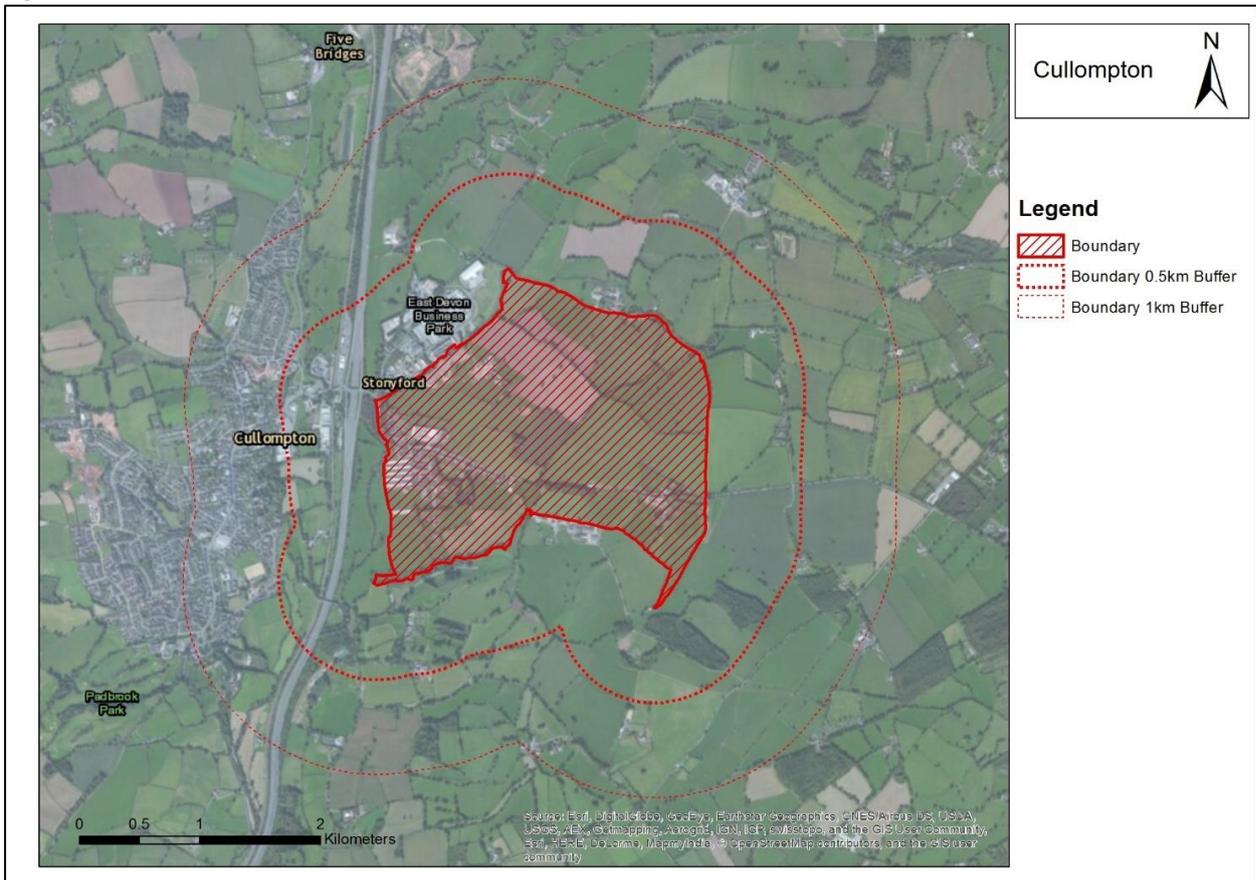
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# 1.0 INTRODUCTION

This preliminary ecological appraisal produced by Ethos Environmental Planning (Ethos) relates to land west of Cullompton (central grid reference: ST 03729 07476) (Fig. 1). The total area surveyed was 197 hectares and includes land to the east of the M5 and the East Devon Business Park. Additional areas of ecological interest within 0.5km of the site were also appraised including the adjacent River Culm.

Figure 1 Site location



## 1.1 Aims and objectives of the appraisal

The preliminary ecological appraisal has been informed by guidelines provided in the ‘*CIEEM Guidelines for Ecological Report Writing, 2015*’. Further guidance in relation to surveys for protected species is detailed in the relevant sections within this report. The survey has the following objectives:

- to identify the existing habitats on site;
- to assess the potential and presence of notable species;
- to establish baseline conditions and determine the importance of ecological features present (or those that could be present) within the specified area;
- to establish any requirements for further surveys or licensing;
- to identify key constraints to the project and make recommendations for design options to avoid significant effects on important ecological features/resources;

- to identify the mitigation measures to reduce any identified or potential ecological impact;
- to identify enhancement opportunities.

## **1.2 Structure of the report**

The following is included within this report:

- Legislative and planning context;
- Methodology;
- Background data review;
- Phase 1 habitat survey;
- Summary and recommendations.

## 2.0 LEGISLATIVE AND POLICY CONTEXT

This section provides a summary of the legislative and planning context which has been used to inform the ecological assessment and subsequent recommendations made in this report. Appendix 1 sets out further details in relation to the most relevant legislation and policy.

### 2.1 Legislation

**The Habitats Directive** (together with the Birds Directive) forms the cornerstone of Europe's nature conservation policy. It is built upon two foundations: the Natura 2000 network of protected sites, and the strict system of species protection. In total the directive protects over 1,000 animals and plant species and over 200 "habitat types" (e.g. special types of forests, meadows, wetlands, etc.) which are of European importance.

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

Badgers and their setts are protected under the **Protection of Badgers Act 1992** as amended by the Hunting Act 2004.

The **Natural Environment and Rural Communities Act 2006** (the NERC act) places a duty on all public authorities, including local planning authorities, to consider biodiversity in their work. Local planning authorities are to ensure that there is no net loss of biodiversity on a site, no net loss in habitat connectivity and aims to enhance biodiversity.

The **Hedgerows Regulations 1997** protect 'important hedgerows' from being removed (uprooted or destroyed). Hedgerows are protected if they are at least 30 years old and meet at least one of the criteria listed in part II of schedule 1.

Specific legislation related to different species such as bats, birds and reptiles is outlined in appendix 1.

### 2.2 National Policy summary

The **National Planning Policy Framework (NPPF)** aims to minimise impacts on biodiversity and provide net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity, including the establishment of coherent ecological networks more resilient to current and future pressures (see Appendix 1).

The **UK Biodiversity Action Plan (UK BAP)** sets out a programme for conserving the UK's biodiversity. It led to the production of 436 action plans between 1995 and 1999 to help many of the UK's most threatened species and habitats to recover. A review of the UK BAP priority list in 2007 led to the identification of 1,150 species and 65 habitats that meet the BAP criteria at UK level.

## 2.3 Local Policy summary

Mid Devon District Council produced a local plan in October 2013, from which the following policy is of relevance to the site:

### **DM28 GREEN INFRASTRUCTURE IN MAJOR DEVELOPMENT**

*Major development proposals must demonstrate that green infrastructure will be incorporated within the site as follows:*

- a) Biodiversity mitigation where warranted, resulting in a net gain in biodiversity;*
- b) Flood and water resource management;*
- c) Green corridors and public rights of way to link the site to the wider GI network, provide walking and cycling opportunities and avoid habitat fragmentation;*
- d) New green infrastructure such as the creation of native woodland where possible;*
- e) Public open space within housing developments.*

*Where evidence demonstrates that meeting these criteria would render the development unachievable, the Council will consider off site provision in lieu of one or more of the policy criteria. The Council will balance the benefits of the development against the objectives of this policy. Housing proposals that do not include public open space within the application site must demonstrate that this will be in the public interest, have no significant adverse impact on the amenity of residents within or adjoining the development, and provide appropriate compensation through design, such as the provision of larger private gardens.*

## **3.0 METHODOLOGY**

### **3.1 Phase 1 habitat survey**

The phase 1 habitat survey and mapping has drawn on guidance provided in the *Handbook for Phase 1 Habitat Survey - a technique for environmental audit (JNCC 2010)*. A field survey was undertaken on the 7<sup>th</sup> April 2016 by the survey team. The survey incorporated assessment of the land within the development boundary and the adjoining area, including a description and mapping of all key features and habitat types. The survey was carried out to identify the range of habitats within the site, however due to the size of the site it was not possible to make a full species list.

### **3.2 Background data search**

An initial desktop study utilised information provided in previous ecological surveys of nearby land, as well as local biodiversity data records. All of this information is publicly available, and was seen to be the most effective way of gaining an understanding of the site and its context.

### **3.3 Personnel**

All surveys were led by Jim Phillips, BSc (Hons), MA, MCIEEM. Due to the size and scope of the surveys involved, Jim was assisted by Charles Cunningham, BSc (Hons) and Kane Burchill.

Jim is a Director of Ethos and a qualified and experienced ecologist with over 8 year's field work experience and a full member of the Chartered Institute of Ecology and Environmental Management (CIEEM). Charles and Kane are qualified ecologists each with two years' experience of practical field ecology. The survey team have worked together on numerous similar projects and have a complimentary range of skills and experience which are considered to have provided a robust ecological appraisal of the site.

### **3.4 Limitations**

The phase 1 survey was carried out in April, and therefore it was not possible to make a full species list of flora and fauna present on site. Sufficient evidence was gathered, with respect to the large size of the site, to make an accurate assessment of the habitats present on site and to recommend and inform further surveys.

## 4.0 BACKGROUND DATA REVIEW

A background data review was undertaken using publicly available data for the proposed site. The primary sources of this information were:

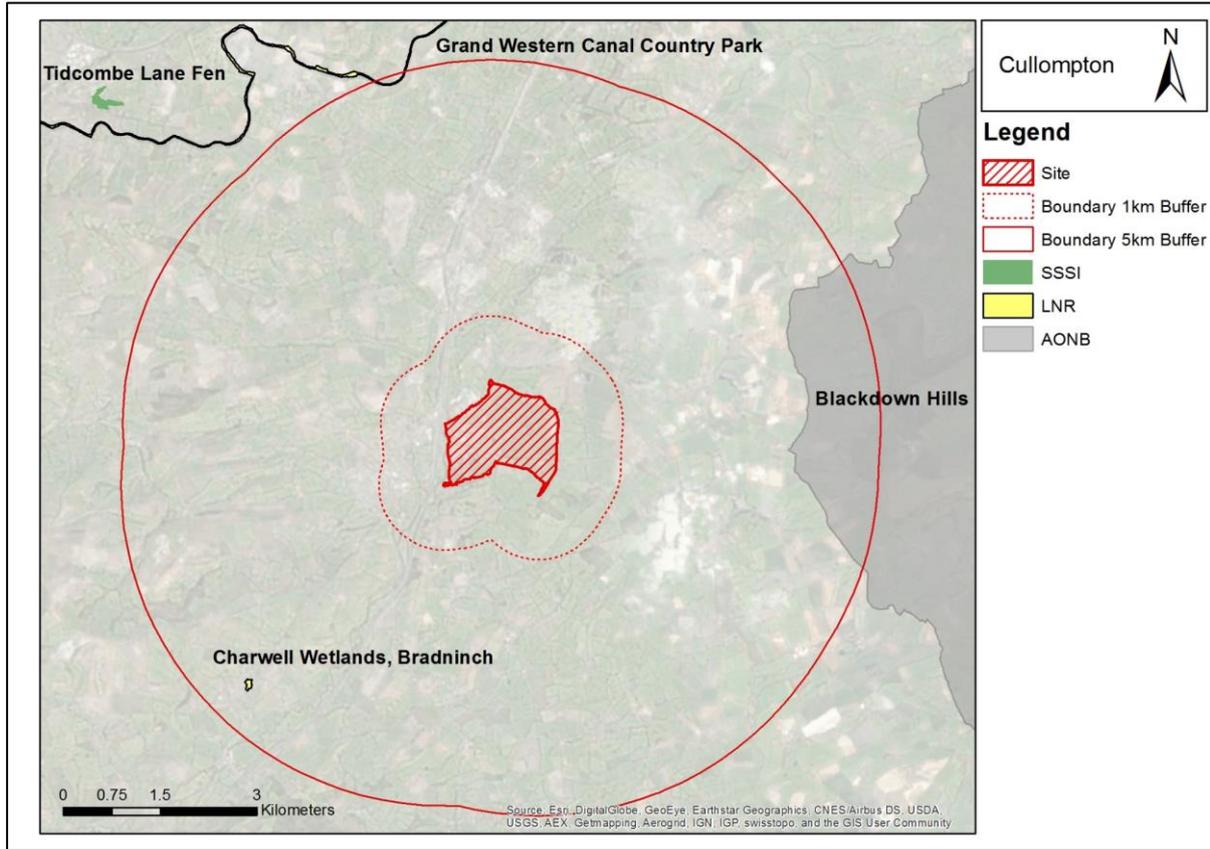
- *EAD Ecology Consultants and Environmental Gain Limited*, which both carried out ecological appraisals (March and April 2014 respectively) for sites in west Cullompton, approximately 2km west of the proposed site. As well as carrying out Phase 1 habitat surveys, existing biodiversity records were within 1km and bat records within 4km. These provided biological records for protected and notable species and information on sites with both statutory and non-statutory conservation designations. Additionally, information on sites with statutory conservation designations was found using the UK Government's Countryside Geographic Information website (MAGIC map).
- *Devon Biodiversity Records Centre (DBRC)* carried out a Phase 1 habitat survey and produced a Wildlife site resource map (2014) for the site. These contain local species records and an overview of the habitat within the site.
- *Acorn Ecology Limited* carried out a Phase 2 Ecological Survey (2012) following an extended Phase 1 habitat survey undertaken in September 2011. A search for relevant protected species within the 10km grid square containing the site (ST00) and within the past 10 years was completed using the National Biodiversity Network website ([www.nbn.org.uk](http://www.nbn.org.uk)). The Devon Biodiversity Records Centre (DBRC) was contacted in July 2012 to determine whether there are any records of great crested newts within 2km of the pond on site. The historic site was located to the west of Cullompton, approximately 2km from the site covered by this appraisal.

### 4.1 Notable Sites

There are no designated sites within a 1km radius of the site, but there are several Local Nature Reserves within 5km as well as the Blackdown hills AONB to the east of the proposed site (see Fig. 2).

- Blackdown Hills (AONB), approximately 4km east of the site;
- Grand Western Canal Country Park (LNR), 5km approx. northwest of the site, supports many waterfowl species and supports rare bankside vegetation and orchids;
- Charwell Wetlands (LNR), approximately 4.5km to the southwest of the site, comprises of fen meadow habitat and an area of peat land.

Figure 2. Statutory habitat designations within 5km of the site, with 1km and 5km buffers

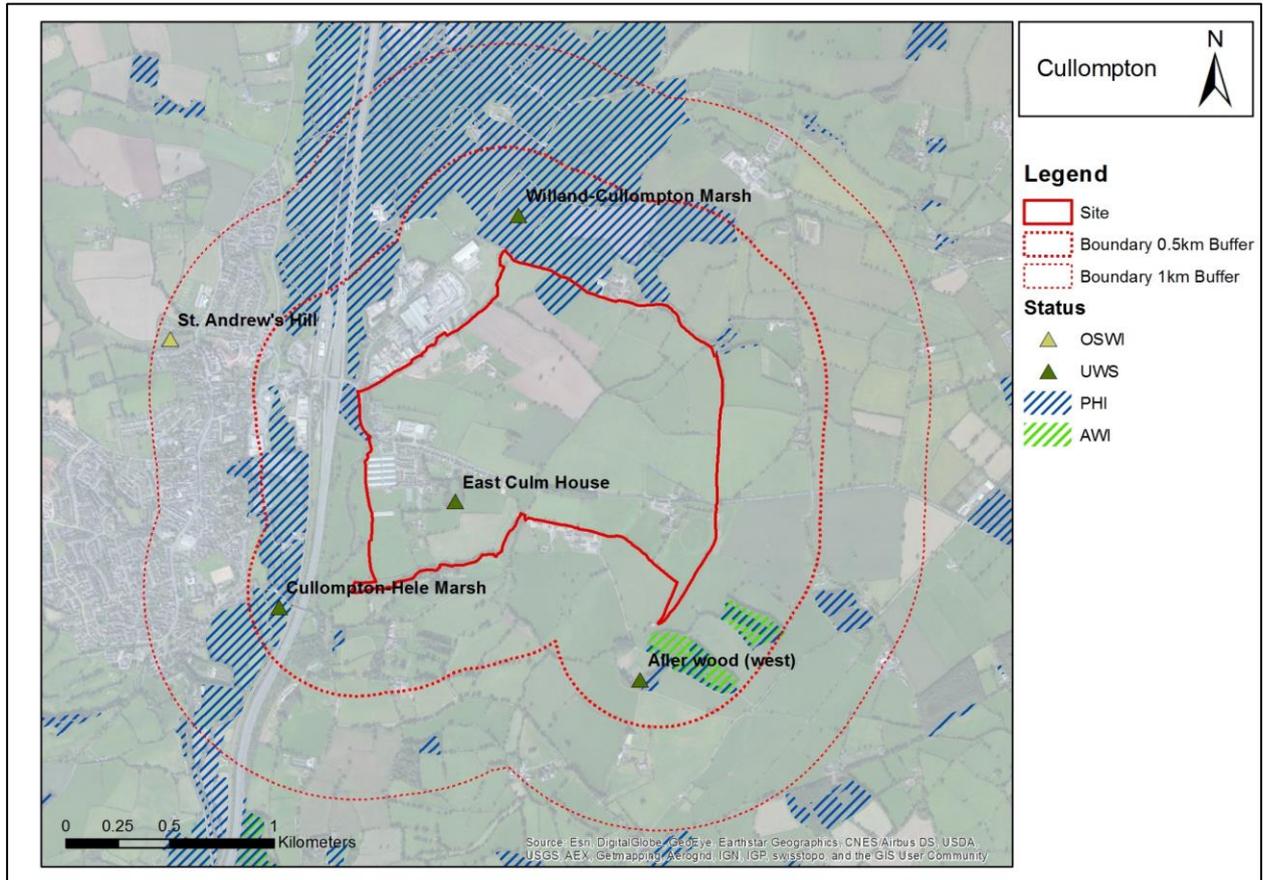


Additionally, there are a number of non-statutory sites within 1km of the application site which are presented in Table 1 and Figure X. There are also priority habitats and ancient woodland present within 1km of the site.

Table 1 Nearby non-statutory areas of interest

Name	Brief Description	Approximate distance from site
St, Andrew’s Hill (OSWI)	Semi improved neutral & marshy grassland	900m west
Willand–Cullompton Marsh (UWS)	Possible floodplain grazing marsh	Borders north of site, one field included
Cullompton–Hele Marsh (UWS)	Possible floodplain grazing marsh	300m west, across M5 transport infrastructure
East Culm House (UWS)	Pond with amphibian interest	Within site
Aller Wood (west) (UWS)	Broadleaved woodland	250m south

Figure 3 Non-statutory habitat designations within 1km of the site, and ancient woodland and priority habitats bordering the site.



## 4.2 Notable Species

A list of notable species records in the area, obtained from previous ecological surveys and data searches, are presented in table 2:

Table 2 Notable species records within 5km of the site

Common Name	Binomial
<b>Birds</b>	
<i>Barn owl*</i>	<i>Tyto alba</i>
<i>Barn swallow</i>	<i>Hirundo rustica</i>
<i>Common kingfisher*</i>	<i>Alcedo atthis</i>
<i>Sand martin</i>	<i>Riparia riparia</i>
<i>Common swift</i>	<i>Apus apus</i>
<i>Little egret</i>	<i>Egretta garzetta</i>
<i>Red kite*</i>	<i>Milvus milvus</i>
<i>Mistle Thrush</i>	<i>Turdus viscivorus</i>
<i>Willow Warbler</i>	<i>Phylloscopus trochilus</i>
<b>Mammals</b>	
<i>European otter*</i>	<i>Lutra lutra</i>
<i>Eurasian badger*</i>	<i>Meles meles</i>
<i>Hazel dormouse*</i>	<i>Muscardinus avellanarius</i>
<i>Common pipistrelle*</i>	<i>Pipistrellus pipistrellus</i>
<i>Soprano pipistrelle*</i>	<i>Pipistrellus pygmaeus</i>
<i>Brown long-eared bat*</i>	<i>Plecotus auritus</i>
<i>Noctule bat*</i>	<i>Nyctalus noctula</i>
<i>Lesser horseshoe bat*</i>	<i>Rhinolophus hipposideros</i>
<i>Whiskered bat*</i>	<i>Myotis mystacinus</i>
<i>Serotine bat*</i>	<i>Eptesicus serotinus</i>
<i>Leisler's bat*</i>	<i>Nyctalus leisleri</i>
<i>Barbastelle bat*</i>	<i>Barbastella barbastellus</i>
<i>Roe Deer</i>	<i>Capreolus capreolus</i>
<i>West European Hedgehog</i>	<i>Erinaceus europaeus</i>
<b>Reptiles and Amphibians</b>	
<i>Common frog</i>	<i>Rana temporaria</i>
<i>Common Toad</i>	<i>Bufo bufo</i>
<i>Newt species</i>	<i>Lissotriton</i>
<b>Invertebrates</b>	
<i>Jersey tiger</i>	<i>Euplagia quadripunctaria</i>
<i>White-legged damselfly</i>	<i>Platynemis pennipes</i>
<b>Flora</b>	
<i>Japanese Knotweed*</i>	<i>Fallopia japonica</i>
<i>Primrose</i>	<i>Primula vulgaris</i>
<i>Water Chickweed</i>	<i>Myosoton aquaticum</i>
<i>Rhododendron</i>	<i>Rhododendron ponticum</i>
<i>Floating Pennywort</i>	<i>Hydrocotyle ranunculoides</i>
<i>Himalayan Balsam</i>	<i>Impatiens glandulifera</i>

### \*Developmental control species

These are species considered most important by local authorities in the planning process. They include species part of the NERC Act (2006) Section 41, those that have European protection, those on the Wildlife and Countryside Act (1981), and Japanese knotweed.

### 4.3 Summary of previous ecology surveys

Results from previous surveys by *Environmental Gain Limited* (April 2014), *EAD Ecology Consultants* (March 2014) and *Acorn Ecology Limited* (2012): *NEEDED? AS 2KM FROM SITE*

**Habitat:** Environmental Gain found the sites to be of moderate ecological value, comprising primarily of semi-improved, cattle-grazed grassland, arable land and rush pasture. The surveys found features of ecological value including native hedgerows, mature trees, marshy grassland, designated as an Other Site of Wildlife Interest (OSWI) and a number of streams. Other surveys found similar habitat or were in more urban environments and so less relevant.

**Reptiles:** Although there are no records of reptiles in the area, the majority of the reports identified potential for reptile presence in the mosaic of habitats within the sites. Primarily for slow worm, and possibly grass snake and common lizard. The phase 2 ecological survey carried out by Acorn Ecology Limited did not include a reptile survey.

**Bats:** There are records of many bat species in the area that were noted by the previous phase 1 surveys (see table x), with potential for roosting as well as foraging areas. The phase 2 survey (Acorn Ecology Limited) carried out both static and walked transect surveys, and found at least 8 bat species, including lesser-horseshoe and barbastelle bat.

**Otter:** There are multiple otter records in the area, the phase 1 surveys found potential habitat for otters adjacent to the streams and also spraint (faeces) and holt (exposed tree root systems on river banks or similar) sites. Further otter surveys were recommended. An otter pad mark was found during the phase 2 survey and a verification survey recommended.

**Amphibians:** Although there are records of common frogs, there are none of great crested newt within 2km of the historic sites and the sites were not in a Great Crested Newt Consultation Zone. Specific surveys were not carried out, possibly because it is unlikely the species is present due to the lack of suitable nearby water bodies.

**Badger:** Evidence of badger activity was found during multiple phase 1 surveys, including foraging tracks and a fresh latrine, and there are multiple records in the wider area. The site where the phase 2 survey was carried out included a large sett within the boundary, and multiple smaller setts were found in the surrounding area.

**Dormice:** There are multiple records of dormice in the area, and suitable habitat was found including hazel hedgerows. The phase 2 report included a specific dormice survey, which did not find any evidence of dormouse presence at that site.

**Breeding birds:** Previous appraisals found suitable nesting and foraging habitat for a variety of bird species, farmland birds in particular. Suitable nesting habitat consisted of mature hedgerows, native trees and overgrown scrub along riverbanks. A number of mature trees were noted as having potential for barn owls.

**Invertebrates:** The historic sites were found to support a diverse assemblage of invertebrates, although the diversity and importance of the invertebrate community was constrained by the relatively intensive grassland management practices.

## **4.4 Relevance of the background data search**

### **4.4.1 Notable Sites**

The nearest statutory site is over 3km from the site, however, given the scale of the development any impacts should be considered carefully. There are a number of non-statutory sites within 1km of the site, of particular note are the UWS pond in the centre of the site and the large areas of high quality grazing marsh to the west and north of the site.

### **4.4.2 Notable species**

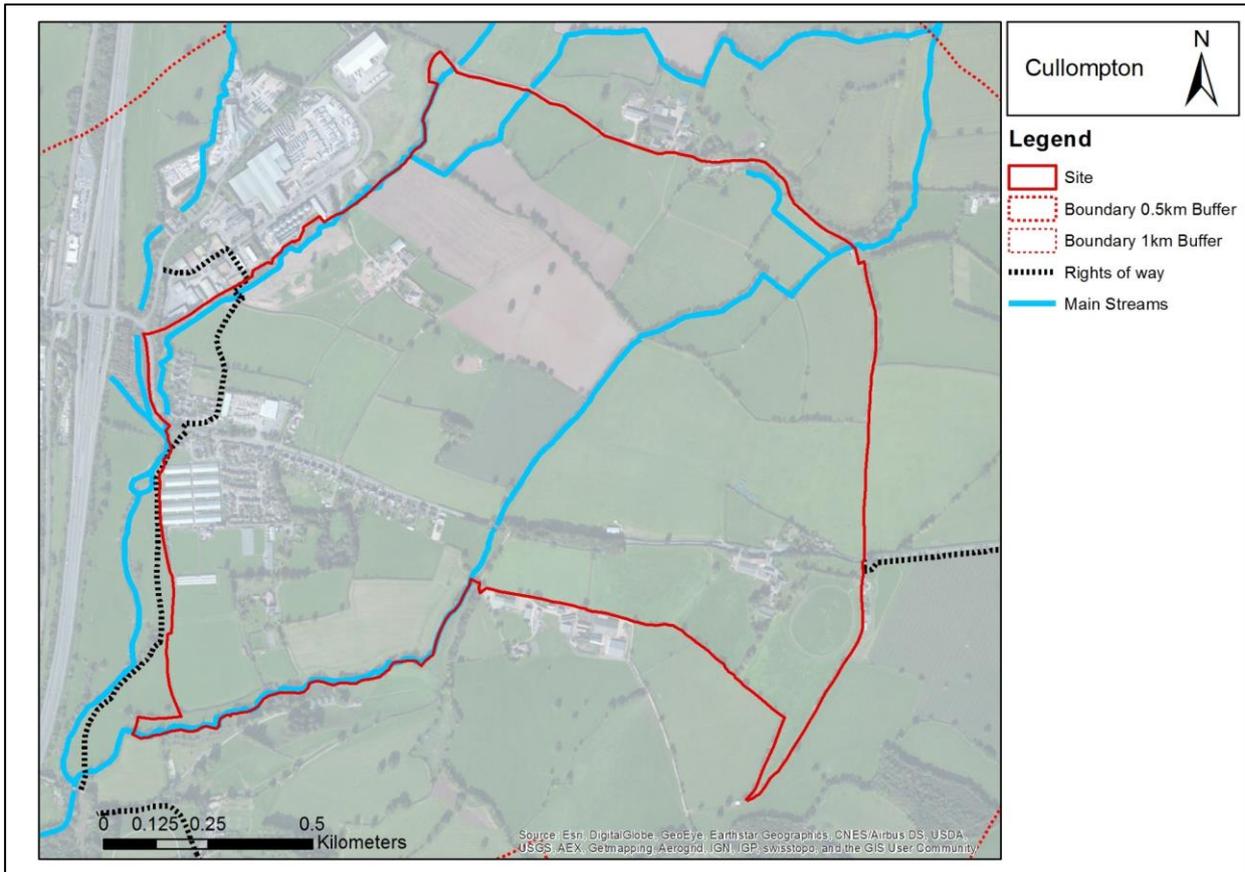
There are a number of species considered in the historic reports and surveys that are of especial relevance to this site, including otter, dormice and bat species. Potential for these species was taken into consideration during the recommendations for future surveys. It is of note is that the stream where the otter tracks were found during the Phase 2 carried out by Acorn Ecology (2012) is a tributary of the Culm river which flows directly to the west of the proposed site. Given the high riparian connectivity and close proximity (1.5km upstream from the confluence of the stream and the Culm river), it is probable otters are present in the stretch of the Culm river adjacent to the site. A small stream runs through the centre of the site and this should also be investigated for signs of otter habitation.

## 5.0 PHASE 1 HABITAT SURVEY

### 5.1 General site description

The 197 Ha site is dominated by large fields of arable land, improved and semi-improved grassland. Two streams run through the site and join the River Culm flowing southwards adjacent to the western site boundary as shown in figure 4.

Figure 4 Site boundary with stream and rights of way

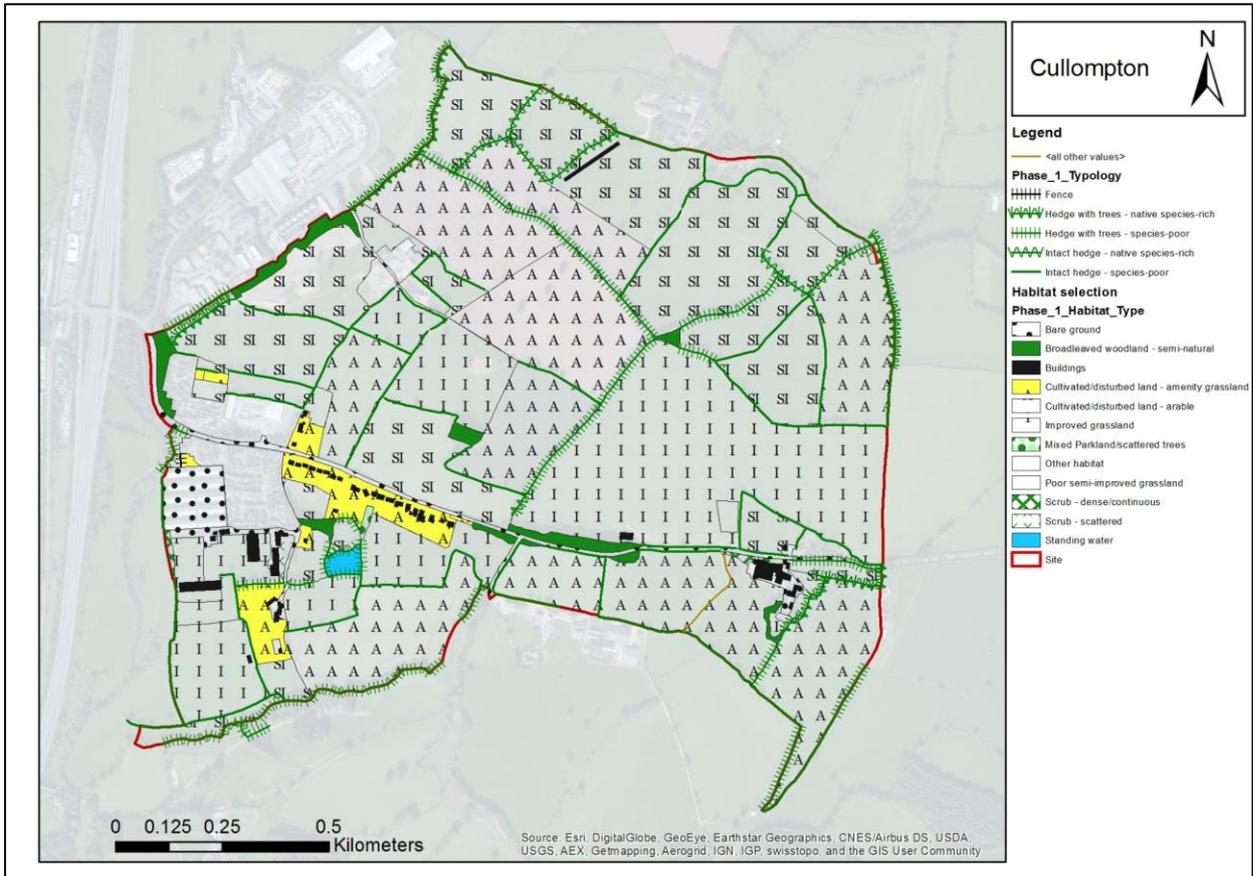


### 5.2 Habitat description

Figure 5 shows the key habitats using the phase 1 habitat classifications. The key habitat types described within this section are:

- Semi-improved grassland
- Improved grassland
- Amenity grassland
- Arable
- Hedgerows
- Woodland
- Scrub
- Standing water

Figure 5 Phase 1 habitat map of site



### 5.2.1 Poor semi-improved grassland



Photograph 1

There are 59.1 Ha of poor semi-improved grassland throughout the site. This habitat is of higher ecological value than improved grassland due to less intensive management. This habitat is mostly in the north of the site, and one field forms part of a wider grazing marsh priority habitat complex to the north of the site.

### 5.2.2 Improved grassland



Photograph 2

46.5 Ha of the land within the site comprised improved grassland. This habitat is of low ecological value due to intensive management such as heavy grazing or use of pesticides, and supports a narrower community of species.

### 5.2.3 Amenity grassland



Photograph 3

Amenity grassland within the site comprises almost entirely of residential gardens. This forms a small proportion of the entire site; 5.3 Ha. The amenity grassland is concentrated in the west of the site around Stonyford.

### 5.2.4 Arable field



Photograph 4

There were a number of arable fields on the site, with a mixture of autumn sown crops and fields left in stubble for spring sowing. Fields with spring sown crops are particularly attractive for ground nesting birds and generally have higher invertebrate and farmland bird abundance. Arable land formed 63.4 Ha of the total site, with the fields surrounded by hedgerows of varying ecological value.

### 5.2.5 Hedgerows



Photograph 5

17.2 km of hedgerows run through the site. The hedgerows range from native species poor hedges with only a few species present to species-rich hedgerows with mature trees within them. The hedges have potential for a variety of protected species, including breeding farmland birds, and the mature trees on site have roosting potential for bats. Additionally, due to records in the area, there is potential for dormouse presence in certain locations.

### 5.2.6 Woodland



Photograph 6

Woodland within the site is mostly deciduous, located in strips and small patches; 3.4 Ha in total excluding isolated trees part of hedgerows. Connectivity between the woodland is generally poor, with no priority habitat or ancient woodland. However, there is a small wood approximately 100m southeast of the site, which is designated as ancient woodland and is also a priority habitat.

### 5.2.7 Scrub



Photograph 7

There is approximately 0.6 Ha of both scattered and dense scrub within the site, generally located in small strips between other habitat types.

### 5.2.8 Standing water



*Photograph 8*

The only large area (0.5 Ha) of standing water within the site is the pond next to Culm House (UWS). The pond had an algal bloom at the northern edge, and there may be some eutrophication occurring, lowering the ecological value of the pond. It is likely there are amphibians present here, although the lack of records in the area and eutrophy make great crested newt presence unlikely.

## 6.0 SUMMARY AND RECOMMENDATIONS

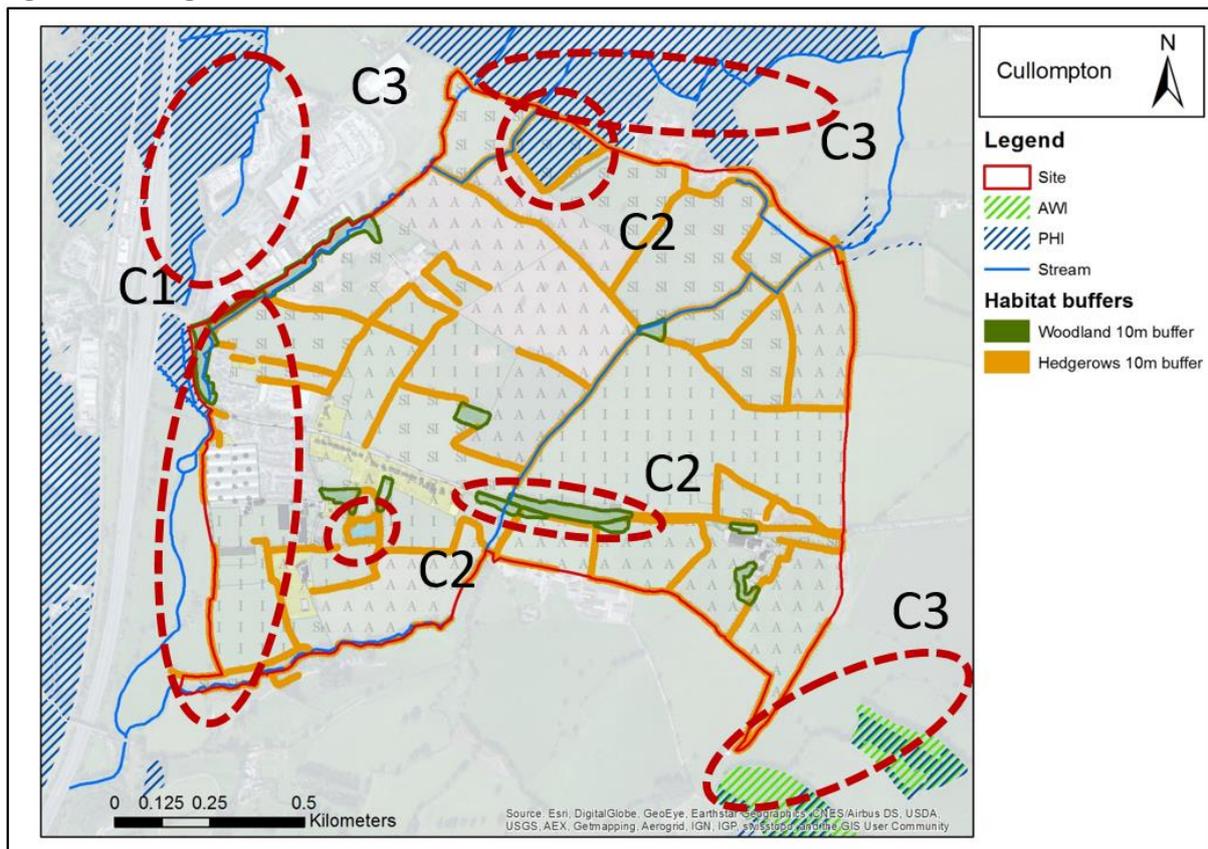
### 6.1 Habitat

#### 6.1.1 Ecological constraints

Ecological constraints (see Fig. 6) of the site can be summarised as follows:

- C1.** The proximity of the River Culm bordering the site to the west, with probable otter presence, and to a lesser extent the streams that run through the site;
- C2.** The existing green infrastructure within the site boundary, including trees present in the area covered by TPOs, large woodland strips and native species rich hedgerows, including a pond with amphibian interest and one field of priority grazing marsh habitat;
- C3.** The existing green infrastructure within the broader site, i.e., the presence of deciduous woodland priority habitat blocks to the southeast, and large areas of grazing marsh surrounding the site.

Figure 6 Ecological constraints



### **6.1.2 Ecological opportunities**

Ecological opportunities of the site can be summarised as follows:

- Enhance connectivity throughout the site through provision of new green infrastructure links across the promoted site, potentially incorporating a stream to create a central corridor, to improve both access and biodiversity, or linking up fragmented woodland;
- Improvement to hedgerows: filling in defunct hedges, planting of additional native species, removal of non-natives;
- Creation of new hedgerows to link other habitats together and create ecological corridors, implemented either as part of any proposed street scene or residential gardens;
- Installation of bird and bat boxes into new residential dwellings;
- Transport infrastructure can be better screened through enhanced green infrastructure provision;
- Planting of wildflower meadows and/or improvement to improved grassland which will benefit pollinators.

## **6.2 Protected species (recommended further surveys)**

The initial survey identified potential for a number of protected species on site due to the suitability of habitats. From this and results from previous surveys, the following further surveys are recommended:

### **6.2.1 Badger**

Given that there are badger records nearby and the scale of the site, focused badger surveys are recommended to ensure any development would not impact on setts nearby. The survey for badgers would include a search of the development site for any evidence of badgers, including setts, foraging signs (snuffle holes), runs and latrines. If signs of badger presence are found, then camera traps should be used to confirm activity.

### **6.2.2 Hedgehog**

There is no standardised survey technique for this BAP species however, hedgerows and other habitats within the site were assessed for their potential to support hedgehogs, and visually for evidence of hedgehogs themselves or their droppings. Assessment of suitable foraging and nesting habitat within site boundaries. The development site contains significant barriers to movement and there are no records of hedgehog within 1km of the site.

### **6.1.3 Otter and water vole**

There are records of otter from the surrounding area and presence within the stage of the Culm adjacent to the site is likely. Surveys should be undertaken to establish whether otters are using the watercourse next to the site to commute or forage and whether the lower courses of the streams running through the site have otter presence.

All waterbodies on site should be assessed for their potential to support riparian mammals. Although no evidence was found when the banks of the river were visually inspected for evidence of water vole and otter (including mammal holes, mammal trails, droppings and feeding remains) more surveys are needed to establish riparian mammal abundance.

#### **6.2.4 Hazel dormouse**

Due to records of dormouse presence in the area, assessment of suitable habitat for hazel dormice within hedgerows on site should be carried out, focusing on hedgerows which will be impacted through development.

#### **6.2.5 Amphibians**

There are no records of great crested newt in the area. However, due to the size of the site and the presence of an UWS pond and a number of streams within the site, surveys should be undertaken. These would include a survey of the pond as potential breeding habitat and habitat assessment of hedgerows as possible dispersal routes. In addition to the on site assessment, a desktop analysis of ponds within 500 metres of the site should be undertaken, to identify any potential breeding ponds which may require further survey.

#### **6.2.6 Birds**

The following bird species were recorded within the site during the assessment: great tit (*Parus major*), house sparrow (*Passer domesticus*), common chiffchaff (*Phylloscopus collybita*), Eurasian blackcap (*Sylvia atricapilla*), common blackbird (*Turdus merula*), barn swallow (*Hirundo rustica*), common buzzard (*Buteo buteo*). Additionally, two dippers (*Cinclus cinclus*) and approximately ten sand martins (*Riparia riparia*) were seen foraging along the Culm river adjacent to the site. Probable sand martin nest holes were observed in the river bank. Over the entire site, suitable habitat is present for both breeding farmland and ground-nesting birds and further bird surveys are required. Three winter (November to March) and three breeding (May-July) bird surveys are recommended.

#### **6.2.7 Reptiles**

Assessment of the potential of the site for reptiles and the need for further surveys, which may be carried out between April and October.

#### **6.2.7 Bats**

There was suitable foraging and commuting habitat present across the site. Additionally, mature trees within hedgerows demonstrated bat roosting potential. Further bat surveys should be carried out including a combination of activity surveys and static bat detector surveys. Depending on the results of these surveys, there may be a requirement for advanced surveys comprising trapping and/or radio tracking. In addition, if any trees are to be removed then emergence surveys should be carried out to establish if there are any active roosts within the site.

Table 3 Survey time periods

<b>Survey</b>	J	F	M	A	M	J	J	A	S	O	N	D
Detailed habitat												
Bats												
Birds												
Reptiles												
GCN												
Hazel dormouse etc												

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## APPENDIX 1 LEGISLATION AND POLICY DETAILS

### A1.1 Legislation - Species

This section outlines the key legislation related to the habitats and species considered within this survey report.

#### **Bats**

All British bats are protected under Section 9 Schedule 5 of the Wildlife and Countryside Act 1981 and amendments. In addition, they are protected under the Berne Convention, they are given migratory species protection within the Bonn Convention Agreement, and are protected under Schedule 2 of the EC Council Directive on the Conservation of Natural Habitats and Wild Fauna and Flora (Habitats Directive).

Regulation 41 of The Conservation of Habitats and Species Regulation 2010 makes it an offence to deliberately capture or kill bats, to deliberately disturb a bat, damage or destroy a breeding site or resting site of any bat. It is an offence to disturb any bat roosting site. Presence of bats does not necessarily mean that development cannot go ahead, but that with suitable, approved mitigation, exemptions can be granted from the protection afforded to bats under regulation 41 by means of a licence. Natural England (NE) is the appropriate authority for determining licence applications for works associated with developments affecting bats, including demolition of their roost sites. In cases where licences are required, certain conditions have to be met to satisfy Natural England. Before the Statutory Nature Conservation Organisation (SNCO), in this case NE, can issue a licence to permit otherwise prohibited acts three tests have to be satisfied. These are:

1. Regulation 53(2)(e) states that licenses may be granted by SNCO to *'preserve public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment.*
2. Regulation 42(10)(a) states that a license may not be granted unless SNCO is satisfied *'that there is no satisfactory alternative'*.
3. Regulation 42(10)(b) states that a license cannot be issued unless SNCO is satisfied that the action proposed *'will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range'*.

In order to meet the tests, SNCO usually expects the planning position to be fully resolved as this is necessary to satisfy tests 1 and 2. Full planning permission, if applicable, will need to have been granted and any conditions relating to bats fully discharged. For test 3, the licensing body seek advice from Natural England. As well as consulting with Natural England, the licensing body may also seek information from the local authority before they will determine

any licence application. The licence application process may take two months before a licence is issued.

### **Reptiles**

All reptile species in Great Britain receive some legal protection from legislation in the Wildlife and Countryside Act 1981. More recently, further protection was afforded in Great Britain to species listed in the Habitat Regulations 1994. Both the Wildlife and Countryside Act 1981 and Habitat Regulations 1994 provide mechanisms to protect species, their habitats and sites occupied by the species. Native reptile species fit into two bands of protection:

European protected species receive all elements of protection in Section 9 of the Wildlife and Countryside Act 1981 and the Habitat Regulations 1994. Native species that receive this protection are:

- Sand lizards (*Lacerta agilis*)
- Smooth snakes (*Coronella austriaca*)

This legislation prohibits the following on any of the above species:

- Deliberately or intentionally killing and capturing (taking) or intentional injuring.
- Deliberately disturbing
- Deliberately taking or destroying eggs
- Damaging or destroying a breeding site or resting place or intentionally damaging a place used for shelter or protection.
- Intentionally obstructing access to a place used for shelter; and keeping, transporting, selling or exchanging; offering for sale or advertising.

Species that receive protection against intentional killing, injuring and sale only:

- Slow-worm (*Anguis fragilis*)
- Common lizard (*Lacerta vivipara*)
- Adder (*Vipera berus*)
- Grass snake (*Natrix natrix*)

Both the Wildlife and Countryside Act 1981 and the Habitat Regulations 1994 apply to all life stages of the protected species: eggs and spawn, larvae, juveniles and adults are all protected.

### **Badgers**

The Protection of Badgers Act 1992 is based primarily on the need to protect badgers from baiting and deliberate harm or injury. It also contains restrictions that apply more widely and it is important for developers to know how this may affect their work. All the following are criminal offences:

- to willfully kill, injure, take, possess or cruelly ill-treat a badger;
- to attempt to do so; or

- to intentionally or recklessly interfere with a sett.

Sett interference includes damaging or destroying a sett, obstructing access to a sett, and disturbing a badger whilst it is occupying a sett. It is not illegal, and therefore a licence is not required, to carry out disturbing activities in the vicinity of a sett if no badger is disturbed and the sett is not damaged or obstructed.

Development should not be permitted unless it is possible to take steps to ensure the survival of the badgers in their existing range and at the same population status, with provision of adequate alternative habitats if setts and foraging areas are destroyed. Natural England will normally only issue a licence after detailed planning permission has been granted, where applicable, so that there is no conflict with the planning process.

Before the planning application is determined, the local planning authority should request a detailed ecological survey/report and developers should be prepared to provide the following information:

- The numbers and status of badger setts and foraging areas that are affected by the proposal;
- the impact that the proposal is likely to have on badgers and what can be done by way of mitigation;
- judgment on whether the impact is necessary or acceptable; and
- a recommendation on whether a licence will be required.

Planning Permission and badger licensing are separate legal functions. Thus receiving planning permission from the Local Authority is no guarantee that development operations will not breach the Protection of Badgers Act 1992. Similarly planning permission does not guarantee that a badger licence will be granted.

### ***Birds***

All wild birds are protected under the Wildlife and Countryside Act 1981 (as amended) and cannot be killed or taken, their nests and eggs taken, damaged or destroyed, it also prohibits or controls certain methods of killing or taking except under licence. Other activities that are prohibited include possession and sale. Activities such as killing or taking birds (including relocating) which would otherwise be illegal can be carried out under licence where there is suitable justification and the issue cannot be resolved by alternative means.

Specially protected or Schedule 1 birds receive full protection under the Wildlife and Countryside Act 1981 (as amended). Part I birds are protected at all times, Part II during the close season only. In addition to the protection from killing or taking that all birds, their nests and eggs have under the Act, Schedule 1 birds and their young must not be disturbed at the nest.

### ***Hazel Dormouse***

They are protected under both the Conservation of Habitats and Species Regulations 2010 and the Wildlife and Countryside Act 1981 (as amended). Dormice and their breeding sites and

resting places are fully protected. Without a licence it is an offence for anyone to deliberately disturb, capture, injure or kill them. It is also an offence to damage or destroy their breeding or resting places, to disturb or obstruct access to any place used by them for shelter. It is also an offence to possess, or sell a wild dormouse.

### **Great Crested Newts**

Great crested newts are fully protected under UK and European legislation:

- Bern Convention 1979: Appendix III
- Wildlife & Countryside Act (as Amended) 1981: Schedule 5
- EC Habitats Directive 1992: Annex II and IV
- Conservation (Natural Habitats etc.) Regulations 1994: Schedule 2
- Countryside Rights of Way Act 2000 (CRoW 2000)

Because great crested newts are listed on Schedule 5 of the Wildlife & Countryside Act 1981, Section 9(1) of the Act makes it an offence to intentionally kill, injure or take great crested newts. Section 9(2) makes it an offence to possess or control a live or dead great crested newt or any part or thing derived from them. Section 9(4) makes it an offence to intentionally damage, destroy, obstruct access to, any structure or place which great crested newts use for shelter or protection. It is also an offence to intentionally disturb them while occupying a structure or place which it uses for that purpose. Section 9(5) makes it an offence to sell, offer or expose for sale, or possess or transport for the purpose of sale, any live or dead great crested newt or any part or thing derived from them. It is also an offence to publish or cause to be published any advertisement likely to be understood as conveying that great crested newts, or parts or derived things of them are bought, sold or are intended to be. Section 9 applies to all stages in their life cycle.

Their inclusion on Schedule 2 of the Conservation Regulations 1994 affords great crested newts extra protection by also making it an offence under Regulation 39(1) to deliberately capture, kill or disturb great crested newts or to deliberately take or destroy their eggs, or damage or destroy a breeding site or resting place. Regulation 39(2) makes it an offence to keep, or transport, or exchange great crested newts or any part or thing derived from them. Paragraphs 39(1) and 39(2) apply to all stages of their life cycle.

## **A1.2 Policy considerations**

This section considers key policies that are relevant to ecology and development of the site.

### ***National Planning Policy***

#### **NPPF policy 109: Conserving and enhancing the natural environment**

*The planning system should contribute to and enhance the natural and local environment by:*

- *protecting and enhancing valued landscapes, geological conservation interests and soils;*
- *recognising the wider benefits of ecosystem services;*

- *minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;*
- *preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability; and*
- *remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.*

## **APPENDIX 2 LIST OF ACRONYMS USED**

*ASNW – Ancient & Semi-Natural Woodland*

*AWI – Ancient Woodland Inventory*

*BAP – Biodiversity Action Plan*

*CWS – County Wildlife Site*

*DBRC – Devon Biodiversity Records Centre*

*LNR – Local Nature Reserve*

*MAGIC – Multi-Agency Geographic Information for the Countryside*

*OSWI – Other Site of Wildlife Interest*

*PHI – Priority Habitat Inventory*

*SAC – Special Areas of Conservation*

*SPA – Special Protection Area*

*SSSI – Site of Special Scientific Interest*

*UWS – Unconfirmed Wildlife Site*