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ECOLOGICAL IMPACT ASSESSMENT - BATS

THE VICARAGE, CYFARTHA, MERTHYR TYDFIL

MERTHYR TYDFIL
COUNTY BOROUGH COUNCIL
Town & Country Planning Act 1990
PERMISSION GRANTED SUBJECT TO CONDITIONS

07 SEP 2020

J. JONES
BA(Hons) BTP M.R.T.P.I
HEAD OF TOWN PLANNING

RICHARD AND DAVINIA LLEWELLYN

200039

**MTCBC
AMENDED PLANS**

27 JUL 2020

RECEIVED

DOCUMENT REF: WWE20104 BAS REV C | 21/07/2020

Director: Richard Dodd, BSc (Hons), CEcol, MCIEEM

Wildwood Ecology Limited. Registered in England & Wales, Company No. 6646654 VAT No. 938019610

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Received 27/07/20

Client:	Richard and Davinia Llewellyn
Site/Job:	The Vicarage, Cyfartha, Merthyr Tydfil
Report title:	Ecological Impact Assessment - Bats
Report reference:	WWE20104 BAS Rev C

Grid Reference:	SO0427806365
Survey dates:	7 th May 2020 and 24 th May 2020
Surveyed by:	Amy Williams Schwartz, Stephen Lowe, Elen Williams and Lee Jenkins
Architect/Agent:	Paul Overton Architects
Planning reference:	Unknown

VERSIONING AND QUALITY ASSURANCE

Rev	Status	Date	Author(s)	Reviewed by	Approved by
A	DRAFT	15/06/2020	Julie Player MCIEEM Senior Ecologist	Alex Wilson MCIEEM Principal Ecologist	Alex Wilson MCIEEM Principal Ecologist
B	Final	17/06/2020	Julie Player MCIEEM Senior Ecologist	Alex Wilson MCIEEM Principal Ecologist	Alex Wilson MCIEEM Principal Ecologist
C	Final – with amendments requested by County Ecologist	21/07/2020	Julie Player MCIEEM Senior Ecologist	Alex Wilson MCIEEM Principal Ecologist	Alex Wilson MCIEEM Principal Ecologist

DISCLAIMER

This document has been prepared by Wildwood Ecology Limited for Richard and Davinia Llewellyn solely as a Ecological Impact Assessment - Bats. Wildwood Ecology Limited accepts no responsibility or liability for any use that is made of this document other than by the client for the purposes for which it was originally commissioned and prepared.

The evidence which we have prepared and provided is true and has been prepared and provided in accordance with the guidance of The Chartered Institute of Ecology and Environmental Management's Code

of Professional Conduct. We confirm that the opinions expressed are our true and professional bona fide opinions.

SUMMARY

Purpose	• Wildwood Ecology was commissioned by Richard and Davinia Llewellyn (the client) to undertake a series of bat activity surveys of The Vicarage, Cyfartha, Merthyr Tydfil. • The site is the subject of a planning application for an extension and renovation of the existing residential dwelling onsite.
Work undertaken	• An Ecological Impact Assessment (EclA) was undertaken by Wildwood Ecology Ltd at the site on the 11th February 2020. The survey determined that the residential dwelling onsite had moderate suitability to support roosting bats and recommended that two bat surveys were undertaken of the building to determine the presence/absence of bats. This report should be read in conjunction with the EclA survey report (Wildwood Ecology, 2020). • Two dusk bat activity surveys were undertaken in May 2020 following best practice in line with the Bat Surveys for Professional Ecologists: Good Practice Guidelines, 3rd edn (Collins 2016).
Key issues	• No bats were recorded roosting within the building during the surveys. • No nesting birds were recorded on/within the building. • Hedgehogs were recorded within the site during both bat activity surveys.

Recommendations	<u>Bats</u> • No further surveys are required. No protected species will be impacted by the proposed works and an EPS bat licence will not be required. • In the unlikely event that bats are encountered during the works all works must stop and an experienced ecologist must be contacted for advice, a protected species licence may be required from Natural Resources Wales. • A bat box will be installed on the new building as enhancement. • The woodland to the north and new bat box will not be illuminated. • All UK bats are nocturnal species and light averse. Artificial lighting of foraging and commuting routes is known to act as a barrier to bats and fragment otherwise suitable habitats, causing a negative impact on their local populations. Therefore, any additional onsite lighting will require a lighting plan demonstrating consideration for bats with dark flight lines maintained, see 5.5 to 5.8 for recommendations. <u>Nesting Birds</u> • All construction works to be undertaken outside of nesting birds season (generally from the 1st March until 31st August, although birds are known to nest outside of these dates in suitable conditions) where possible to avoid disturbance to nesting birds within the woodland and scrub. • In the unlikely event that nesting birds are encountered within the building during the works, all works will stop, and an ecologist will be contacted for advice. A breeding bird survey will then be required, and any active nests identified will be protected until the young have fledged. • If works outside nesting bird season is not possible, temporary screening will be installed around the woodland (section of woodland that is in close proximity to the construction of the extension) to minimise disturbance. • A bird box will be installed on the new building as an enhancement. <u>Hedgehogs</u> • Due to the presence of hedgehogs within the site, a precautionary approach is recommended with layered cuts taken, allowing full sight of the litter layer. To be removed by hand tools only and following pre-commencement check (immediately before) for hedgehogs. Any animals found will be relocated to the woodland into a similar feature after a health check.
Conclusions	• Providing that the recommendations outlined within this report are successfully implemented, it should be possible for the proposed development to proceed and for there to be no long-term impacts upon the key protected species present at the site. • This ecological report will remain valid for a period of 18 months from the date of the last survey – i.e. until November 2021.

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1 INTRODUCTION

- 1.1 Wildwood Ecology was commissioned by Richard and Davinia Llewellyn (the client) to undertake bat activity surveys of The Vicarage, Cyfartha, Merthyr Tydfil (the site) centred at grid reference SO0427806365.
- 1.2 An Ecological Impact Assessment (EclA) was undertaken at the site on the 11/02/2020. This found the building affected by the development to have moderate bat roost suitability. Further bat activity surveys (x2) were therefore recommended. The surveys (dusk emergence) were undertaken on the 07/05/2020 and 24/05/2020.

Site description

- 1.3 The aerial image of the site (Figure 1) shows the site to consist of a residential dwelling an associated driveway, a garage is located to the north of the property (not visible on the aerial image as its hidden by the tree canopy) broadleaved woodland to the north, scrub and grassland habitat within the garden.



Figure 1 – Aerial image of the site (red line shows the site boundary). Image used under licence (©2020 Google). Imagery date 25/06/2018.

- 1.4 The habitat located within the wider site (Figure 2) predominately consist of shopping centres and industrial estates to the north and north west, residential housing estates to the south, east and west, the River Taff to the east and large broadleaved woodland blocks south west of the site, this woodland however is on the far side of the A470.

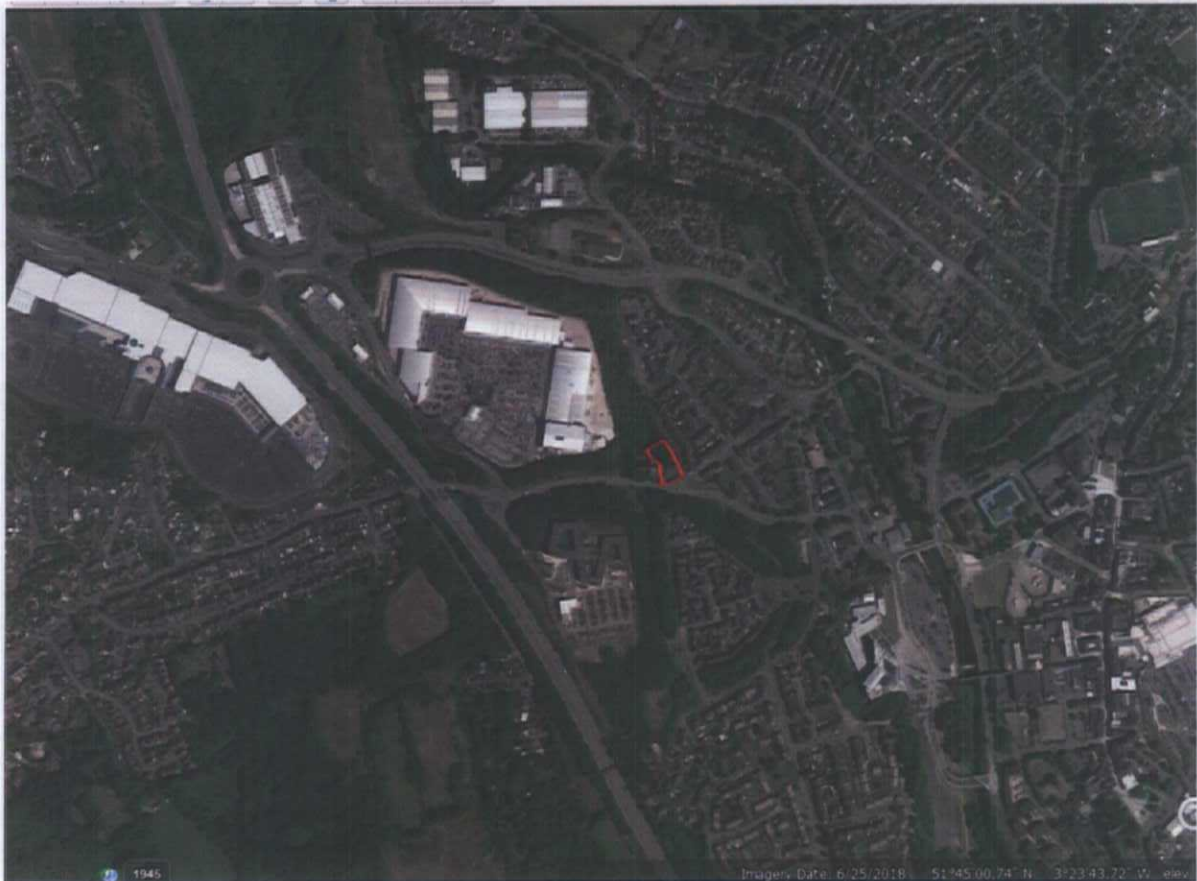


Figure 2 - Aerial image of the wider site (red line shows the site boundary). Image used under licence (©2020 Google). Imagery date 25/06/2018.

Proposed development

- 1.5 The site is the subject of a planning application for an extension and renovation of the existing residential dwelling onsite.

Purpose of this report

- 1.6 The purpose of this report is to provide sufficient information for the local planning authority to fully assess the potential ecological impacts of the proposed development, or to identify what further information is required before a full assessment can be made.
- 1.7 The results of the bat activity surveys have been used to establish the need for, and extent of, any mitigation or compensation measures required as part of the proposed development.

2 METHODOLOGY

Bat activity surveys (dusk emergence)

- 2.1 Two bat activity surveys (dusk emergence surveys) were undertaken at the onsite building.
- 2.2 The dusk emergence surveys commenced approximately 15 minutes before the time of local sunset (source www.sunrisesunsetmap.com) and continued for approximately 1.5 hours after sunset.
- 2.3 Surveyors were equipped with broadband bat detectors (including Elekon Batscanner Stereo, Anabat Scout, Wildlife Acoustics EMT).
- 2.4 Note was made of all bat activity recorded including (where appropriate) roost access points, species, time of re-entry, direction of flight, behaviour (foraging or commuting) and use of landscape features. Minimal lighting was used during the surveys as this can alter the behaviour of the bats emerging from or entering a roost or foraging or commuting over a site.

Surveyor information

- 2.5 The activity surveys were undertaken by Amy Williams Schwartz, Stephen Lowe, Lee Jenkins and Elen Williams. See Table 3 for further information.

Table 1 – Surveyor information.

Surveyor	Licences	Ecological experience
Amy Williams Schwartz MSc, BSc (Hons.) Ecologist	GCN	Writing up a PhD thesis on wildlife/road interactions in the UK, and experienced in performing academic ecological research projects, as well as species identification. Experienced in surveying for a wide range of protected species including great crested newt, reptiles, and bats.
Survey assistants *Stephen Lowe Elen Williams *Lee Jenkins	* Bat licenced	Competent and confident in conducting an emergence/re-entry survey in conjunction with a licenced ecologist. Assistants backed up by experienced surveyors and/or recording detectors where possible.

Limitations and assumptions

- 2.6 No limitations were encountered, or assumptions made, and it is considered that, with the access gained and recording undertaken, an accurate assessment of the site's ecological value in relation to bats has been made.

3 RESULTS

Bat activity surveys (dusk emergence)

Timing and conditions

3.1 The survey timings and weather conditions during the activity surveys can be seen in Table 2.

Table 2 - Summary of survey timing and conditions during activity surveys.

Date	Type	Survey Timing			Conditions			
		Start	End	Sunset / Sunrise	Temp [°C]	Cloud Cover [Oktas]	Wind Speed [Beaufort]	Rain
07/05/2020	Dusk emergence	20.33	22.18	20.48	Start: 16 End: 14	Start: 3 End: 0	Start: 1 End: 1	Nil
24/05/2020	Dusk Emergence	20.58	22.43	21.13	Start: 13 End: 11	Start: 1 End: 1	Start: 0 End: 0	Nil

3.2 The results of the bat activity surveys (dusk emergence) are summarised in Table 3.

Table 3 - Bat activity survey results. SS±xx refers to the time in minutes before/after sunset and SR±xx refers to the time in minutes before/after sunrise

Survey type and date	Roosts / points of particular interest	General observations	Licenced Surveyor
Dusk emergence 07/05/2020	First bat seen but not heard at 20.48 (SS+10) foraging over trees north of the church	Bat activity low during the survey. A small number of soprano and common pipistrelle (x6 in total) were recorded foraging over the trees of the woodland, adjacent to the neighbouring church.	Stephen Lowe
Dusk Emergence 24/05/2020	First bat seen at 21.30 (SS+17) commuting from the direction of the church over the top of the building towards the woodland behind the house.	- Common pipistrelles were recorded foraging over the tree of the woodland behind the house (x4 maximum). - Noctules were heard not seen (commuting).	Lee Jenkins

3.3 Bat flight lines in and around the site can be seen in Appendix I.

4 INTERPRETATION AND ASSESSMENT

- 4.1 The following interpretation and assessment is provided to ensure full compliance with both UK and European legislation and both local and national planning policy (see Appendix IV).

Bat activity surveys (dusk emergence)

- 4.2 No bat roosts were confirmed within the onsite building.
- 4.3 Due to the times that bats were first seen and/or heard it would suggest that bats are roosting within the neighbouring church or a nearby property and foraging over the woodland on site before commuting to adjacent foraging habitat.
- 4.4 The woodland provides an important dark corridor for bats that may be emerging from the church and also an important foraging resource for bats within the local area. The woodland is to be retained as part of the works and therefore commuting and foraging bats and foraging habitat will not be impacted.
- 4.5 The site is located within a highly lit up area (see Figure 3), the radiance levels modelled at the site are $17.17 \times 10^{-9} \text{ W cm}^{-2} \times \text{sr}$ (www.lightpollutionmap.info). It is considered that the construction of the extension will not increase light levels significantly to cause an impact to bats. The area is unlikely to be used significantly by more light intolerant species such as horseshoe or long-eared bats.



Figure 3 - light pollution (radiance) of the local area (www.lightpollutionmap.info)

- 4.6 There was minimal light spill onto the building itself from a streetlight located on Aberdare Road (see Figure 4 below).



Figure 4 - Minimal light spill on the northern aspect of the house (photograph taken during the bat activity survey on 07/05/2020)

- 4.7 As no bat roosts were recorded within residential house onsite and the woodland is to be retained, it is considered that in the absence of mitigation there will be no impact on bat species as a result of the proposed development.

Nesting birds

- 4.8 The local records search returned a number of records for nesting bird species in the vicinity of the site (see Table 5).
- 4.9 The onsite building (residential dwelling) had low suitability for nesting birds.
- 4.10 No nesting birds or signs of nesting bird activity was recorded on/within the property during the bat activity surveys.
- 4.11 The woodland immediately behind the house offers suitable habitat for common and garden bird species.
- 4.12 There may be a negative impact on bird species as a result of the proposed development, through disturbance to nesting birds within the woodland during the construction phase of the works.

Other fauna

- 4.13 Hedgehogs were observed foraging within the garden and woodland during both bat activity surveys and may well be nesting within the woodland.
- 4.14 There may be a negative impact on hedgehogs if a precautionary approach to vegetation clearance is not undertaken.

5 CONCLUSIONS AND RECOMMENDATIONS

- 5.1 Wildwood Ecology was commissioned by Richard and Davinia Llewellyn (the client) to undertake bat Activity Surveys (dusk emergence) at The Vicarage, Cyfartha, Merthyr Tydfil.
- 5.2 The site is the subject of a planning application for an extension and renovation of the existing residential dwelling onsite.

Bat activity surveys (dusk emergence and pre-dawn re-entry)

- 5.3 No bat roosts were confirmed within the onsite buildings.
- 5.4 In the absence of mitigation there will not be a negative impact on bat species as a result of the proposed development of the site.
- 5.5 A European Protected Species licence (EPSL) will therefore not be required for this site and works may proceed with no further consideration for bats.
- 5.6 All UK bats are nocturnal species and light averse (horseshoe bats particularly so). Artificial lighting of foraging and commuting routes is known to act as a barrier to bats and fragment otherwise suitable habitats, causing a negative impact on their local populations.
- 5.7 Therefore, if there is to be lighting, there will need to be a lighting plan demonstrating consideration for bats with dark flight lines maintained (see Appendix I). The external works for the proposed development should be undertaken during daylight hours and a lighting plan should be produced to demonstrate that any 'exterior' lighting proposed post-development would not have a detrimental effect on bats commuting along nearby habitat.
- 5.8 Suggestions for achieving this and for mitigating the light impact on bats are outlined in Guidance Note 08/18 - 'Bats and artificial lighting in the UK; Bats and the built environment series' (The Bat Conservation Trust, BCT, and the Institution of Lighting Professionals, ILP). These include:
 - All luminaires should lack UV elements when manufactured. Metal halide, fluorescent sources should not be used.
 - LED luminaires should be used where possible due to their sharp cut-off, lower intensity, good colour rendition and dimming capability.
 - A warm white spectrum (ideally <2700Kelvin) should be adopted to reduce blue light component.
 - Luminaires should feature peak wavelengths higher than 550nm to avoid the component of light most disturbing to bats (Stone, 2012).
 - Internal luminaires can be recessed (rather than choosing a pendant fitting) where installed in proximity to windows to reduce glare and light spill.
 - 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 a lighting professional.
 - 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.

- Any external security lighting should be set on motion-sensors and short (1min) timers.
- As a last resort, accessories such as baffles, hoods or louvres can be used to reduce light spill and direct it only to where it is needed.

5.9 The woodland located to the north of the site and the bat box (to be installed on the new building as an enhancement see 5.16 and Appendix II) will not be illuminated.

Nesting Birds

- 5.10 All construction works to be undertaken outside of nesting birds season (generally from the 1st March until 31st August, although birds are known to nest outside of these dates in suitable conditions) where possible to avoid disturbance to nesting birds within the woodland and scrub.
- 5.11 In the unlikely event that nesting birds are encountered within the building during the works, all works will stop, and an ecologist will be contacted for advice. A breeding bird survey will then be required, and any active nests identified will be protected until the young have fledged.
- 5.12 If works outside nesting bird season is not possible, temporary screening will be installed around the woodland (section of woodland that is in close proximity to the construction of the extension) to minimise disturbance.

Hedgehogs

- 5.13 Precautionary approach to vegetation removal is recommended with layered cuts taken, allowing full sight of the litter layer. To be removed by hand tools only and following pre-commencement check (immediately before) for hedgehogs. Any animals found will be relocated to the woodland into a similar feature after a health check.

Biodiversity enhancement

- 5.14 Local Authorities have a duty (known as the 'Biodiversity and resilience of ecosystems duty') under the Environment (Wales) Act 2016 to seek to maintain and enhance biodiversity in the exercise of their functions.
- 5.15 Where possible the existing onsite habitat will be retained to ensure that species are not adversely affected by the development. Native species of local provenance will be used for any new planting on the site to support The Action Plan for Pollinators in Wales, 2013 (<http://gov.wales/docs/desh/publications/130723pollinator-action-plan-en.pdf>).
- 5.16 Bird nesting boxes and bat roosting boxes should be incorporated within any newly constructed buildings and boundary features. Bird and bat boxes could also be introduced to any woodland habitat. A range of types should be used in order to cover a variety of species. Many designs are available, and we would initially recommend that one of each of the following to be installed within the woodland:
- Bats - <https://www.wildcare.co.uk/integrated-eco-bat-box-crevice.html> (an integrated bat box if it can be incorporated within the design of the new building)
<https://www.wildcare.co.uk/double-cavity-bat-box-black-10560.html>
 - Bird Box – <https://www.nhbs.com/vivara-pro-woodstone-house-sparrow-nest-box> (an integrated box if it can be incorporated within the design of the new building)
<https://www.nhbs.com/search?q=bird+box&qview=158587>

- 5.17 A habitat pile would be of benefit to create a feature for use by hedgehogs as well as other species. This can be created out of garden cuttings, gathered leaf litter and branches, to form a pile within the wooded area.

Overall conclusion

- 5.18 Providing that the recommendations outlined within this report are successfully implemented, it should be possible for the proposed development to proceed and for there to be no long-term impacts upon the key protected species present at the site.

This ecological report will remain valid for a period of 18 months from the date of the last survey – i.e. until November 2021. Further surveys may be required to update the site information if planning is not obtained or works do not commence within that time period.

6 REFERENCES

- Bat Conservation Trust and the Institution of Lighting Professionals (2018) Bats and artificial lighting in the UK; *Bats and the Built Environment* series (Guidance Note 08/18), The Bat Conservation Trust, London.
- Collins, J. (ed.) (2016) Bat surveys for Professional Ecologists: Good Practice Guidelines (3rd edn). The Bat Conservation Trust, London.
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- Light Pollution map (2019). www.lightpollutionmap.info, Accessed 01/06/2020
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APPENDIX I: BAT ACTIVITY SURVEY RESULTS

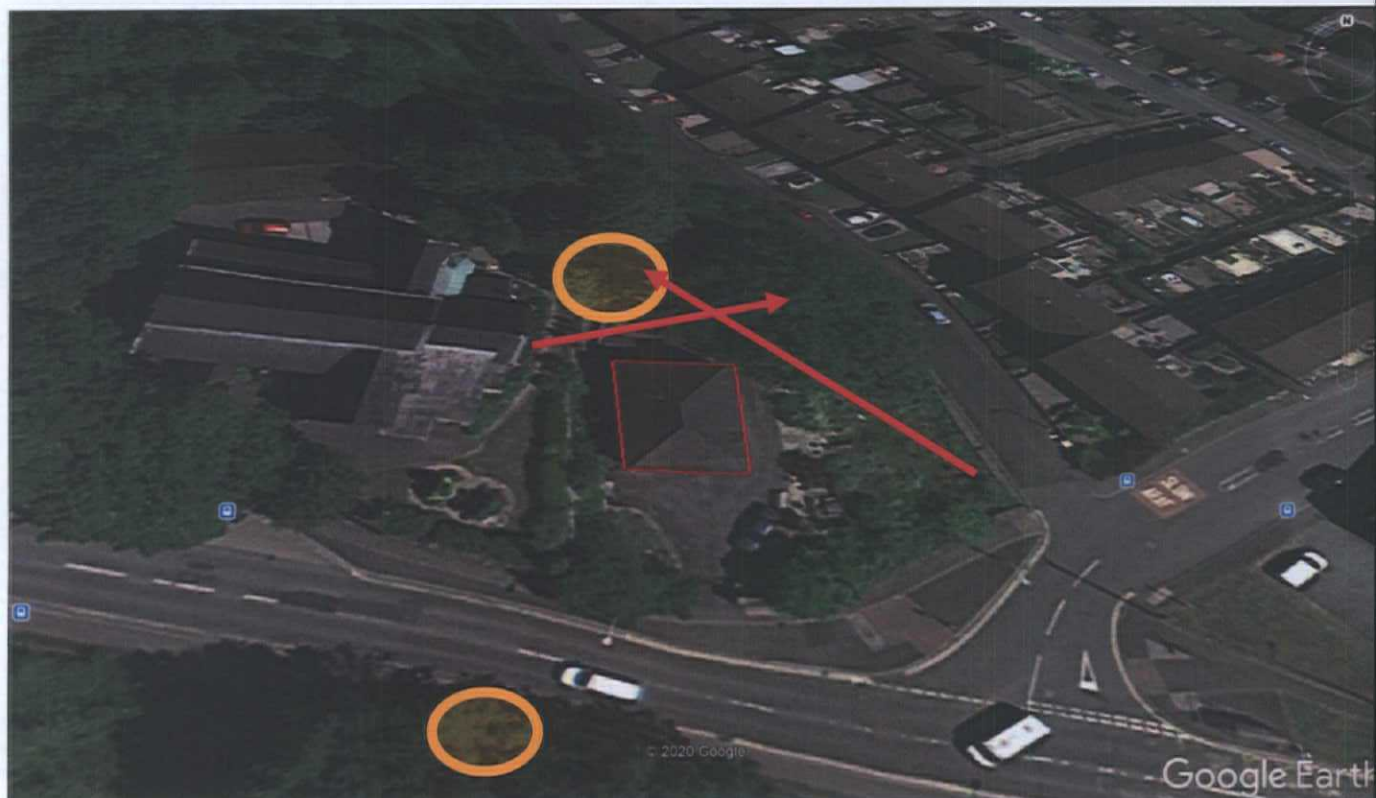
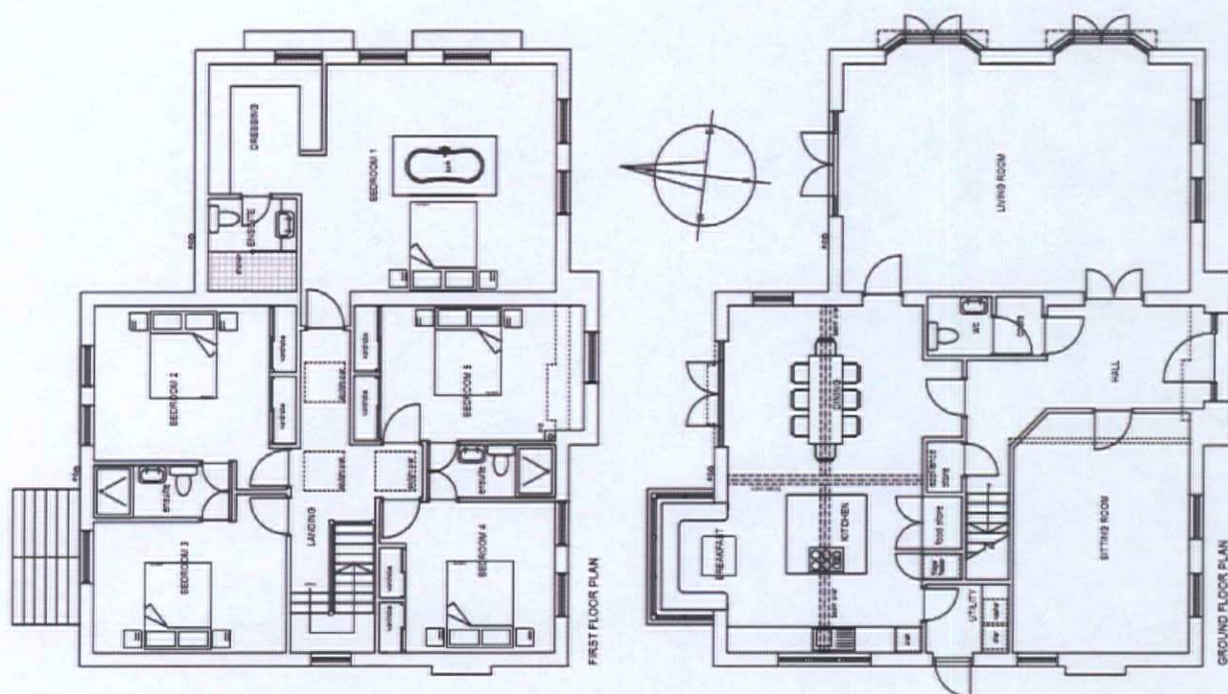
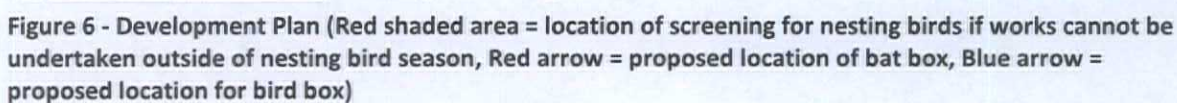


Figure 5 - Bat activity survey results (yellow circles = foraging bats, red arrows = the directions of commuting bats, red polygon – the property)

APPENDIX II: PROPOSED DEVELOPMENT AND MITIGATION PLAN



Project No: 2022-01-01	Project Name: The Vicarage, Cyfartha, Merthyr Tydfil
Client: Richard and Davinia Llewellyn	Project Manager: [Name]
Project Location: The Vicarage, Cyfartha, Merthyr Tydfil	Project Status: [Status]
Project Date: 2022-01-01	Project Version: 1.0
Project Description: [Description]	Project Objectives: [Objectives]
Project Scope: [Scope]	Project Deliverables: [Deliverables]
Project Risks: [Risks]	Project Mitigation: [Mitigation]
Project Budget: [Budget]	Project Timeline: [Timeline]
Project Team: [Team]	Project Contact: [Contact]
Project Approval: [Approval]	Project Sign-off: [Sign-off]



APPENDIX III: SPECIES LIST

To be submitted to the appropriate Local Records Centre

Site Name: The Vicarage, Cyfartha, Merthyr Tydfil **Provided by:** Wildwood Ecology Ltd

Grid ref: SO0427806365 **Verified by:** Julie Player

Common name	Scientific Name (if known)	Number	Comment
West European Hedgehog	<i>Erinaceus europaeus</i>	2	Seen within garden
Common Pipistrelle	<i>Pipistrellus pipistrellus</i>	4	Foraging and commuting
Soprano Pipistrelle	<i>Pipistrellus pygmaeus</i>	1	Foraging and commuting
Noctule	<i>Nyctalus noctula</i>	2	Commuting

APPENDIX IV: PLANNING POLICY AND LEGISLATION

The following local and national planning policy and both primary and European legislation relating to nature conservation and biodiversity status are considered of relevance to the current proposal.

Planning and biodiversity

Local Authorities have a requirement to consider biodiversity and geological conservation issues when determining planning applications under the following planning policies.

Planning Policy Wales (2018) and Technical Advice Note 5 (2009)

Planning Policy Wales (Edition 10, December 2018) sets out the land use planning policies of the Welsh Government, integrating with the Environment (Wales) Act (2016). The advice contained within Planning Policy Wales (PPW) is supplemented for some subjects by Technical Advice Notes (TAN's).

TAN 5 (Welsh Government, 2009) specifically provides advice about how the land use planning system should contribute to protecting and enhancing biodiversity and geological conservation. The TAN provides advice for local planning authorities on the key principles of positive planning for nature conservation; nature conservation and Local Development Plans; nature conservation in development management procedures; development affecting protected internationally and nationally designated sites and habitats; and development affecting protected and priority habitats and species.

Under Section 2.4 within the TAN 5, 'when deciding planning applications that may affect nature conservation local planning authorities should':

- Pay particular attention to the principles of sustainable development, including respect for environmental limits, applying the precautionary principle, using scientific knowledge to aid decision making and taking account of the full range of costs and benefits in a long term perspective;
- Contribute to the protection and improvement of the environment, so as to improve the quality of life and protect local and global ecosystems, seeking to avoid irreversible harmful effects on the natural environment;
- Promote the conservation and enhancement of statutorily designated areas and undeveloped coast;
- Ensure that appropriate weight is attached to designated sites of international, national and local importance;
- Protect wildlife and natural features in the wider environment, with appropriate weight attached to priority habitats and species in Biodiversity Action Plans;
- Ensure that all material considerations are taken into account and decisions are informed by adequate information about the potential effects of development on nature conservation;
- Ensure that the range and population of protected species is sustained;
- Adopt a step-wise approach to avoid harm to nature conservation, minimise unavoidable harm by mitigation measures, offset residual harm by compensation measures and look for new opportunities to enhance nature conservation; where there may be significant harmful effects local planning authorities will need to be satisfied that any reasonable alternative sites that would result in less or no harm have been fully considered;

Legislation and biodiversity

Certain species of animals and plants found in the wild in the UK are legally protected from being harmed or disturbed. These species are listed in the Wildlife and Countryside Act 1981 (as amended) or are named as European Protected Species (EPS) in the Conservation of Habitats and Species Regulations 2017 (as amended). These two main pieces of legislation have been consulted when writing this report and are therefore described in detail within this section.

Other relevant legislation and policy documents that have been consulted include – The Environment (Wales) Act 2016; The Countryside and Rights of Way Act 2000; The Hedgerow Regulations 1997; Biodiversity Action Plans, both UK-wide (UKBAP) and Local plans (LBAPs), and The National Planning Policy Framework (NPPF).

There is also legislation that legally protects certain animals - for example, the Protection of Badgers Act (1992) protects badgers and their setts, and the Deer Act (1991) places restrictions on actions that can be taken against deer species.

Environment (Wales) Act 2016

Section 6 of the Act places a duty on public authorities to 'seek to maintain and enhance biodiversity' so far as it is consistent with the proper exercise of those functions. In so doing, public authorities must also seek to 'promote the resilience of ecosystems'. The duty replaces the section 40 duty in the Natural Environment and Rural Communities Act 2006 (NERC Act 2006), in relation to Wales, and applies to those authorities that fell within the previous duty.

Public authorities will be required to report on the actions they are taking to improve biodiversity and promote ecosystem resilience.

Section 7 replaces the duty in section 42 of the NERC Act 2006. The Welsh Ministers will publish, review and revise lists of living organisms and types of habitat in Wales, which they consider are of key significance to sustain and improve biodiversity in relation to Wales.

The Welsh Ministers must also take all reasonable steps to maintain and enhance the living organisms and types of habitat included in any list published under this section and encourage others to take such steps.

Wildlife & Countryside Act 1981 (as amended)

The Wildlife & Countryside Act 1981 (as amended) [WCA] is the primary legislation for England and Wales for the protection of flora, fauna, and the countryside. Part I within the Act deals with the protection of wildlife.

Most European Protected Species offences are now covered under the Conservation of Habitats and Species Regulations (as amended) (see below), but some 'intentional' acts are still covered under the WCA, such as obstructing access to a bat roost.

The WCA prohibits the release to the wild of non-native animal species listed on Schedule 9 (e.g. Signal Crayfish and American Mink). It also prohibits planting in the wild of plants listed in Schedule 9 (e.g. Japanese Knotweed and *Rhododendron ponticum*) or otherwise deliberately causing them to grow in the wild. This is to prevent the release of invasive non-native species that could threaten our native wildlife.

The provisions relating to animals in the Act only apply to 'wild animals'; these are defined as those that are living wild or were living wild before being captured or killed. It does not apply to captive bred animals being held in captivity.

There are 'defences' provided by the WCA. These are cases where acts that would otherwise be prohibited by the legislation are permitted, such as the incidental result of a lawful operation which could not be reasonably avoided, or actions within the living areas of a dwelling house.

Licensing: certain prohibited actions under the Wildlife and Countryside Act may be undertaken under licence by the proper authority. For example, scientific study that requires capturing or disturbing protected animals can be allowed by obtaining a licence – e.g. bat surveys.

Conservation of Habitats and Species Regulations 2017 (as amended)

The Conservation of Habitats and Species Regulations 2017 (as amended) (which are the principal means by which the EC Habitats Directive is transposed in England and Wales) update the legislation and consolidate all the many amendments which have been made to the Regulations since they were first made in 1994.

These regulations provide for the:

- protection of European Protected Species [EPS] (animals and plants listed in Annex IV Habitats Directive which are resident in the wild in Great Britain) including bats, dormice, great crested newts, and otters;
- designation and protection of domestic and European Sites - e.g. Site of Special Scientific Interest [SSSI] and Special Area of Conservation [SAC]; and
- adaptation of planning controls for the protection of such sites and species.

Public bodies (including the Local Planning Authority) have a duty to have regard to the requirements of the Habitats Directive in exercising their function – i.e. when determining a planning application.

There is no defence that an act was the incidental and unavoidable result of a lawful activity.

Licensing: it is possible for actions which would otherwise be an offence under the Regulations to be undertaken under licence issued by the proper authority. For example, where a European Protected Species has been identified and the development risks deliberately affecting an EPS, then a 'development licence' may be required.

Species protection

The following protected species information is relevant to this report. Legislation is only discussed in relation to planning and development; other offences may exist.

Amphibians

The common frog, common toad, common newt, and palmate newt receive limited protection under the Wildlife and Countryside Act 1981 (as amended), making it illegal to sell or trade them.

The Great Crested Newt and Natterjack Toad are fully protected under the Conservation of Habitats and Species Regulations 2017 (as amended) as European Protected Species. It is illegal to:

- Deliberately capture, injure, kill, or disturb either species,
- Intentionally or recklessly obstruct access to any structure/place used for shelter or protection, or
- Damage or destroy a breeding site or resting place.

Badger

Badgers are protected in the UK under the Protection of Badgers Act 1992. Under the act it is an offence to:

- Wilfully kill, injure, take, possess or cruelly ill-treat¹ a Badger, or attempt to do so;
- To intentionally or recklessly interfere with a sett² (this includes disturbing Badgers whilst they are occupying a sett, as well as damaging or destroying a sett or obstructing access to it).

The legislation aims to protect the species from persecution, rather than being a response to an unfavourable conservation status, as the species is in fact common over most of Britain; it is not intended to prevent properly authorised development.

Bats

All British bats are classed as European Protected Species and therefore receive protection under the Conservation of Habitats and Species Regulations 2017 (as amended), making it an offence *inter alia* to:

- Deliberately kill, injure, or capture a bat;
- Deliberately disturb bats;
- Damage or destroy a breeding site or resting place of a bat.

In addition, all British bats are also listed under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) which contains further provisions making it an offence to intentionally or recklessly:

- Obstruct access to any structure or place which any bat uses for shelter or protection; or
- Disturb any bat while occupying a structure or place which it uses for that purpose.

If proposed development work is likely to destroy or disturb bats or their roosts, then a licence will need to be obtained from Natural England, which would be subject to appropriate measures to safeguard bats.

Birds

In the UK, the provisions of the Birds Directive are implemented through the Wildlife & Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2017 (as amended). All wild birds, their nests and eggs are protected it an offence to:

- kill, injure, or take any wild bird;
- take, damage, or destroy the nest of any such bird whilst it is in use or being built; or
- take or destroying an egg of any such wild bird.

The law covers all species of wild birds including common, pest or opportunistic species.

Special protection against disturbance during the breeding season is also afforded to those species listed on Schedule 1 of the Act.

¹ The intentional elimination of sufficient foraging area to support a known social group of Badgers may, in certain circumstances, be construed as an offence by constituting "cruel ill treatment" of a Badger

² A sett is defined as "any structure or place which displays signs indicating current use by a Badger". Advice issued by Natural England (June 2009) is that a sett is protected as long as such signs remain present, which in practice could potentially be for some time after the last actual occupation by Badger.

Dormice

The common dormouse is classed as a European Protected Species and therefore receive protection under the Conservation of Habitats and Species Regulations 2017 (as amended), making it an offence inter alia to:

- Deliberately capture, injure, or kill a dormouse;
- Deliberately disturb dormice;
- Damage or destroy a breeding site or resting place of a dormouse.

In addition, the dormouse is listed under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) which contains further provisions making it an offence to intentionally or recklessly:

- Obstruct access to any structure or place which a dormouse uses for shelter or protection; or
- Disturb a dormouse while occupying a structure or place which it uses for that shelter or protection.

Otters

The European Otter, *Lutra lutra* is a European Protected Species and therefore receive protection under the Conservation of Habitats and Species Regulations 2017 (as amended), making it an offence inter alia to:

- deliberately capture, injure, or kill any wild otter;
- deliberately disturb wild otters;
- damage or destroy a breeding site or resting place of an otter.

In addition, the otter is listed under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) which contains further provisions making it an offence to intentionally or recklessly:

- disturbs an otter while it is occupying a structure or place which it uses for shelter or protection; or
- obstructs access to such a place.

If proposed development work is likely to destroy or disturb otters or their resting places, then a licence will need to be obtained from Natural Resource Wales, which would be subject to appropriate measures to safeguard otters.

Reptiles

Adders, slow worms, grass snakes and common lizards are protected against killing and injuring under Schedule 9 of the Wildlife and Countryside Act 1981 (as amended). This legislation makes it illegal to intentionally kill or injure a common reptile. As a result, reptiles must be removed from areas of development and relocated onto suitable release sites before any site works can commence.

Smooth snakes and sand lizards are European Protected Species under schedule 5 of the Wildlife and Countryside Act 1981 (as amended) and Schedule 2 of the Conservation of Habitats and Species Regulations 2017 (as amended). This makes it illegal to carry out the following activities:

- Deliberately or recklessly disturb, capture, or kill these animals;
- Deliberately or recklessly take or destroy eggs of these animals;
- Damage or destroy a breeding site or resting place of such a wild animal; or

Keep, transport, sell or exchange, or offer for sale or exchange, any live or dead animal, or any part of, or anything derived from such a wild animal.