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PRELIMINARY ROOST ASSESSMENT REPORT

2 MORLAIS BUILDINGS, MERTHYR TYDFIL

JUSTIN MCCARTHY

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Client:	Justin McCarthy
Site/Job:	2 Morlais Buildings, Merthyr Tydfil
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Report reference:	WWE20075

Grid Reference:	SO 05049 06466
Survey date:	18/03/2020
Surveyed by:	Julie Player
Architect/Agent:	Paul Overton Architects
Planning reference:	Unknown

VERSIONING AND QUALITY ASSURANCE

Rev	Status	Date	Author(s)	Reviewed by	Approved by
A	DRAFT	23/03/2020	Julie Player MCIEEM Senior Ecologist	Alex Wilson MCIEEM Principal Ecologist	Alex Wilson MCIEEM Principal Ecologist
B	FINAL	25/03/2020	Julie Player MCIEEM Senior Ecologist	Alex Wilson MCIEEM Principal Ecologist	Alex Wilson MCIEEM Principal Ecologist
C	FINAL – with amendments based on LPA ecologist's comments	31/03/2020	Julie Player MCIEEM Senior Ecologist	Alex Wilson MCIEEM Principal Ecologist	Alex Wilson MCIEEM Principal Ecologist

DISCLAIMER

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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 Justin McCarthy (the client) to undertake a Preliminary Roost Assessment (PRA) of 2 Morlais Buildings, Merthyr Tydfil - The site is the subject of a planning application for the refurbishment of the shop to change its use to residential flats and to demolish the garage to the rear of the property to create a new parking area.
Work undertaken	A PRA was undertaken consisting of a desk study and field survey undertaken in March 2020 following best practice in line with the Bat Surveys for Professional Ecologists: Good Practice Guidelines, 3rd edn (Collins 2016).
Key issues	- Nesting birds on shop, however the works being undertaken on the property are predominately being undertaken internally and external works are minimal (e.g cosmetic/restoration works). No suitable bat access features were recorded within the house. Bats and birds will not be impacted by the proposed works on the house. - The garage did not offer suitable access or roosting features for bats or nesting birds. Bats and birds will not be impacted by the proposed works.
Recommendations	- No further surveys are required. No protected species will be impacted by the proposed works. - 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. - In the unlikely event that nesting birds are encountered 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.
Conclusions	This ecological report will remain valid for a period of 18 months from the date of the last survey – i.e. until September 2021.

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1 INTRODUCTION

- 1.1 Wildwood Ecology was commissioned by Justin McCarthy (the client) to undertake a Preliminary Roost Assessment (PRA) of 2 Morlais Buildings, Merthyr Tydfil (the site) centred at grid reference SO 05049 06466.

Site description

- 1.2 The aerial image of the site (Figure 1) shows the site to consist of a terraced property (shop with flats above it) and garage to the rear of the property.



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

- 1.3 The site is located within a densely populated area of Merthyr Tydfil. The wider site consists (Figure 2) residential and industrial estates located north, south and west of the site, with a scattered treeline and a weir located 100m west and the River Taff is located 430m west. Scattered treelines, parklands and woodland blocks are located to the east of the site.



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

- 1.4 The site is the subject of a planning application for the refurbishment of the shop to change its use to residential flats and to demolish the garage to the rear of the property to create a new parking area.

Purpose of this report

- 1.5 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.
- 1.6 The result of the PRA has been used to inform whether further surveys are required, or to establish the need for, and extent of, any mitigation or compensation measures required as part of the proposed development.

2 METHODOLOGY

Desk study

- 2.1 A biodiversity desk study was undertaken in relation to the site in March 2020 (SEWBRc ref 0190-775). The sources consulted and the type of information obtained are summarised in Table 1.

Table 1 – Sources of biodiversity and ecological records.

Source	Information requested (search buffer from site centre/boundary)
South East Wales Biodiversity Records Centre (SEWBRc)	• Bats and roof-nesting birds only: ○ Bats (2km) ○ Roof nesting birds (0.15km)
Multi-Agency Geographic Information for the Countryside (MAGIC) ¹	• International statutory designations(5km) • National statutory designations (2km)

- 2.2 The search buffers are considered to be sufficient to cover the potential zone of influence (ZoI²) of the proposed development.
- 2.3 The impact of the proposed development on the biological integrity of any nearby designated protected sites has been fully considered.
- 2.4 Data for bats and birds only was obtained from South East Wales Biodiversity Records Centre (SEWBRc) as the proposals will only impact on the buildings, hence data for other species would be irrelevant.
- 2.5 No previous survey information was available for the site itself.

Field survey

- 2.6 A field survey was undertaken on the 18th March 2020.
- 2.7 An assessment of the onsite buildings was undertaken in accordance with the latest published best practice guidance (Collins, 2016).
- 2.8 The buildings were externally and internally inspected (garage) for bats and their signs with the aid of high-powered lamps and close-focussing binoculars.
- 2.9 The suitability of the buildings to accommodate bats was assessed, along with a systematic search for signs of bats (e.g. droppings, moth wings, scratch marks, staining, etc.) or actual bats that were present. Particular attention was paid to the roof areas, with searches for any crevices or gaps in walls, gaps between beams and joists, droppings stuck to the walls, floors or other surfaces, or feeding remains below beams, in addition to a number of other factors and signs indicative of a bat roost.
- 2.10 In addition, the buildings were classified according to its suitability for bats, based on the presence of features within the structure and / or landscape (see Table 2).

¹ <http://magic.defra.gov.uk/MagicMap.aspx>

² ZoI definition – ‘the areas/resources that may be affected by the biophysical changes caused by activities associated with a project’ (CIEEM, 2016).

Table 2 – Summary of guidelines for assessing the potential suitability of proposed development sites for bats (from Collins 2016).

Suitability	Description of building, tree, or structure	Number of activity survey visits required ³
Negligible	Negligible habitat features on site likely to be used by roosting bats.	None
Low	A structure or tree with one or more potential roost sites that could be used by individual bats opportunistically. However, potential roost sites not suitable for larger numbers or regular use (i.e. maternity or hibernation).	One
Moderate	A structure or tree with one or more potential roost sites that could be used by bats, but unlikely to support a roost of high conservation status.	Two
High	A structure or tree with one or more potential roost sites obviously suitable for use by larger numbers of bats on a more regular basis and potentially for longer periods of time.	Three
Confirmed roost	Evidence of bats or use by bats found.	Minimum of two – to characterise the roost

Surveyor information

2.11 The PRA was undertaken by Julie Player. See Table 3 for further information.

Table 3 – Surveyor information.

Surveyor	Licences	Ecological experience
Julie Player B.Sc. (Hons) MCIEEM Senior Ecologist	Bat Dormouse GCN	Holds a first-class honours degree in International Wildlife Biology. Experience in working for ecological consultancies since 2012. Experienced in undertaking bat, dormouse, reptile and great crested newt surveys. Is a licensed bat, dormouse and great crested newt surveyor in England and Wales.

Limitations and assumptions

2.12 Many species of bat in the UK are crevice dwelling, and bats or signs of bats can be difficult to find within a building. In addition, there may be areas that are inaccessible to the surveyor.

2.13 No other limitations were encountered, or assumptions made during either the desk study or the field survey and it is considered that with the access gained and recording undertaken an accurate assessment of the site's ecological value has been made.

³ To provide confidence that bats are absent from the structure

3 RESULTS

Desk study

Designated sites (statutory)

- 3.1 There were no international statutory designations within 5km of the site and two national statutory designations within 2km (see Table 4). The closest statutory designated site was approximately 1km south west from the site and is designated for its marshy grassland habitat.
- 3.2 There are no protected areas (SSSIs or SACs) designated for their bat populations within 10km of the site.

Designated sites (non-statutory)

- 3.3 There was one non-statutory designation within 1km of the site (see Table 4). The non-statutory designated site, the River Taff was approximately 430m west of the site and is designated for its river habitats and the fauna that it supports.

Table 4 – Summary of designated sites in range of the site.

Site name	Designation	Description / key reason for designation	Distance & direction
River Taff	SINC	The site is designated for its variety of habitats and fauna that the river supports including otter, birds, fish, bats and reptiles	430m W
Cwm Glo A Glyndyrys	SSSI	Cwm Glo a Glyndyrys is of special interest for its extensive areas of marshy grassland, species-rich neutral grassland and acid grassland, and for the association of these habitats with others including woodland and heath.	1km SW
Cwm Taf Fechan Woodlands	SSSI	Where the partially wooded valley of the Taf Fechan crosses the north crop Carboniferous Limestone. Mixed deciduous woodlands cover steep slopes and spoil from quarries with one of the few Glamorgan stations for <i>Gymnocarpium robertianum</i> .	1.7km NW

Protected species

3.4 Table 5 summarises the priority and protected species records found within the local area within the last 10 years.

Table 5 – Bat and roof-nesting bird species records found in the vicinity of the site within the last 10 years.

Protected & priority		# of records (# species)			Further information
Groups	Species	Onsite	<500m	>500m	
Bats	Common pipistrelle	-	6	18	Closest record – Roost located 194m NW
	Soprano pipistrelle	-	5	10	Closest record – Foraging 115m W
	Unidentified pipistrelle	-	3	13	Closest record – Bat activity recorded 117m N
	Brown long-eared bat	-	1	2	Closest record – Bat activity 464m W
	Long-eared species	-	1	-	Closest record – Roost 169m S
	Natterers bat	-	-	3	Closest record – Activity 1.6km NW
	Noctule	-	2	-	Closest record – Bat activity 117m N
	Serotine	-	-	1	Closest record – Commuting 1.4km N
	Lesser horseshoe	-	1	1	Closest record – Day and night roost 117m N
	Daubenton's bat	-	-	6	Closest record – Foraging 1.4km NW
	Unidentified <i>Myotis</i>	-	-	4	Closest record - 1.6km N
	Unidentified bat	-	3	14	Closest record – 133m E
	TOTALS	-	22 (8)	72 (10)	
Birds (Schedule 1)		-	- (-)	1 (1)	Schedule 1 species: Peregrine was recorded 524m from the site
Birds (non-Schedule 1)		-	2 (2)	6 (6)	Non-schedule 1 birds recorded include, herring and lesser black-backed gull, swallow, blue tit, house sparrow and swift.

Field survey

3.5 Prevailing weather conditions during the field survey are summarised within Table 6.

Table 6 – Summary of weather conditions during the PRA.

Date	Type	Conditions				Personnel * = licence holder
		Temp [°C]	Cloud cover [Oktas]	Wind speed [Beaufort]	Rain	
18/03/2020	Preliminary Roost Assessment	9	8	2	Light drizzle	Julie Player

3.6 A description of the buildings inspected during the PRA can be seen in Table 7.

Table 7 – Onsite buildings information.

Building / Tree reference	Building type / Section Tree species	Description	Development plans
A	Shop with flats above it	Three storey terraced property with a martial arts gym at the ground level, and residential flats on the upper floors. A slate tiled roof and UPVC fascia's and guttering which were tight to the wall, and all appeared to be in good condition.	Refurbishment of existing building. Change of use to flat at first and second floor, to provide two, one bedroom flats.
B	Garage	Single storey breeze block garage with wooden framed and corrugated roof, metal framed windows, fascia's UPVC and tight to the wall.	Demolition – To make space for parking at the rear of the property.

3.7 The results of the PRA can be seen in Table 8.

Table 8 – PRA results.

Building / Tree reference	Use by bats	Use by birds	Bat signs and internal and external Potential Roost Features (PRFs) & access points
A	N	N	The roof of the building is suitable to support nesting gull or corvid species – no evidence of nesting birds was recorded during the survey. Roof and fascia boards were in good condition and appeared to be quite new. No access features for bats identified.
B	N	N	The flat roof may be used by nesting birds, however as the garage is only one storey high, predators (e.g domestic cats) would have easy access to the nest (e.g chicks and eggs would be exposed), so it is unlikely that birds would nest. No suitable bat access features into the structure were recorded and no evidence of the presence of bats was recorded. Rat droppings were recorded within the garage who were entering the garage through a gap underneath the garage door (at ground level).

Links to surrounding habitat

- 3.8 The site is connected to large blocks of woodland to the east and north west via scattered trees and treelines, woodlands provide high quality habitat for roosting, foraging and commuting bats. The site is connected to the weir and the River Taff site via dense treelines and scattered trees, with both the weir and the River Taff offer suitable commuting and foraging habitat for bats as well as for bats roosting within adjacent trees. The site is connected to recorded roosts for lesser horseshoe, brown long-eared and common pipistrelle bats via scattered trees and treelines.

4 INTERPRETATION AND ASSESSMENT

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

Designated sites

- 4.2 There were both statutory and non-statutory designated sites identified within the vicinity of the site (see Table 4). The closest statutory site was Cwm Glo A Glyndyrys SSSI which is located 1km from the site and is designated for its marshy grassland habitat and the closest non-statutory site was the River Taff which is located 430m west of the site and is designated for its varied habitats and fauna that the river corridor supports.
- 4.3 There no protected areas (SSSIs or SACs) designated for their bat populations within 10km of the site.
- 4.4 Given the scale of the proposed development, and the lack of likely impacts beyond the site boundary, the nearby designated sites are sufficiently well separated so that no impacts on their designated features are anticipated as a result of the works.

Preliminary roost assessment (PRA) for bats and nesting birds

- 4.5 Based on the results of the PRA, an assessment of the potential suitability of the onsite buildings/trees for bats and nesting birds could be made (see Table 9).

Table 9 – Onsite buildings suitability for bats and nesting birds.

Building / tree reference	Suitability / confirmed use	
	Bats	Nesting birds
A	Negligible	Suitable
B	Negligible	Negligible

Bats

- 4.6 The local records search returned a number of records for bat species in the vicinity of the site (see Table 5). Species recorded were predominately pipistrelle bats, however roosts were also recorded for lesser horseshoe and brown long eared bats within the vicinity of the site.
- 4.7 The site is located within a highly lit up area in the high street (shop front), the lane at the rear of the property which runs adjacent to the garage is also lit. Vegetation located immediately east of the site is suitable to support foraging bats but is located adjacent to street lights. The site is likely to attract non-light sensitive bat species (e.g pipistrelle bats) and unlikely to support light sensitive species (e.g brown long-eared and lesser horseshoe bats) within the immediate vicinity of the site.
- 4.8 Only internal and cosmetic works are to be undertaken on the shop, no major works (e.g roofing works) are required. The garage is to be demolished as part of the proposed works, however no suitable bat access features or suitable roosting locations were recorded.
- 4.9 As the onsite buildings have negligible suitability for bats (despite there being a number of records for bat species in the vicinity of the site) there is unlikely to be a negative impact on bat species as a result of the proposed development.

Nesting birds

- 4.10 The local records search returned a number of records for nesting bird species in the vicinity of the site (see Table 5). The site did not offer any suitable habitat to support peregrine (Schedule 1 bird species). The shop roof did have suitability to support nesting gull or corvid species, although no evidence of this was recorded during the survey. The external of the property will not be impacted as part of the proposed works, only cosmetic, restoration works are required. Birds will therefore not be impacted as part of the proposed works on the house.
- 4.11 The garage was not suitable for nesting birds and will therefore not be impacted by the demolition of this structure.

5 CONCLUSIONS AND RECOMMENDATIONS

- 5.1 Wildwood Ecology was commissioned to undertake a Preliminary Roost Assessment (PRA) of 2 Morlais Buildings, Merthyr Tydfil.
- 5.2 The site is the subject of a planning application for the refurbishment of the shop to change its use to residential flats and to demolish the garage to the rear of the property to create a new parking area.

Designated sites

- 5.3 Designated sites in the vicinity of the site (see Table 4) are sufficiently well separated so that no impacts on their designated features are anticipated as a result of the proposed development.

Protected species

- 5.4 Recommendations regarding protected species are shown in Table 10.

Table 10 – Recommendations.

Species	Recommendations
Bats	No further surveys 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. If bats are encountered during the works a protected species licence may be required from Natural Resources Wales.
Nesting birds	No further surveys required. In the unlikely event that nesting birds are encountered during the works, all works will stop and an ecologist must 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.

Biodiversity enhancement

- 5.5 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.
- 5.6 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>).
- 5.7 Bird nesting boxes and bat roosting boxes will be incorporated within the proposed building and boundary features. A range of types should be used in order to cover a variety of species. Many designs are available, and we would initially suggestion the following for this site:
- Bats – Greenwood's Ecohabitats Single Crevice Box (Figure 3), or similar



Figure 3 – Greenwoods Ecohabitats single crevice box (range of colours available)

- Birds – Bilbao_32mm hole box (or similar)



Overall conclusion

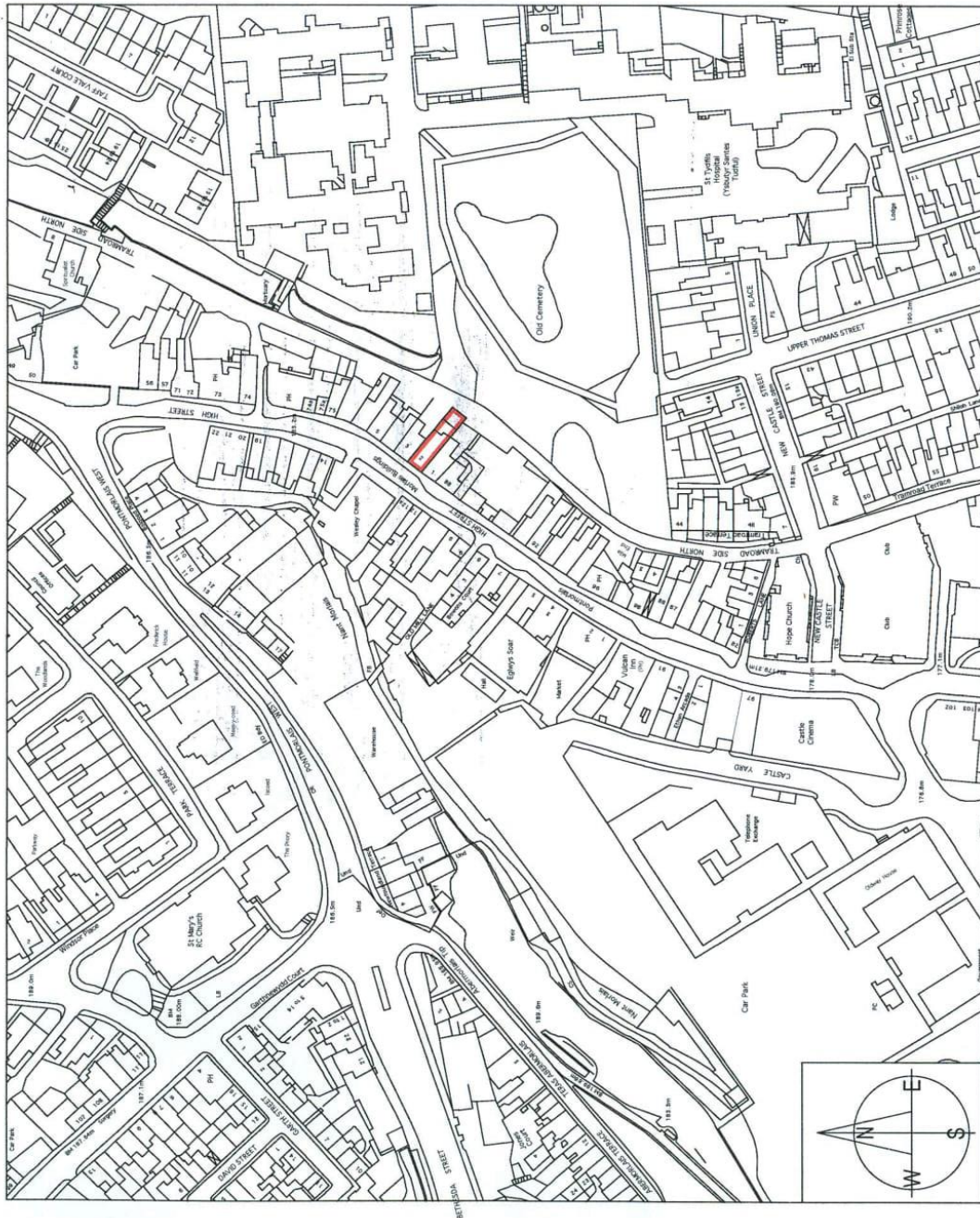
5.8 No further ecology surveys are required, and no protected species will be impacted by the proposed works.

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

6 REFERENCES

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APPENDIX I: SITE LOCATION PLAN



LOCATION PLAN scale 1:2500

APPENDIX II: PROPOSED DEVELOPMENT PLAN

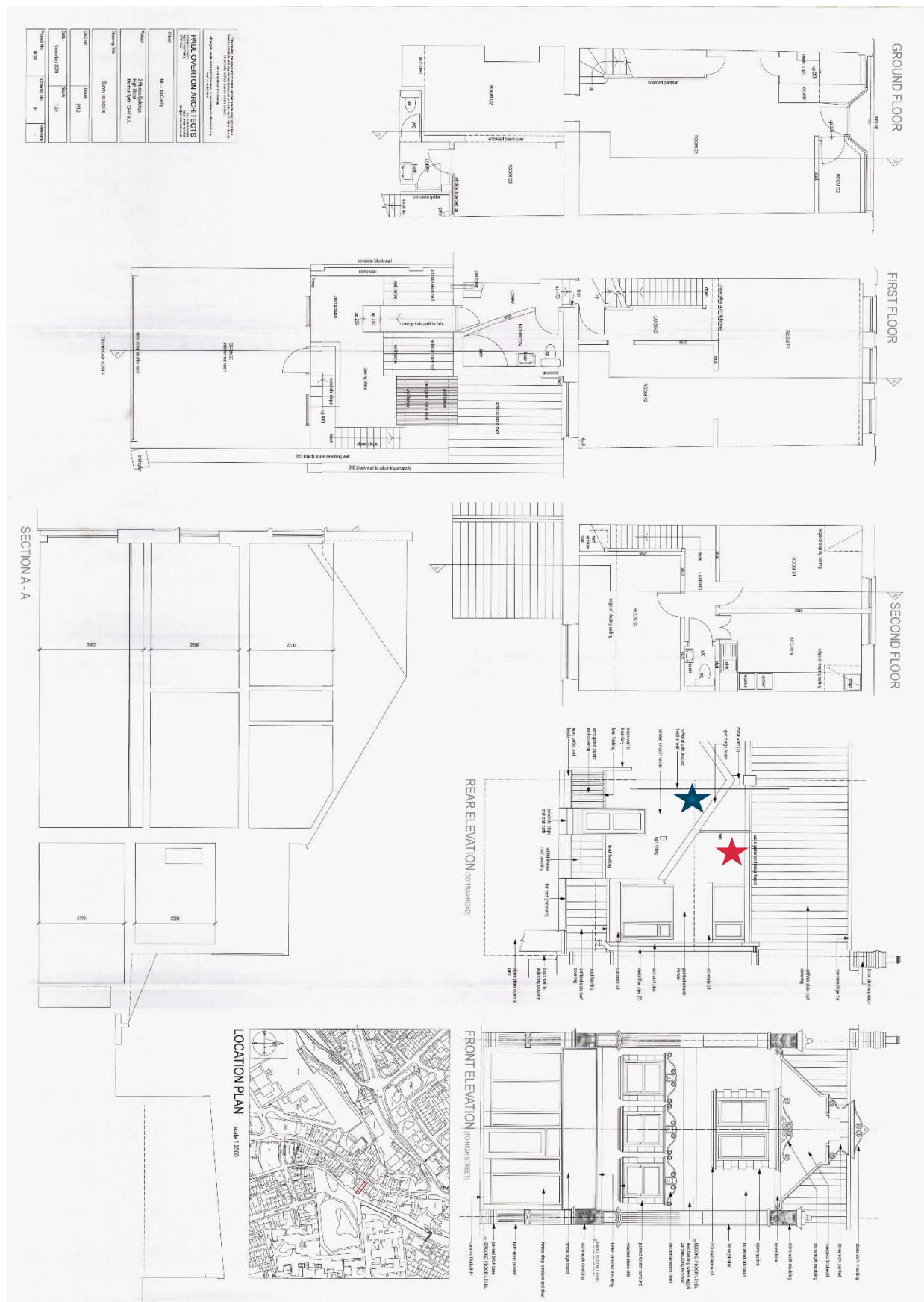


Figure 4 – Proposed development plan (Red star = bat box location, blue star = bird box location)

APPENDIX III: SURVEY IMAGES



Figure 5 - Rear of terraced property



Figure 6 – Front of garage to the rear of the property



Figure 7 - Eastern aspect of garage and roof of terraced house



Figure 8 - Western aspect of the garage and roof of terraced property



Figure 9 - Roof of terraced house



Figure 10 - Garage (door is closed and locked when not in use)



Figure 11 - Inside garage



Figure 12 - Inside garage

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 (EU Exit) 2019, 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 (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 (EU Exit) 2019, as amended

The Conservation of Habitats and Species Regulations (EU Exit) 2019, 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 (EU Exit) 2019, 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-treat⁴ a Badger, or attempt to do so;
- To intentionally or recklessly interfere with a sett⁵ (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 (EU Exit) 2019, 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 (EU Exit) 2019, 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.

Dormice

The common dormouse is classed as a European Protected Species and therefore receive protection under the Conservation of Habitats and Species Regulations (EU Exit) 2019, 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.

⁴ 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

⁵ 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.

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 (EU Exit) 2019, 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 (EU Exit) 2019, 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.