



Preliminary Ecological Appraisal Survey

Melita House, Gwaelodygarth Close, Merthyr Tydfil, Glamorgan, CF47 8DX

David Thomas

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Draft	1	Chris Formaggia BSc (Joint Hons) CBiol CEnv MCIEEM MRBS VR – Head of Ecology	25/05/2021
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Guidelines

This assessment has been designed to take into account in forming a professional opinion:

- Chartered Institute of Ecology and Environmental Management 'Guidelines for Preliminary Ecological Appraisal Second Edition, December 2017';
- Chartered Institute of Ecology and Environmental Management 'Guidelines for Ecological Impact Assessment in the UK and Ireland. Terrestrial, Freshwater, Coastal and Marine, September 2018'; and
- British Standard 42020 (2013) 'Biodiversity – Code of Practice for Planning and Development'.

Proportionality

The work involved in preparing and implementing all ecological surveys, impact assessments and measures for avoidance, mitigation, compensation and enhancement should be proportionate to the predicted degree of risk to biodiversity and to the nature and scale of the proposed development. Consequently, the decision-maker should only request supporting information and conservation measures that are relevant, necessary and material to the application in question. Similarly, the decision-maker and their consultees should ensure that any comments and advice made over an application are also proportionate.

This approach is enshrined in Government planning guidance, for example, Planning Policy Wales (PPW) 2021.

The desk studies and field surveys undertaken to provide a preliminary ecological appraisal (PEA) might in some cases be all that is necessary.

(BS 42020, 2013)

In consequence of the scale and intensity of the proposed development, the low impact on ecological receptors identified through both the site survey and search of local biological records, and the passive interface with the mitigation hierarchy, this plan-led report is considered adequate and proportionate. It communicates all relevant information necessary to determine a planning application or support the recommendations for further surveys.

Executive summary

Arbtech Consulting Limited was commissioned by David Thomas to undertake a Preliminary Ecological Appraisal of a garden area at Melita House. The survey was completed on Tuesday the 11th May 2021. The aim of the survey was to complete an Extended Phase 1 Habitat Survey of the survey area (all land that will be impacted by the proposals) and analyse this against a desk study of the local area.

The report is to a proposal to create a new dwelling on a garden area of Melita House.

Recommendations - This is work you will need to commission (if any) to obtain planning permission or comply with legislation for other consent.

Ecological Factor	Survey findings and commentary	Foreseen impacts	Recommendations	Enhancements The Local Planning Authority has a duty to ask for enhancements under the NPPF (July 2018)
Designated sites	The site is not subject to any designation. The Magic database shows that there are two statutory designated sites within 2km – The Cwm Glo a Glyndyrys SSSI and the Cwm Taf Fechan Woodlands SSSI but both of these are more than 1.5km from site. There are no local site designations on site. The LPA has advised that there are three SINC sites within 1km of site with the closest being 0.3km away. The LPA has advised that the site lies within the broad network of corridors – the Buglife B-Line.	The scheme will not impact upon nationally or internationally important sites because the scale of the operation will not generate any indirect risks to the site. The scheme will not impact upon regionally or locally important sites because the scale of the operation will not generate any indirect risks to the site.	No further evaluation of impact on Special sites is required.	In recognition of the Buglife B-Line corridor the scheme will be enhanced with the placement of an Elba Insect tower on one of the warmer elevations of the new-build. 

Notable habitats and plants	The site contains no DEFRA mapped Priority Habitat. There are substantial blocks of deciduous woodland to the immediate west and also further north east within 500m. The hedgerows on the site boundaries are domestic and would not qualify as ecologically IMPORTANT under the Hedgerow Regulations, 1997. They are regarded as habitat of principal importance in Wales	The scheme will not generate any direct or indirect impacts upon Priority Habitats. The existing hedgerows are retained.	No further evaluation of habitat or vegetation is considered necessary.	n/a
Invasive / Non-native species	None observed at the time of survey.	No foreseen impact	No action required but remain vigilant to infestation.	n/a
Bats	The only mature tree affected by the scheme is a non-native conifer that has no potential roosting features (PRFs) for bats. Maturer silver birches in the southern boundary are retained and also lack PRFs. A small domestic shed is currently on site and will be moved elsewhere on the Melita House grounds. It has negligible value for roosting bats and contained no evidence of bat usage.	No foreseen impact	External lighting will comply with https://theilp.org.uk/publication/guidance-note-8-bats-and-artificial-lighting/ Dark corridors will be maintained around the site peripheries and the integrated bat box will not be illuminated.	An integral bat tube could be included in the masonry of the southern elevation of the new build as new niche roosting habitat for bats. The box will not be illuminated.
Birds	The site is likely to support common woodland bird species primarily it is the peripheries.	Active nests could be destroyed by any loss of trees or shrub.	It is recommended that standard planning conditions are employed to protect breeding birds, their nest and eggs in accordance with the Wildlife and Countryside Act 1981 (as amended): Vegetation should be cleared outside the period 1st March to 31st August. If this timeframe cannot be avoided, a close inspection of the habitat should be undertaken immediately prior to the commencement of works. All active nests will need to be retained until the young have fledged.	Introduce new structural planting of fruit-rich, local provenance native species to increase foraging on site.

Reptiles	The site comprises of mown lawn, garden beds and a children's playing area. The habitat is not expected to support foraging or hibernating reptiles.	The larger western garden at Melita House might support low numbers of reptiles such as slow worm but the construction footprint is unlikely to generate impact upon these.	Any vegetation clearance should be centre-out to allow any mobile fauna to escape to unaffected surrounding habitat.	None
Amphibians	The site is not likely to support common amphibian species or great crested newt (GCN) because of a lack of nearby breeding opportunity and suitable habitat on site.	The site is unlikely to be significantly important for amphibians.	No further work necessary.	None
Other Terrestrial Mammals	Badgers No badger setts were located during the PEA or any evidence of badger use located.	Badgers The scheme poses no risk to live badgers or their occupied setts.	Badgers Remain vigilant to the occupation of the site by badgers. Badger populations are dynamic.	Badgers Planting additional fruit trees on the developed site will provide additional foraging resources for badgers.
	Water Vole No habitat	Water Vole n/a	n/a	n/a
	Otter No habitat	Otter n/a	n/a	n/a
	Hedgehogs Domestic garden habitat is present. The LPA has indicated records of hedgehog within 500m of site.	There is a very minor loss of possible foraging area. New	The LPA requires 2# 130*130 gaps to be created in any new boundary fencing to allow continued free movement of animals.	-

		boundaries might impinge of free movement of the species.		
Invertebrates	The LPA has identified the site as being within the Buglife B-Line network. The nature of the site is not likely to have any significant value for invertebrates.	No significant impact.	No further work necessary.	In recognition of the Buglife B-Line corridor the scheme will be enhanced with the placement of an Elba Insect tower on one of the warmer elevations of the new-build.

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1.0 Introduction and Context

1.1 Background

Arbtech Consulting Limited was commissioned by David Thomas to undertake a Preliminary Ecological Appraisal of an area of garden at Melita House. The survey was completed on the 11th May 2021. The aim of the survey was to complete an Extended Phase 1 Habitat Survey of the survey area (all land that will be impacted by the proposals) and analyse this against a desk study of the local area.

No previous reports have been produced for this site by Arbtech.

1.2 Site Context

The site is located at National Grid Reference SO 04935 07340 and has an area of approximately 0.04Ha. The site consists of gardens comprising of mown amenity lawn, a children's play area, garden beds and a shed that is to be moved to the garden to the west.

1.3 Scope of the report

This report describes the baseline ecological conditions at the site; evaluates habitats within the survey area in the context of the wider environment; and describes the suitability of those habitats for notable or protected species. It identifies significant ecological impacts as a result of the development proposals; summarises the requirements for further surveys and mitigation measures, to inform subsequent mitigation proposals, achieve Planning or other statutory consent, and to comply with wildlife legislation.

The aim of the PEA was to obtain data on existing ecological conditions, and to conduct a preliminary assessment of the likely significance of ecological impacts on the proposed development. Establishing the baseline conditions for future monitoring. To achieve this, the following steps were taken:

- The desk study area and field survey area (generally 50m from the site boundary/proposed footprint and including the 'zone of influence' of the scheme) have been identified
- A desk study has been carried out.
- Baseline information on the site and surrounding area has been recorded through an 'Extended Phase 1 Habitat Survey', including a Phase 1 Habitat Survey (JNCC 2010) and recording further details in relation to notable or protected habitats and species.
- The ecological features present within the survey area have been evaluated where possible (CIEEM, December 2017).
- Invasive plant and animal species (such as those listed on Schedule 9 of the Wildlife & Countryside Act) have been identified.
- Likely impacts on features of value, as a result of the development proposals, have been identified.
- Recommendations for further survey and assessment have been made.
- Recommendations for mitigation and opportunities for enhancement have been provided based on current information.

A survey plan is presented in Appendix 1, proposed plans in Appendix 2, desk study results in Appendix 3 and a summary of relevant legislation is presented in Appendix 4.

1.4 Project Description

The development proposals are for the construction of a new dwelling on a garden area on the east side of the existing Melita House site.

2.0 Methodology

2.1 Desk Study methodology

The desk study informing the survey conclusions consists of a review of nearby statutory and non-statutory designated sites, Biodiversity Action Plan (BAP) Priority Habitats and granted EPSML records held on the Magic database. An assessment of the surrounding landscape structure was also completed using aerial images from Google Earth and OS maps.

Given the lack of ecological receptor risk and the low nature conservation value of habitats present it is considered that a 2km biological records search would be superfluous in this case.

2.2 Site Survey methodology

The survey was undertaken by Head of Ecology Chris Formaggia BSc (Joint Hons) CBiol CEnv MCIEEM MRBS VR who has 32 years of professional ecological survey experience.

The methodology for the Phase 1 Habitat Survey is based on the best practice publication Phase 1 Habitat Survey Methodology (JNCC, 2010). All land parcels are described and mapped according to JNCC Phase 1 Habitat Classification. Where appropriate, target notes provide supplementary information on habitat conditions, features too small to map to scale, species composition, structure and management.

During the survey, habitats were assessed for their suitability to support protected species, and field signs indicating their presence recorded. The assessment takes into consideration the findings of the desk study, the habitat conditions on site and in the context of the surrounding landscape, and the ecology of the protected species. The likelihood of the presence of protected species is ranked; the habitats on site are evaluated against their likelihood to provide suitable habitat for protected species.

The ecological value of the survey area has been assessed based on the Guidelines for Ecological Impact Assessment (CIEEM, 2018), and the Handbook of Biodiversity Methods: Survey, Evaluation and Monitoring (Hill, 2005), using geographic frames of reference. The biodiversity value of any identified designated sites, habitat types and associated species assemblages has been considered. The distribution and extent of invasive species listed on Schedule 9 of the Wildlife and Countryside Act (1981 as amended 1996) were also noted throughout the survey area.

2.3 Suitability Assessment

The habitats on site were evaluated as to their likelihood to provide sheltering, roosting, foraging, basking or nesting habitat. The likelihood of the occurrence of protected species is ranked according to the criteria listed in Table 1 below.

Table 1: showing criteria considered when assessing the likelihood of occurrence of protected species

Present	Species are confirmed as present from the current survey or historical confirmed records.
High	Habitat and features of high quality for species/species assemblage. Species known to be present in wider landscape (desk study records). Good quality surrounding habitat and good connectivity.
Medium	Habitat and features of moderate quality. The site in combination with surrounding land provides all habitat/ecological conditions required by the species/assemblage. Within known national distribution of species and local records in desk study area. Limiting factors to suitability, including small area of suitable habitat, some severance/poor connectivity with wider landscape, poor to moderate habitat suitability in local area.
Low	Habitats within the survey area poor quality. Few or no records from data search. Despite above, presence cannot be discounted as within national range, all required features/conditions present on site and in surrounding landscape. Limiting factors could include isolation, poor quality landscape, or disturbance.
Negligible	Very limited poor-quality habitats and features. No local records from desk study; site on edge of, or outside, national range. Surrounding habitats considered unlikely to support species/species assemblage.

2.4 Limitations – evaluation of the methodology

It should be noted that whilst every effort has been made to describe the baseline conditions within the survey area, and evaluate these features, this report does not provide a complete characterisation of the site. This assessment provides a preliminary view of the likelihood of protected species being present. This is based on suitability of the habitats on the site and in the wider landscape, the ecology and biology of species as currently understood, and the known distribution of species as recovered during the searches of historical biological records.

There were no specific limitations to the survey – the PEA was carried out in a favourable timing window and full site access was possible.

3.0 Results and Evaluation

3.1 Desk Study Results

The desk study has been carried out as described in section 2.1 of this report. Any relevant findings regarding statutory and non-statutory designated sites, Biodiversity Action Plan (BAP) Priority Habitats and granted EPSML records are incorporated into the evaluation section of this report, with additional maps provided in Appendix 3.

Table 2 – Statutory Special Sites within 2km of the site boundary

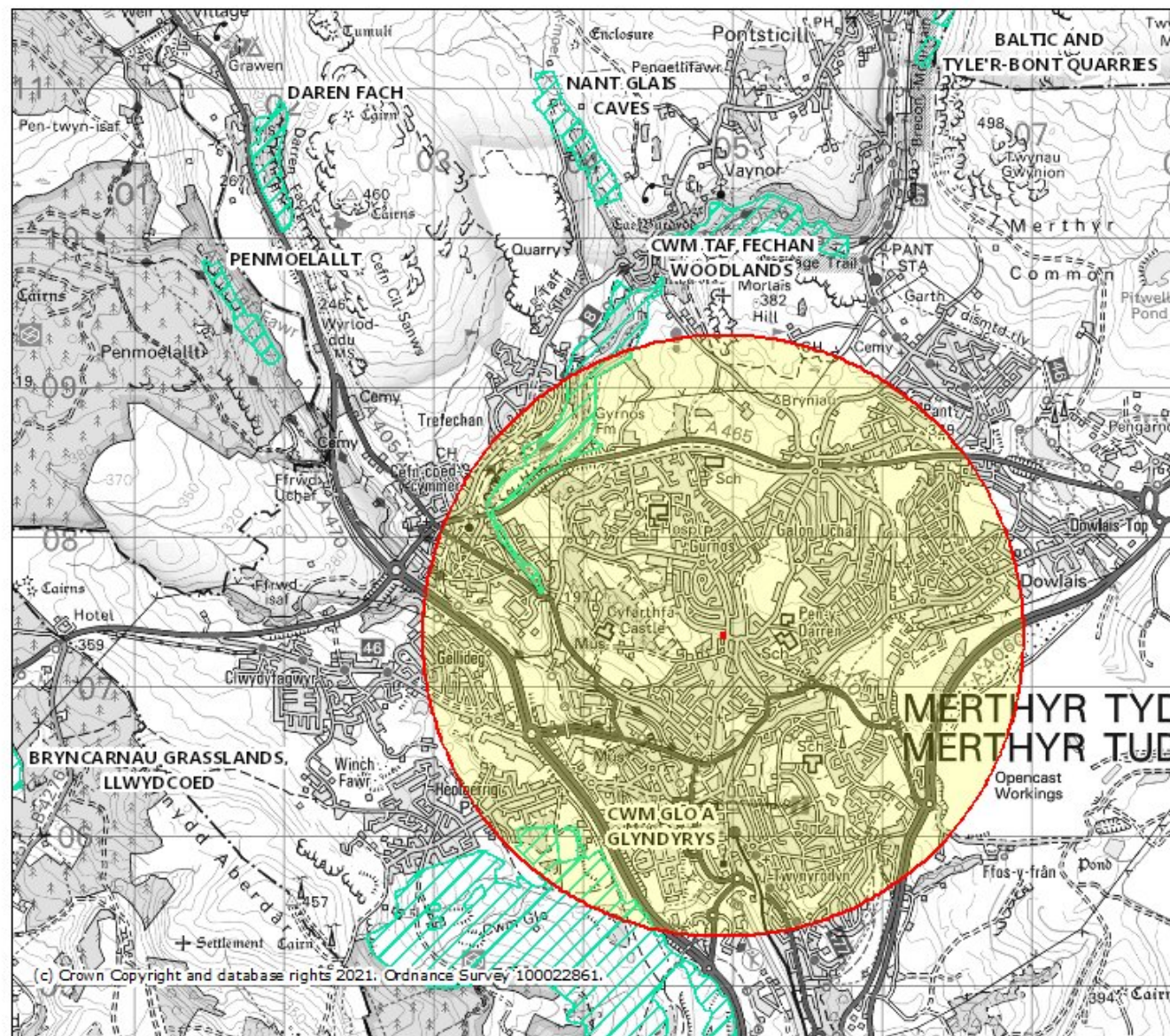
Sites of Special Scientific Interest (Wales)

Name
CWM GLO A GLYNDYRYS
Eastings
303786
Northings
205227
First Notified

23/01/2003
Last Notified
17/07/2008
Confirmation Date
08/04/2009
Cartesian Area (Ha)
181.310227
Name
CWM TAF FECHAN WOODLANDS
Eastings
303945
Northings
208684
First Notified
01/01/1972
Last Notified
09/12/1985
Confirmation Date
Null
Cartesian Area (Ha)
64.13199

MAGiC

Melita House Designated Sites



Legend

- National Nature Reserves (Wales)
- Ramsar Sites (Wales)
- Sites of Special Scientific Interest (Wales)
- Special Areas of Conservation (Wales)
- Special Protection Areas (Wales)
- Biosphere Reserves (Wales)

Projection = OSGB36

xmin = 294200

ymin = 203500

xmax = 314000

ymax = 212700

Map produced by MAGiC on 25 May, 2021.

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3.2 Landscape

The proposal is outside of any of the proposed Merthyr Special Landscape Areas (SLAs).

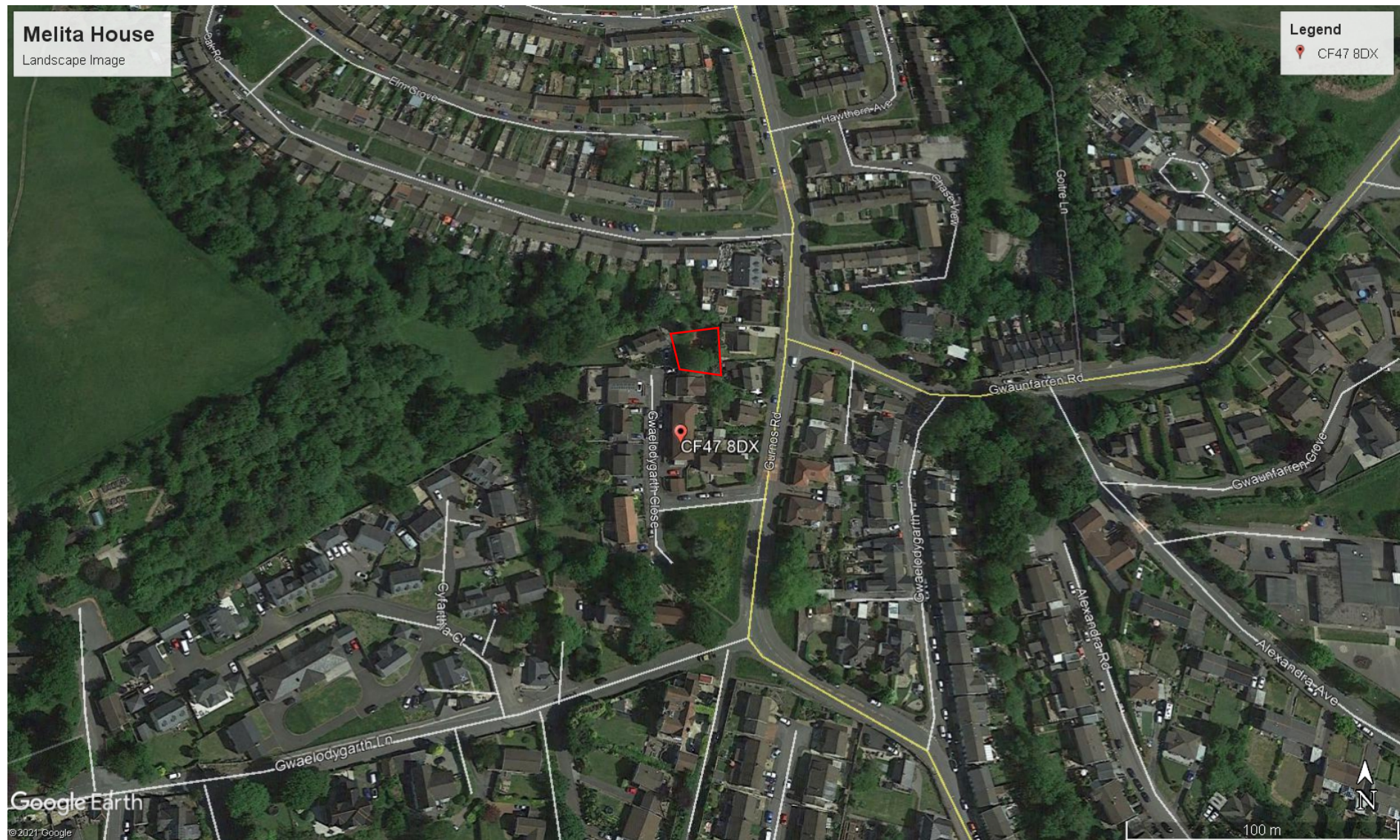


Figure 1: Aerial photo of site, showing landscape structure

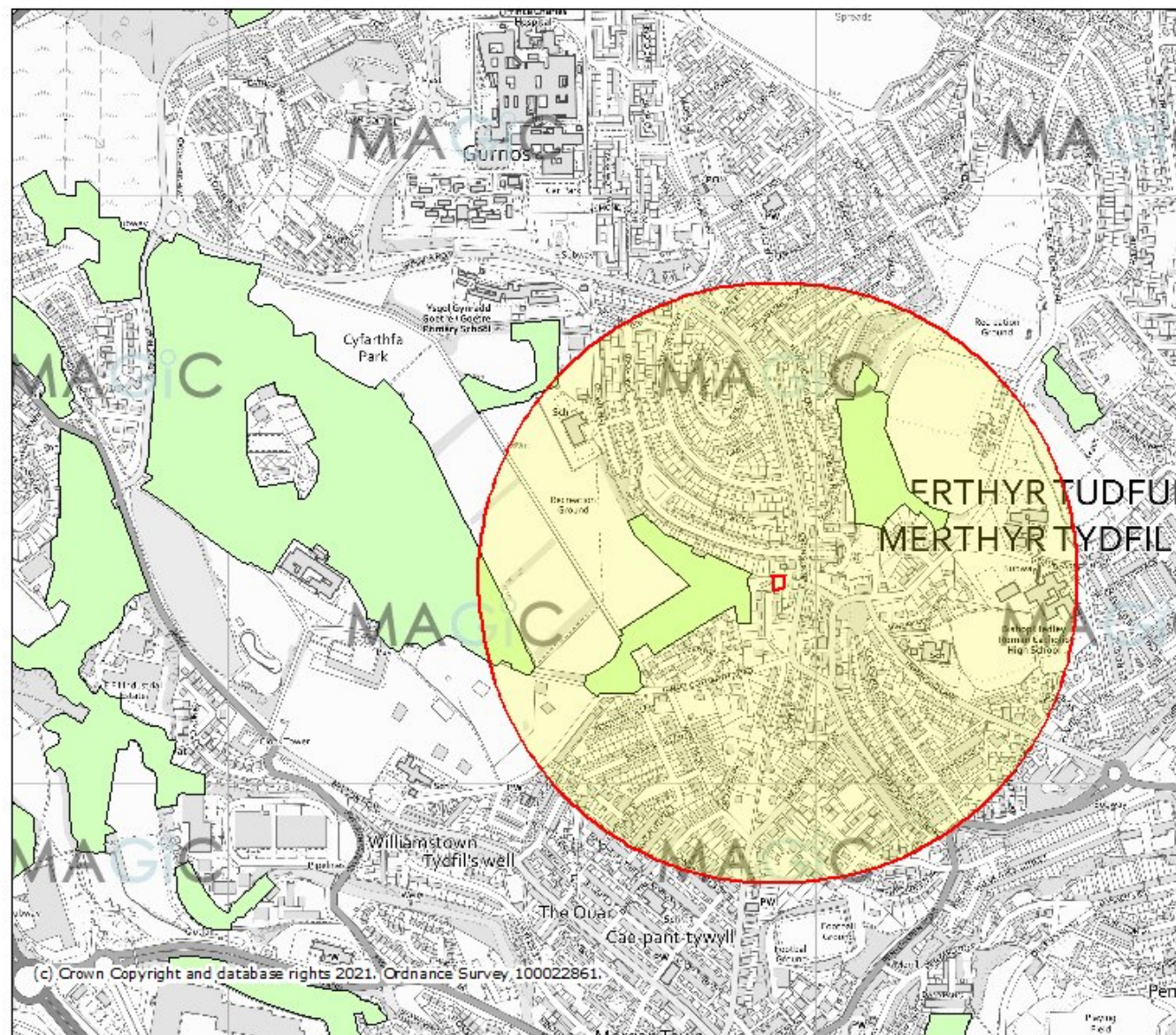
The site contains no Priority Habitat as recorded on the DEFRA magic database. It should be noted that the recorded PH on Magic is extremely limited in Wales. The Priority Habitat within 500m of site that is mapped is as follows:

National Forest Inventory (GB)	
Category	
Woodland	
Interpreted Forest Type	
Broadleaved	
Area (hectares)	
2.81	
Category	
Woodland	
Interpreted Forest Type	
Broadleaved	
Area (hectares)	
1.01	
Category	
Woodland	
Interpreted Forest Type	
Broadleaved	
Area (hectares)	
21.38	
Category	
Woodland	
Interpreted Forest Type	
Broadleaved	
Area (hectares)	
2.21	

OK

MAGiC

Melita House Priority Habitat



Legend

National Forest Inventory
(GB)

- Assumed woodland
- Broadleaved
- Cloud \ shadow
- Conifer
- Coppice
- Coppice with standards
- Failed
- Felled
- Ground prep
- Low density
- Mixed mainly broadleaved
- Mixed mainly conifer
- Shrub
- Uncertain
- Windthrow
- Young trees

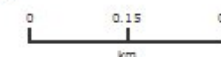
Projection = OSGB36

xmin = 302100

ymin = 206300

xmax = 307100

ymax = 208600

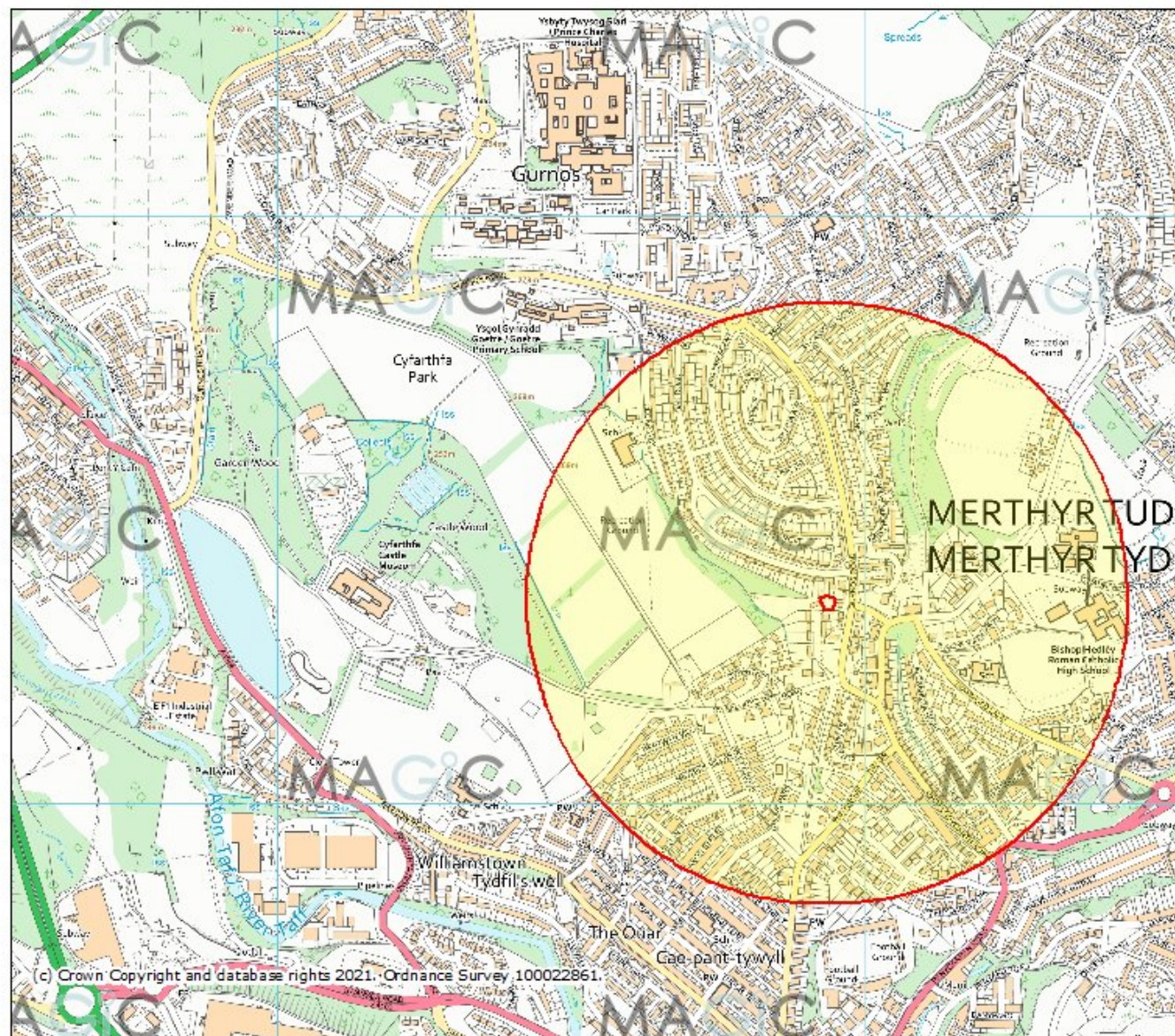


Map produced by MAGiC on 25 May, 2021.

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MAGiC

Melita House Ponds 500m



0 ponds within 500m

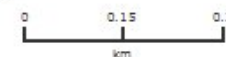
Projection = OSGB36

xmin = 302000

ymin = 206300

xmax = 307100

ymax = 208600



Map produced by MAGiC on 25 May, 2021.

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3.3 Field Survey Results

The site of the proposed development is an area of pasture shown in the map in Appendix 1. The climatic conditions recorded at the time of the survey are shown in Table 6.

Table 4: Weather conditions during the survey

Date: 11/05/2021	
Temperature	11°C
Relative Humidity	66%
Cloud Cover	80%
Wind	2 mph
Rain	Showers

Melita House

Client

David Thomas

Client Ref.

DTMH1

Surveyor

Chris Formaggia

Surveyor Ref.

CF1

Location

CF47 8DX

County

Merthyr Tydfil

Notes

-

Polygon (#001P) Lawn

Area/Perimeter

0.01 Ha / 51 m

Habitat

J1.2 Amenity Grassland

Notes

Low diversity sward – actively mown

Keywords

Lawn

Plant Species

Meadow grasses are dominant

Priority and Invasive Species

Not Recorded

Polygon (#002P)

Area/Perimeter

0.01 Ha / 33 m

Habitat

J4 Bare Ground

Notes

Children's play area with soft bark mulch treatment

Keywords

Canal corridor adjacent

Plant Species

Meadow grasses are dominant

Priority and Invasive Species

Not recorded

Polygon (#003P) bedding areas

Area/Perimeter

0.01 Ha / 20 m

Habitat

J4 Introduced Shrub

Notes

Garden beds

Keywords

Managed garden species

Plant Species

Garden introductions

Priority and Invasive Species

-

Linear (#001L) Hedgerow

Perimeter

58 m

Habitat

J2.3.1 – Hedge and trees – Species-poor

Notes

Domestic curtilage hedge

Keywords

-

Plant Species

Silver birch dominate, other species include hawthorn, holly, magnolia, ash and elder

Priority and Invasive Species

-

3.4 Site descriptions and photos

J1.2 Amenity Grassland

The new dwelling will be partially constructed on an existing low-diversity mown lawn.



Patio area and northern boundary hedge

Boundaries are retained in the scheme.

**Children's playing area**

The new build will be constructed upon the bare ground (soft bark mulch treated) area.



Lawson Cypress

The only tree requiring removal – no PRFs for bats

**Melita House**

NGR SO 04914 07339

The existing dwelling which will sit to the west of the new build.



3.5 Protected species evidence

The site is likely to be utilised by common woodland bird species and riparian bird species. Observed birds were dunnock, wood pigeon, blue tit, blackbird, carrion crow, magpie, and robin.

The lawns have negligible foraging value for common reptile species and terrestrial phase amphibians.

No badger setts within 30m of site.

4.0 Conclusions, Impacts and Recommendations

4.1 Informative guidelines

Likelihood of the presence of protected species

Where physical evidence of the presence of protected species is indeterminate during the survey, the habitats on site are evaluated as to their likelihood to provide sheltering, roosting, foraging, basking or nesting habitat. The likelihood of occupancy of protected species is ranked according to the criteria listed in Table 1.

Where this report supports a planning application, the ecological interest of the study area (including the survey area) and the proposed development has also been evaluated in terms of the planning policies relating to biodiversity. It is clearly stated where a preliminary value can be given and where further information is required.

Appropriate justification for this assessment is provided in Section 2.3 and Table 1 of this report.

4.2 Evaluation

Taking the desk study and site survey results into account, the following conclusions for ecological factors has been reached.

Table 5: Evaluation of site

Ecological Factor	Survey findings and commentary	Foreseen impacts	Recommendations	Enhancements The Local Planning Authority has a duty to ask for enhancements under the NPPF (July 2018)
Designated sites	The site is not subject to any designation. The Magic database shows that there are two statutory designated sites within 2km – The Cwm Glo a Glyndyrys SSSI and the Cwm Taf Fechan Woodlands SSSI but both of these are more than 1.5km from site. There are no local site designations on site. The LPA has advised that there are three SINC sites within 1km of site with the closets being 0.3km away. The LPA has advised that the site lies within the broad network of corridors – the Buglife B-Line.	The scheme will not impact upon nationally or internationally important sites because the scale of the operation will not generate any indirect risks to the site. The scheme will not impact upon regionally or locally important sites because the scale of the operation will not generate any	No further evaluation of impact on Special sites is required.	In recognition of the Buglife B-Line corridor the scheme will be enhanced with the placement of an Elba Insect tower on one of the warmer elevations of the new-build. 

		indirect risks to the site.		
Notable habitats and plants	The site contains no DEFRA mapped Priority Habitat. There are substantial blocks of deciduous woodland to the immediate west and also further north east within 500m. The hedgerows on the site boundaries are domestic and would not qualify as ecologically IMPORTANT under the Hedgerow Regulations. 1997. They are regarded as habitat of principal importance in Wales	The scheme will not generate any direct or indirect impacts upon Priority Habitats. The existing hedgerows are retained.	No further evaluation of habitat or vegetation is considered necessary.	n/a
Invasive / Non-native species	None observed at the time of survey.	No foreseen impact	No action required but remain vigilant to infestation.	n/a
Bats	The only mature tree affected by the scheme is a non-native conifer that has no potential roosting features (PRFs) for bats. Maturer silver birches in the southern boundary are retained and also lack PRFs. A small domestic shed is currently on site and will be moved elsewhere on the Melita House grounds. It has negligible value for roosting bats and contained no evidence of bat usage.	No foreseen impact	External lighting will comply with https://theilp.org.uk/publication/guidance-note-8-bats-and-artificial-lighting/ Dark corridors will be maintained around the site peripheries and the integrated bat box will not be illuminated.	An integral bat tube could be included in the masonry of the southern elevation of the new build as new niche roosting habitat for bats. The box will not be illuminated.
Birds	The site is likely to support common woodland bird species primarily it is the peripheries.	Active nests could be destroyed by any loss of trees or shrub.	It is recommended that standard planning conditions are employed to protect breeding birds, their nest and eggs in accordance with the Wildlife and Countryside Act 1981 (as amended): Vegetation should be cleared outside the period 1st March to 31st August. If this timeframe cannot be avoided, a close inspection of the habitat should be undertaken immediately prior to the commencement of works. All active nests will need to be retained until the young have fledged.	Introduce new structural planting of fruit-rich, local provenance native species to increase foraging on site.

Reptiles	The site comprises of mown lawn, garden beds and a children's playing area. The habitat is not expected to support foraging or hibernating reptiles.	The larger western garden at Melita House might support low numbers of reptiles such as slow worm but the construction footprint is unlikely to generate impact upon these.	Any vegetation clearance should be centre-out to allow any mobile fauna to escape to unaffected surrounding habitat.	None
Amphibians	The site is not likely to support common amphibian species or great crested newt (GCN) because of a lack of nearby breeding opportunity and suitable habitat on site.	The site is unlikely to be significantly important for amphibians.	No further work necessary.	None
Other Terrestrial Mammals	Badgers No badger setts were located during the PEA or any evidence of badger use located.	Badgers The scheme poses no risk to live badgers or their occupied setts.	Badgers Remain vigilant to the occupation of the site by badgers. Badger populations are dynamic.	Badgers Planting additional fruit trees on the developed site will provide additional foraging resources for badgers.
	Water Vole No habitat	Water Vole n/a	n/a	n/a
	Otter No habitat	Otter n/a	n/a	n/a

	Hedgehogs Domestic garden habitat is present. The LPA has indicated records of hedgehog within 500m of site.	There is a very minor loss of possible foraging area. New boundaries might impinge of free movement of the species.	The LPA requires 2# 130*130 gaps to be created in any new boundary fencing to allow continued free movement of animals.	-
Invertebrates	The LPA has identified the site as being within the Buglife B-Line network. The nature of the site is not likely to have any significant value for invertebrates.	No significant impact.	No further work necessary.	In recognition of the Buglife B-Line corridor the scheme will be enhanced with the placement of an Elba Insect tower on one of the warmer elevations of the new-build.

The site habitats are not ecologically important and no further ecological evaluations are considered necessary for this site.

5.0 Bibliography

- British Trust for Ornithology (2016) www.bto.org/about-birds/nbnw/putting-up-a-nest-box
- BS 42020, Biodiversity – Code of practice for planning and development (2013) <http://www.eoebiodiversity.org/pdfs/BS42020.pdf>
- Cheffings, C. and Farrell, L. (eds.) (2005) The Vascular Plant Red Data List for Great Britain. Joint Nature Conservation Committee, Peterborough.
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Appendix 1: Phase 1 Habitat Survey Map

Not mapped – The habitats are of low to negligible nature conservation value

[illegible]Proposed General Arrangement Plans
1:200

Appendix 3: Desk Study Information

Not recommended

Appendix 4: Legislation and Planning Policy

LEGAL PROTECTION

National and European Legislation Afforded to Habitats

International Statutory Designations

Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) are sites of European importance and are designated under the EC Habitats Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora (the Habitats Directive) and the EC Birds Directive 2009/147/EC on the conservation of wild birds respectively. Both form part of the wider Natura 2000 network across Europe.

Under the Habitats Directive Article 3 requires the establishment of a network of important conservation sites (SACs) across Europe. Over 1,000 animal and plant species, as well as 200 habitat types, listed in the directive's annexes are protected in various ways:

Annex II species (about 900): core areas of their habitat are designated as sites of Community importance (SCIs) and included in the Natura 2000 network. These sites must be managed in accordance with the ecological needs of the species.

Annex IV species (over 400, including many annex II species): a strict protection regime must be applied across their entire natural range within the EU, both within and outside Natura 2000 sites.

Annex V species (over 90): Member States must ensure that their exploitation and taking in the wild is compatible with maintaining them in a favourable conservation status.

SPAs are classified under Article 2 of the Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds both for rare bird species (as listed on Annex I) and for important migratory species.

SACs and SPAs up to 12 nautical miles from the coast (i.e. 'territorial waters') are afforded protection in the UK under the Conservation of Habitats and Species Regulations 2017 which consolidate all amendments made to the Conservation (Natural Habitats, &c.) Regulations 1994.

The Conservation of Offshore Marine Habitats and Species Regulations 2017 consolidate and update the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007. The 2017 Regulations introduce amendments which transfer responsibility for European nature conservation in the Welsh offshore region to Welsh Ministers. This gives Welsh Ministers similar powers in Welsh offshore waters to those currently exercised by Scottish Ministers in Scottish offshore waters. These regulations transpose into national law Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (Habitats Directive), and elements of Council Directive 2009/147/EC on the conservation of wild birds (Wild Birds Directive) in the UK offshore area. They came into force on 30th November 2017. These regulations apply to the UK's offshore marine area which covers waters beyond 12 nautical miles, within British Fishery Limits and the seabed within the UK Continental Shelf Designated Area. The Conservation of Habitats and Species Regulations 2017 form the legal basis for the implementation of the Habitats and Birds Directives in terrestrial areas and territorial waters out to 12nm in England and Wales (including the inshore marine area) and to a limited extent in Scotland and Northern Ireland.

Ramsar sites are designated under the Convention on Wetlands of International Importance, agreed in Ramsar, Iran, in 1971. The Convention covers all aspects of wetland conservation and recognises the importance of wetland ecosystems in relation to global biodiversity conservation. The Convention refers to wetlands as "*areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres*".

However, they may also include riparian and coastal zones. Ramsar sites are statutorily protected under the Wildlife & Countryside Act 1981 (as amended 01.04.1996) with further protection provided by the Countryside and Rights of Way (CROW) Act 2000. Policy statements have been issued by the Government in England and Wales highlighting the special status of Ramsar sites. The Government in England and Wales has issued policy statements which ensure that Ramsar sites are afforded the same protection as areas designated under the EC Birds and Habitats Directives as part of the Natura 2000 network (e.g. SACs & SPAs). Further provisions for the protection and management of SSSIs have been introduced by the Nature Conservation (Scotland) Act 2004.

National Statutory Designations

Sites of Special Scientific Interest (SSSI) are designated by nature conservation agencies in order to conserve key flora, fauna, geological or physio-geographical features within the UK. The original designations were under the National Parks and Access to the Countryside Act 1949 but SSSIs were then re-designated under the Wildlife & Countryside Act 1981 (as amended). As well as reinforcing other national designations (including National Nature Reserves), the system also provides statutory protection for terrestrial and coastal sites which are important within the European Natura 2000 network and globally.

Local Statutory Designations

Local authorities in consultation with the relevant nature conservation agency can declare Local Nature Reserves (LNRs) under the National Parks and Access to the Countryside Act 1949. LNRs are designated for flora, fauna or geological interest and are managed locally to retain these features and provide research, education and recreational opportunities.

Non- Statutory Designations

All non-statutorily designated sites are referred to as Local Wildlife Sites (LWS) and can be designated by the local authority for supporting local conservation interest. Combined with statutory designation, these sites are considered within Local Development Frameworks under the Town and Country Planning system and are a material consideration during the determination of planning applications. The protection afforded to these sites varies depending on the local authority involved.

Regionally Important Geological Sites (RIGs) are the most important geological and geomorphological areas outside of statutory designations. These sites are also a material consideration during the determination of planning applications.

The Hedgerow Regulations 1997

The Hedgerow Regulations 1997 are designed to protect 'important' countryside hedgerows. Importance is defined by whether the hedgerow (a) has existed for 30 years or more; or (b) satisfies at least one of the criteria listed in Part II of Schedule 1 of the Regulations.

Under the Regulations, it is against the law to remove or destroy hedgerows on or adjacent to common land, village greens, SSSIs (including all terrestrial SACs, NNRs and SPAs), LNRs, land used for agriculture or forestry and land used for the keeping or breeding of horses, ponies or donkeys without the permission of the local authority. Hedgerows 'within or marking the boundary of the curtilage of a dwelling-house' are excluded.

National and European Legislation Afforded to Species

The Habitats Directive

The EC Habitats Directive aims to promote the maintenance of biodiversity by requiring Member States to take measures to maintain or restore wild species listed on the Annexes to the Directive at a favourable conservation status, introducing robust protection for those species of European importance. The Directive is transposed into UK law by The Conservation of Habitats and Species Regulations 2017 (the Conservation Regulations) and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (as amended). The following notes are relevant for all species protected under the EC Habitats Directive:

In the Directive, the term 'deliberate' is interpreted as being somewhat wider than intentional and may be thought of as including an element of recklessness.

The Habitats Regulations do not define the act of 'migration' and, therefore, as a precaution, it is recommended that short distance movement of animals for e.g. foraging, breeding or dispersal purposes are also considered.

In order to obtain a European Protected Species Mitigation (EPSM) licence, the application must demonstrate that it meets all of the following three 'tests':

- The action(s) are necessary for the purpose of preserving public health or safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequence of primary importance for the environment;
- There is no satisfactory alternative; and
- The action authorised will not be detrimental to the maintenance of the species concerned at a favourable conservation status in their natural range.

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

The Wildlife and Countryside Act (WCA) 1981 (as amended) implements the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention 1979, implemented 1982) and implements the species protection requirements of EC Birds Directive 2009/147/EC on the conservation of wild birds in Great Britain (the birds Directive). The WCA 1981 has been subject to a number of amendments, the most important of which are through the Countryside and Rights of Way (CROW) Act (2000) and Nature Conservation (Scotland) Act 2004.

Other legislative Acts affording protection to wildlife and their habitats include:

- Deer Act 1991
- Natural Environment & Rural Communities (NERC) Act 2006
- Protection of Badgers Act 1992
- Wild Mammals (Protection) Act 1996

Badgers

Badgers *Meles meles* are protected under The Protection of Badgers Act 1992 which makes it an offence to:

- Wilfully kill, injure, take, or attempt to kill, injure or take a badger
- Cruelly ill-treat a badger, including use of tongs and digging
- Possess or control a dead badger or any part thereof
- Intentionally or recklessly damage, destroy or obstruct access to a badger sett or any part thereof
- Intentionally or recklessly disturb a badger when it is occupying a badger sett

- Intentionally or recklessly cause a dog to enter a badger sett
- Sell or offers for sale, possesses or has under his control, a live badger

Effects on development works:

A development licence will be required from the relevant countryside agency (i.e. Natural England, Natural Resources Wales, Scottish Natural Heritage) for any development works likely to affect an active badger sett, or to disturb badgers whilst they occupy a sett. Guidance has been issued by the countryside agencies to define what would constitute a licensable activity. It is no possible to obtain a licence to translocate badgers.

Birds

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

- Intentionally (or recklessly in Scotland) kill, injure or take any wild bird
- Intentionally (or recklessly in Scotland) take, damage or destroy (or, in Scotland, otherwise interfere with) the nest of any wild bird while it is in use or being built
- Intentionally take or destroy an egg of any wild bird
- Sell, offer or expose for sale, have in his possession or transport for the purpose of sale any wild bird (dead or alive) or bird egg or part thereof.
- Intentionally or recklessly obstruct or prevent any wild bird from using its nest (Scotland only)

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

This affords them protection against:

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

Effects on development works:

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

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

Reptiles (Amphibians and reptiles)

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

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

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

- Intentional or reckless disturbance (at any level)
- Intentional or reckless obstruction of access to any place of shelter or protection
- Selling, offering or exposing for sale, possession or transporting for purpose of sale.

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

- Intentionally or recklessly kill or injure these species.

Effects on development works:

A European Protected Species Mitigation (EPSM) Licence issued by the relevant countryside agency (i.e. Natural England, Natural Resources Wales, Scottish Natural Heritage) will be required for works likely to affect the breeding sites or resting places amphibian and reptile species protected under Habitats Regulations. A licence will also be required for operations liable to result in a level of disturbance which might impair their ability to undertake those activities mentioned above (e.g. survive, breed, rear young and hibernate). The licences are to allow derogation from the relevant legislation, but also to enable appropriate mitigation measures to be put in place and their efficacy to be monitored.

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

Water voles

The water vole *Arvicola terrestris* is fully protected under Schedule 5 of the WCA. This makes it an offence to:

- Intentionally kill, injure or take (capture) water voles
- Intentionally or recklessly damage, destroy or obstruct access to any structure or place used for shelter or protection
- Intentionally or recklessly disturb water voles while they are occupying a structure or place used for shelter or protection

Effects on development works:

If development works are likely to affect habitats known to support water voles, the relevant countryside agency (i.e. Natural England, Natural Resources Wales, Scottish Natural Heritage) must be consulted. It must be shown that means by which the proposal can be re-designed to avoid contravening the legislation have been fully explored e.g. the use of alternative sites, appropriate timing of works to avoid times of the year in which water voles are most vulnerable, and measures to ensure minimal habitat loss. Conservation licences for the capture and translocation of water voles may be issued by the relevant countryside agency for the purpose of development activities if it can be shown that the activity has been properly planned and executed and thereby contributes to the conservation of the population. The licence will then only be granted to a suitably experienced person if it can be shown that adequate surveys have been undertaken to inform appropriate mitigation measures. Identification and preparation of a suitable receptor site will be necessary prior to the commencement of works.

Otters

Otters *Lutra lutra* are fully protected under the Conservation Regulations through their inclusion on Schedule 2. Regulation 41 prohibits:

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

Otters are also currently protected under the WCA through their inclusion on Schedule 5. Under this Act, they are additionally protected from:

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

Effects on development works:

An EPSM Licence issued by the relevant countryside agency (i.e. Natural England, Natural Resources Wales, Scottish Natural Heritage) will be required for works likely to affect otter breeding or resting places (often referred to as holts, couches or dens) or for operations likely to result in a level of disturbance which might impair their ability to undertake those activities mentioned above (e.g. survive, breed, and rear young). The licence is to allow derogation from the relevant legislation but also to enable appropriate mitigation measures to be put in place and their efficacy to be monitored

Bats

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

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

- Damage or destruction of a breeding site or resting place

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

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

Effects on development works:

An EPSM Licence issued by the relevant countryside agency (i.e. Natural England, Natural Resources Wales, Scottish Natural Heritage) will be required for works are likely to affect a bat roost or an operation which are likely to result in an illegal level of disturbance to the species will require an EPSM licence. The licence is to allow derogation from the legislation through the application of appropriate mitigation measures and monitoring.

Dormice

Hazel Dormice *Muscardinus avellanarius* are fully protected under Habitats Regulations through their inclusion on Schedule 2. Regulation 41 prohibits:

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

Dormice are also protected under the WCA through their inclusion on Schedule 5. Under this Act, they are additionally protected from:

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

Effects on development works:

Works which are liable to affect a dormice habitat or an operation which are likely to result in an illegal level of disturbance to the species will require an EPSM licence issued by the relevant countryside agency (i.e. Natural England, Natural Resources Wales (NB: Hazel Dormouse are entirely absent from Scotland)). The licence is to allow derogation from the legislation through the application of appropriate mitigation measures and monitoring.

White clawed crayfish

There is a considerable amount of legislation in place in an attempt to protect the White-clawed crayfish *Austropotamobius pallipes*. This species is listed under the European Union's (EU) Habitat and Species Directive and is listed under Schedule 5 of the Wildlife and Countryside Act (1981). This makes it an offence to:

- Protected against intentional or reckless taking
- Protected against selling, offering or advertising for sale, possessing or transporting for the purpose of sale

It is also classified as Endangered in the IUCN Red List of Endangered Species. As a result of this and other relevant crayfish legislation such as the Prohibition of Keeping of Live Fish (Crayfish) Order 1996, a series of licences are needed for working with White-clawed and non-native crayfish. These are:

- A licence to handle crayfish (therefore survey work) in England
- A licence for the keeping of crayfish in England and Wales with an exemption for Signal crayfish (England).
- People in the post-code areas listed with crayfish present prior to 1996 do not need to apply for consent for crayfish already established. It does not, however, allow any new stocking of non-native crayfish into waterbodies. Consent for trapping of non-native crayfish for control or consumption is most likely to be granted in Thames and Anglian regions in the areas with "go area" postcodes.
- Harvesting of crayfish is prohibited in much of England and in any part of Scotland and Wales.

Effects on development works:

The relevant countryside agency (i.e. Natural England, Natural Resources Wales, Scottish Natural Heritage) will need to be consulted about development which could impact on a watercourse or wetland known to support white clawed crayfish. Conservation licences for the capture and translocation of crayfish can be issued if it can be shown that the activity has been properly planned and executed and thereby contributes to the conservation of the population. The licence will only be granted to a suitably experienced person if it can be shown that adequate surveys have been undertaken to inform appropriate mitigation measures. Identification and preparation of a suitable receptor site will be necessary prior to the commencement of the works.

Wild Mammals (Protection Act) 1996

All wild mammals are protected against intentional acts of cruelty under the above legislation. This makes it an offence to mutilate, kick, beat, nail or otherwise impale, stab, burn, stone, crush, drown, drag or asphyxiate any wild mammal with intent to inflict unnecessary suffering.

To avoid possible contravention, due care and attention should be taken when carrying out works (for example operations near burrows or nests) with the potential to affect any wild mammal in this way, regardless of whether they are legally protected through other conservation legislation or not.

Legislation afforded to Plants

With certain exceptions, all wild plants are protected under the WCA. This makes it an offence for an 'unauthorised' person to intentionally (or recklessly in Scotland) uproot wild plants. An authorised person can be the owner of the land on which the action is taken, or anybody authorised by them.

Certain rare species of plant, for example some species of orchid, are also fully protected under Schedule 8 of the Wildlife and Countryside Act 1981 (as amended). This prohibits any person from:

- Intentionally (or recklessly in Scotland) picking, uprooting or destruction of any wild Schedule 8 species (or seed or spore attached to any such wild plant in Scotland only)
- Selling, offering or exposing for sale, or possessing or transporting for the purpose of sale, any wild live or dead Schedule 8 plant species or part thereof
- In addition to the UK legislation outlined above, several plant species are fully protected under Schedule 5 of The Conservation of Habitats and Species Regulations 2010. These are species of European importance. Regulation 45 makes it an offence to:
 - Deliberately pick, collect, cut, uproot or destroy a wild Schedule 5 species
 - Be in possession of, or control, transport, sell or exchange, or offer for sale or exchange any wild live or dead Schedule 5 species or anything derived from such a plant.

Effects on development works:

An EPSM licence will be required from the relevant countryside agency (i.e. Natural England, Natural Resources Wales, Scottish Natural Heritage) for works which are likely to affect species of planted listed on Schedule 5 of the Conservation of Habitats and Species Regulations 2010. The licence is to allow derogation from the legislation through the application of appropriate mitigation measures and monitoring.

Invasive Species

Part II of Schedule 9 of the WCA lists non-native invasive plant species for which it is a criminal offence in England and Wales to plant or cause to grow in the wild due to their impact on native wildlife. Species included (but not limited to):

- Japanese knotweed *Fallopia japonica*
- Giant hogweed *Heracleum mantegazzianum*
- Himalayan balsam *Impatiens glandulifera*

Effects on development works:

It is not an offence for plants listed in Part II of Schedule 9 of the WCA 1981 to be present on the development site, however, it is an offence to cause them to spread. Therefore, if any of the species are present on site and construction activities may result in further spread (e.g. earthworks, vehicle movements) then it will be necessary to design and implement appropriate mitigation prior to construction commencing.

Injurious weeds

Under the Weeds Act 1959 any landowner or occupier may be required prevent the spread of certain 'injurious weeds' including (but not limited to):

- Spear thistle *Cirsium vulgare*
- Creeping thistle *Cirsium arvense*
- Curled dock *Rumex crispus*
- Broad-leaved dock *Rumex obtusifolius*
- Common ragwort *Senecio jacobaea*

It is a criminal offence to fail to comply with a notice requiring such action to be taken. The Ragwort Control Act 2003 establishes a ragwort control code of practice as common ragwort is poisonous to horses and other livestock. This code provides best practice guidelines and is not legally binding.

National Planning Policy Framework (ENGLAND)

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

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

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

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

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

Scottish Planning Policy (Published: 23 Jun 2014)

The SPP sits alongside the Scottish Government planning policy documents. The National Planning Framework (NPF) provides a statutory framework for Scotland's long-term spatial development. The NPF sets out the Scottish Government's spatial development priorities for the next 20 to 30 years.

A Natural, Resilient Place - Valuing the Natural Environment (National Planning Framework Context) Paragraph 193. The natural environment forms the foundation of the spatial strategy set out in NPF3. The environment is a valued national asset offering a wide range of opportunities for enjoyment, recreation and sustainable economic activity. Planning plays an important role in protecting, enhancing and promoting access to our key environmental resources, whilst supporting their sustainable use.

Policy Principles: Paragraph 194. The planning system should:

- Facilitate positive change while maintaining and enhancing distinctive landscape character;
- **Conserve and enhance protected sites and species, taking account of the need to maintain healthy ecosystems and work with the natural processes which provide important services to communities;**
- Promote protection and improvement of the water environment, including rivers, lochs, estuaries, wetlands, coastal waters and groundwater, in a sustainable and co-ordinated way;
- Seek to protect soils from damage such as erosion or compaction;
- Protect and enhance ancient semi-natural woodland as an important and irreplaceable resource, together with other native or long-established woods, hedgerows and individual trees with high nature conservation or landscape value;
- Seek benefits for biodiversity from new development where possible, including the restoration of degraded habitats and the avoidance of further fragmentation or isolation of habitats; and
- Support opportunities for enjoying and learning about the natural environment.

Planning Policy Wales (Edition 11, 2021)

Paragraph 6.43 of the document refers to Biodiversity and Ecological Networks and states:

The planning system has a key role to play in helping to reverse the decline in biodiversity and increasing the resilience of ecosystems, at various scales, by ensuring appropriate mechanisms are in place to both protect against loss and to secure enhancement. Addressing the consequences of climate change should be a central part of any measures to conserve biodiversity and the resilience of ecosystems. Information contained in SoNaRR, Area Statements and species records from Local Environmental Record Centres should be taken into account. Development plan strategies, policies and development proposals must consider the need to:

- support the conservation of biodiversity, in particular the conservation of wildlife and habitats;
- ensure action in Wales contributes to meeting international responsibilities and obligations for biodiversity and habitats;
- ensure statutorily and non-statutorily designated sites are properly protected and managed;
- safeguard protected and priority species and existing biodiversity assets from impacts which directly affect their nature conservation interests and compromise the resilience of ecological networks and the components which underpin them, such as water and soil, including peat; and
- secure enhancement of and improvements to ecosystem resilience by improving diversity, condition, extent and connectivity of ecological networks.

Environment (Wales) Act 2016 and the Biodiversity Duty

The Environment (Wales) Act introduces a new biodiversity duty, which highlights biodiversity as an essential component of ecosystem resilience. This new duty replaces the biodiversity duty in the Natural Environment and Rural Communities Act 2006 (referred to as the NERC Act). Part 1 of the Act deals with Sustainable management of natural resources including Biodiversity and Resilience of Ecosystems Duty. The Environment Act enhances the current NERC Act duty to require all public authorities, when carrying out their functions in Wales, to seek to “maintain and enhance biodiversity” where it is within the proper exercise of their functions. In doing so, public authorities must also seek to “promote the resilience of ecosystems”. As under the NERC Act the new duty will apply to a range of public authorities such as the Welsh Ministers, local authorities, public bodies and statutory undertakers. This ensures that biodiversity is an integral part of the decisions that public authorities take in relation to Wales. It also links biodiversity with the long term health and functioning of our ecosystems, therefore helping to align the biodiversity duty with the framework for sustainable natural resource management provided in the Act.

Biodiversity and Resilience of Ecosystems Duty (Section 6 Duty)

5.44 Planning authorities must seek to maintain and enhance biodiversity in the exercise of their functions. Planning authorities must also take account of and promote the resilience of ecosystems, in particular the following aspects:

- a) Diversity between and within ecosystems;
- b) The connections between and within ecosystems;
- c) The scale of ecosystems;

- d) The condition of ecosystems (including their structure and functioning); and
- e) The adaptability of ecosystems.

5.45 In fulfilling this duty, planning authorities must have regard to:

- a) The list of habitats of principal importance for Wales, published under Section 7 of the Environment (Wales) Act 2016;
- b) The State of Natural Resources Report (SoNaRR), published by NRW; and
- c) Any Area Statement that covers all or part of the area in which the authority exercises its functions.

5.46 A proactive approach towards facilitating the delivery of biodiversity and resilience outcomes should be taken by all those participating in the planning process. In particular, planning authorities should demonstrate that they have sought to fulfil the duties and requirements of Section 6 of the Environment Act by taking all reasonable steps to maintain and enhance biodiversity in the exercise of their functions. The broad framework for implementing the duty and building resilience through the planning system includes addressing:

- Diversity: to ensure mechanisms are in place to minimise further loss and that circumstances allow for species' populations to expand and recolonise their natural range (former range) or adapt to future change. This means development should provide a net benefit for biodiversity, and at the very least, with no significant loss of habitats or populations of species, locally or nationally;
- Extent: to ensure mechanisms allow for the maintenance of existing assets and networks and promote the restoration of damaged, modified or potential habitat and the creation of new habitat. This means that planning choices should incorporate measures which seek the creation and restoration of green networks and linkages between habitats and maintaining and
- enhancing other green infrastructure features and networks;
- Condition: this is more complex to address, not least because of the interactions of various factors which underpin habitats. At the very least planning approaches should not compromise the condition of ecosystems. By taking an integrated approach to development, for example, which considers both direct and wider impacts and benefits it should be possible to make a positive contribution through the planning system; and
- Connectivity: to take opportunities to develop functional habitat and ecological networks across landscapes, building on existing connectivity and quality and encouraging habitat creation and restoration. The opportunities could include enlarging habitat areas, developing buffers around designated sites or other biodiversity assets or corridors (including transport and river corridors) and the creation of 'stepping stones' which will strengthen the ability of habitats and ecological networks to adapt to change, including climate change.