



3387 | CMS ROCKINGHAM

CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN (CEMP: BIODIVERSITY)

January 2025 | For Planning

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1.0 INTRODUCTION

1.1.1 Smeeden Foreman Limited has been commissioned by BDB Design Build to provide a Construction Environmental Management Plan (CEMP: Biodiversity) for a development site located off Kestrel Way, Birdwell, Barnsley (central grid reference SE 3495 0052), hereafter referred to as the 'site'

1.1.2 The site has been granted full planning permission (planning ref. 2023/0815) subject to discharge of conditions. This report has been produced in relation to the discharge of condition 5 which states:

Notwithstanding the submitted details, no development shall take place (including demolition, ground works and vegetation clearance) until a Construction Environmental Management Plan - Biodiversity (CEMP-B) has been submitted to and approved in writing by the local planning authority. The CEMP-B shall include, but not necessarily be limited to, the following:

- Risk assessment of potentially damaging construction activities;*
- Identification of 'biodiversity protection zones';*
- Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);*
- The location and timing of sensitive works to avoid harm to biodiversity features (e.g. daylight working hours only starting one hour after sunrise and ceasing one hour before sunset);*
- Use of protective fences, exclusion barriers and warning signs, including advanced installation and maintenance during the construction period;*
- The times during construction when specialist ecologists need to be present on site to oversee works;*
- Responsible persons and lines of communication;*
- The role and responsibilities on site of an Ecological Clerk of Works (ECoW) or similarly competent person(s).*

Reason: In the interests of long-term biodiversity, in accordance with Local Plan Policy BIO1.

1.1.3 The purpose of the report is to identify habitats and potential protected/notable species on site to be protected from construction operations. The proposals include for construction of 7No. commercial industrial units in 6No. blocks (Use classes E(g)(ii), E(g)(iii), B2 and B8) and associated external works.

1.1.4 This report is to be read in conjunction with the corresponding Preliminary Ecological Appraisal (PEA) and Biodiversity Net Gain (BNG) Assessment, produced by Smeeden Foreman (2024).

1.1.5 BDB Design Build are the company responsible for the implementation of this CEMP: Biodiversity.

2.0 SITE DESCRIPTION

- 2.1.1 The site is located to the east of Junction 36 of the M1, approximately 5.7km to the south of Barnsley town centre (refer to Figure 01 below). The majority of the site comprises Open Mosaic Habitats on Previously Developed Land (OMH). Hedgerows with associated trees and mixed scrub are also present within the site.
- 2.1.2 Commercial and industrial units with associated access roads are adjacent to the north and west, with the A6195 Dearne Valley Parkway immediately adjacent to the east. An area of developing scrub/woodland is also located to the southwest of site.
- 2.1.3 Residential dwellings and commercial units are present within the surrounding landscape to the north, with additional areas of industrial/business development under construction, and occasional areas of farmland, woodland and tree belts to the south and east. The M1 is located approximately 0.3km west of site.

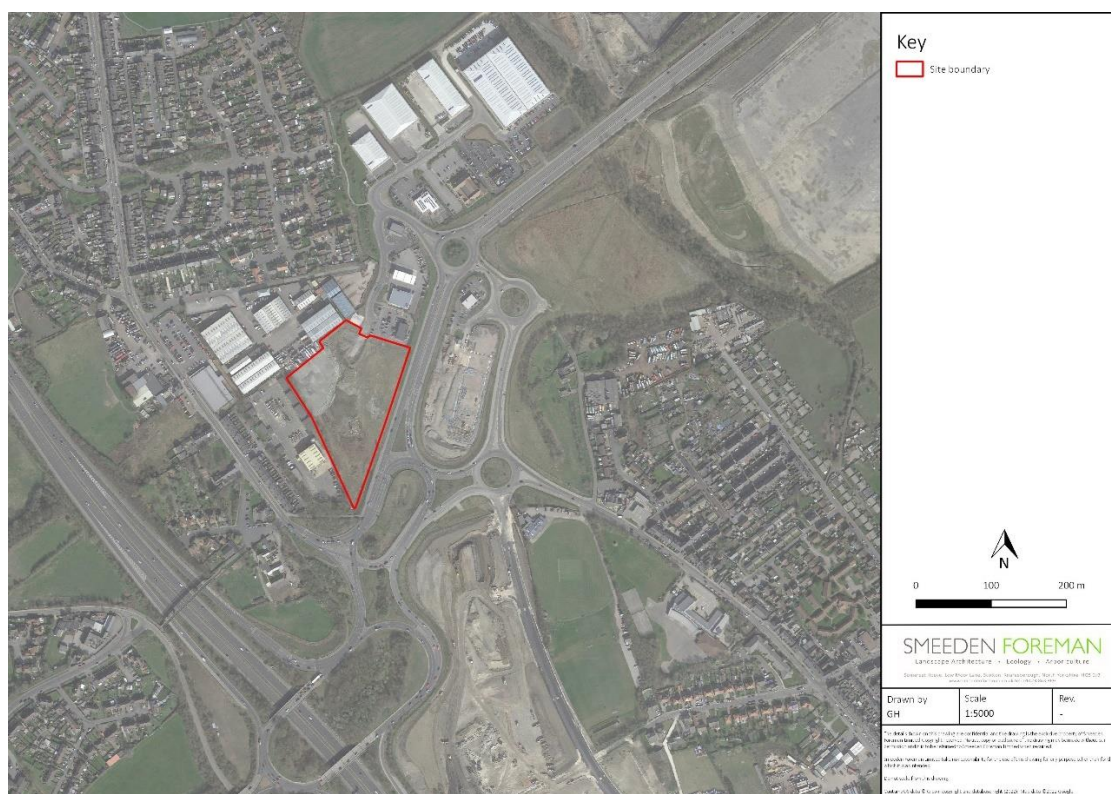


Figure 01: Aerial view of site location

3.0 LANDSCAPE STRATEGY

3.1.1 The landscape plan illustrates the habitats and habitat features to be in the post construction phase and sets out the level of strategic spatial arrangement for the site in order to provide the green infrastructure framework (soft landscaping) to the proposed development. Risk assessments of potentially damaging construction activities, and identification of biodiversity protection zones for retained features both pre and during construction, are also outlined within the report.

3.1.2 The landscape objectives include:

- Retention of existing trees and vegetation in accordance with BS 5837: 2012 guidance;
- Existing trees to be removed;
- Proposed native species tree/hedge planting;
- Proposed ornamental tree/shrub planting;
- Proposed wildflower/flowering lawn mix, and;
- Incorporation of wildlife features.

3.1.3 Reference has been made to the approved Landscape Proposals (drawing ref. *SF3387 LL02 Rev E, and SF3387 LL03 Rev E*) produced by Smeeden Foreman (refer to Figures 02 and 03).



Figure 02: SF 3387 LL02 Rev E (produced by Smeeden Foreman, 2023)



Figure 03: SF 3387 LL03 Rev E (produced by Smeeden Foreman, 2023)

4.0 PRE-CONSTRUCTION

4.1 TREE PROTECTION

- 4.1.1 Retained trees may be subject to accidental physical (mechanical) damage from machinery, soil compaction as a result of machinery/contractor presence, and airborne pollution (ie. dust), which may lead to degradation of habitat and indirect adverse effects on species it supports.
- 4.1.2 The overhanging branches and root areas of trees T1 to T13 will be protected by tree protection fencing. This fencing may be temporarily adjusted to facilitate the construction of the car parking and bin storage areas. The proposed parking bays will be constructed using Terram Geocell (or similar approved) Cellular Confinement System with type 3 stone, in no dig root protection area.
- 4.1.3 Installation of protective fencing will ensure there is no accidental damage to retained trees or their root zones during the construction phase from machinery due to compaction and will prevent the storage of construction materials around root areas.
- 4.1.4 The temporary protective fencing is to be installed to BS5837:2012: Trees in Relation to Design, Demolition and Construction and extend outside the canopy of the retained trees and remain in position until construction is complete. All-weather notices, A4 size, shall be attached to the tree protection fencing every 10m at 1.5m high with the words: 'Tree Protection Fence—strictly no access'.
- 4.1.5 Tree T4 (referenced as Tree T24 within Arboricultural Survey Report) is subject to removal to facilitate the development, though will be retained and protected until requisite survey works have been completed. Refer to section 4.2 for further information.
- 4.1.6 Refer to the Tree Survey and Arboricultural Impact Assessment Report (2023) produced by Smeeden Foreman, and Appendix B for further details on protection of trees.

Mixing and storage of materials

- 4.1.7 All mixing and storage of cement and concrete will take place in a designated area, which will be located well outside the vicinity of the Root Protection Area (RPA) of retained trees.

4.2 TREES WITH BAT ROOST SUITABILITY

- 4.2.1 During the PEA undertaken by Smeeden Foreman (July 2023), all trees within, and immediately adjacent to, the application boundary were subject to survey from ground level.
- 4.2.2 Tree T4 (referenced as Tree T24 within the arboricultural survey report: SF3387 Arb Survey Report Rev D), was assessed as having moderate potential to support roosting bats. This tree is in poor condition, and is subject to removal to facilitate the proposed development.
- 4.2.3 A climb and inspect survey of the tree is not possible due to health and safety reasons, and therefore bat emergence/re-entry surveys carried out during the appropriate survey season (May to September) are required to be undertaken at the tree prior to its removal.

- 4.2.4 In addition, tree protection fencing as outlined within section 4.1 will be installed to form a Construction Exclusion Zone (CEZ) around the tree, which will ensure there is no accidental damage to the tree/surrounding vegetation or their root zones, and will prevent the storage of construction materials around root areas, before the requisite surveys have been carried out. Refer to Appendix 02 for outlined Tree Protection Zones during construction.
- 4.2.5 In the event of a bat roost being found a licence from Natural England may be required, with appropriate mitigation and working methods.
- 4.2.6 Subject to confirmation by a suitably qualified ecologist (SQE) that roosting bats are likely absent, the tree and associated protection fencing can be removed, and construction activities can proceed in this area.

4.3 VEGETATION CLEARANCE

Breeding birds

- 4.3.1 Nesting birds are afforded protection under the Wildlife and Countryside Act 1981 (*as amended*) with additional protection against disturbance given to those listed under Schedule 1 of the Act.
- 4.3.2 The proposed development requires the removal of several trees and areas of scrub, which have potential to support breeding birds. Accidental injury/mortality/nest degradation therefore has the potential to occur as a result of construction activities/vegetation clearance/dust deposition.
- 4.3.3 Where possible, vegetation clearance works should be undertaken outside of the main nesting bird season (March – August, inclusive). It is also advised that any vegetation works are to be undertaken using trimmers/brushcutters due to the habitat types present on site.
- 4.3.4 Where clearance of vegetation /scrub/ grassland/trees is to be undertaken during the main bird nesting season, a check for nesting birds will be carried out by a suitably qualified ecologist. These checks will be undertaken prior to any clearance works and within 48 hours of the proposed commencement date. If nesting birds are identified, the advising ecologist will issue guidance in relation to the protection of the nesting birds in conjunction with the scheduled works. Measures such as applying a 'no works' buffer around the nest may be necessary. The buffer distance would be species-specific and confirmed by the advising ecologist.
- 4.3.1 Any 'no works' buffer zones established during site clearance will be maintained until the ecologist has confirmed that the young birds have fledged and are no longer dependent on the nest site/s. The retention of tree protection fencing, as detailed above, within the arboricultural report and Appendix B, will also help to protect any birds nesting in retained vegetation.

Reptiles/great crested newt/hedgehog

- 4.3.2 Given the potential presence of these species within 2km of site and the potential for accidental injury/mortality for related species during clearance/construction activities, a precautionary approach to site clearance is recommended.
- 4.3.3 Mitigation measures would include discouraging reptiles from the construction area by vegetation management/habitat manipulation whereby vegetation is cleared or cut in stages to ground level three weeks prior to construction during the reptile inactive

period (November-March). The first pass should lower the overall sward height to a minimum of 80mm, with the second pass being timed during the second week, reducing the height to 50mm and the final pass removing all the cover to ground level. The grassland should be cut from the centre outwards ensuring reptiles are not 'trapped' in central areas and should be maintained as 'bare ground' until the completion of construction works. Cut materials should be subject to checks and removed from the site immediately to minimise the risk of creating habitat features which may become attractive to wildlife.

- 4.3.4 Great crested newt *Triturus cristatus* have been recorded within 1.3km of the site, with suitable terrestrial habitats recorded on site during the 2023 survey.
- 4.3.5 The site represents suitable habitat for foraging and commuting hedgehog *Erinaceus europaeus*, though connectivity to areas off-site are limited within the wider existing industrial landscape.
- 4.3.6 Precautionary working methods will be adopted to make sure the above species are not harmed/killed during works. Such works will include the following:
- Removal of any potential hibernacula outside of the hibernation period (i.e. avoid November – February, inclusive);
 - Avoid creation of any potential refugia/hibernacula by removing any tree/shrub cuttings or arisings immediately after cutting; and,
 - Removal of any dense shrubs/scrub to be immediately preceded by a check for any resting hedgehog/reptiles/great crested newt undertaken by a suitably qualified ecologist.
- 4.3.7 Removal by 'grubbing up' of tree roots should be undertaken during the active period to avoid hibernation of reptiles and great crested newt (March – October).
- 4.3.8 Any reptiles, amphibians and mammals caught will be translocated to suitable habitat off site.

4.4 WATERBODY DRAIN-DOWN

- 4.4.1 An area of ephemeral standing water present on site will be lost to facilitate the proposed works. This was assessed to be of 'below average' suitability to support breeding great crested newt (GCN). Records of GCN have also been identified within 1.3km of the site, with two further waterbodies located within 500m.
- 4.4.2 Damaging or destructive works affecting waterbodies potentially used by GCN should where possible be undertaken outside the breeding season (February – October, inclusive) unless it is impractical to do so. Draining down of ponds can be undertaken via use of a pump operated at low speed fitted with a fine mesh filter or a trench dug into the bank of the pond from which the water can be drawn off. A fine mesh screen should also be fitted over the mouth of the trench to facilitate newt capture. Newts can be caught by netting as draining takes place and by hand searching through plants, debris and silt when the pond is dewatered.
- 4.4.3 Any reptiles/amphibians/other species caught during drainage will be translocated to suitable adjacent habitat off-site.

5.0 DURING CONSTRUCTION

5.1 TOOLBOX TALK

- 5.1.1 To ensure that retained habitats and species are protected during construction, and that site personnel are aware of associated responsibilities, a toolbox talk will be given by a suitably qualified ecologist to all relevant personnel/building contractors immediately prior to construction works commencing on site. The toolbox talk will highlight ecological constraints which will include protected species known to occur on/near to site, and the mitigation measures implemented to avoid adverse impact upon them during construction works, such as the incorporation of protective fencing and precautionary working methods.
- 5.1.2 Contact details of the ecologist will be provided to the building contractor so contact can be made if advice is required during construction works. A copy of this management plan will be made available to the contractor for reference purposes during works.
- 5.1.3 A log of when and to whom toolbox talks were delivered will be kept and made available as evidence of adherence. Any new site personnel will be required to be given a toolbox talk by the site manager, and the requirement for an update talk by the Ecological Clerk of Works (ECOW) may be required should site management change.

5.2 PRECAUTIONARY WORKING METHODS – BADGER & OTHER MAMMALS

- 5.2.1 Due to the presence of suitable habitat for badger and hedgehog on site/ in the surrounding local area, it is anticipated that the species may access the site for foraging and commuting purposes.
- 5.2.2 Precautionary working methods will be adopted during construction works, which will include the following:
- Any artificial lighting required during construction works should illuminate the minimum area required to complete the task at hand. Lighting hoods / cowls or time/motion-triggered lighting could also be used to control and minimise artificial light-spill. Off-site habitats should also be kept free of artificial illumination;
 - Construction works should be limited to daylight hours in order to prevent disturbance to night-time foraging activity;
 - Installing fencing around the periphery of the site, which will sit flush with ground-level, to reduce the likelihood of badgers and hedgehog entering the active construction site;
 - It is recommended that small gaps (0.15m) are left under sections of new fencing/walls (where applicable) within the development to allow continued passage of hedgehog and maintain connectivity across the site;
 - Covering, or providing a means of escape from, any trenches left open overnight; and if not able to be covered to provide an escape ramp (comprised of a sloped side or wooden plank reaching up to ground level or slightly above), to allow any badger/hedgehogs that fall in to escape;
 - Capping any open pipework at the end of each working day, to prevent accidental harm to badger, hedgehog and other mammals.
- 5.2.3 In addition to the above, tree/scrub cuttings will be removed from construction zones once vegetation is cut so as to avoid the creation of brash piles; these may be attractive

to hedgehogs and other species, which could subsequently be harmed if the brash pile is burnt or removed with machinery. Piles must be carefully checked before burning.

- 5.2.4 Storage of materials / waste will be on areas of hardstanding or bare ground. Stored material will ideally be raised off the ground (e.g., on pallets) and waste is to be stored in skips or removed from site as soon as possible.

5.3 TREE PROTECTION

Root Protection Area (RPA) and Tree Canopy

- 5.3.1 Temporary protective fencing will be erected pre-construction and remain in position throughout the construction period (refer to the Arboricultural Report for proposed locations). Suitable weather-proof notices should also be displayed to identify tree protection zones. They should state the purpose of the fencing and that it should not be moved, or traversed, other than by authorised personnel throughout the construction period. Tree protection fencing will ensure that:

- When siting cabins and welfare facilities the location is considered in terms of potential impacts on the root protection areas of trees. The appointed arborist should be consulted if further information is needed and approved by the local authority.
- Use of heavy plant does not cause ground compaction, and soil disturbance over RPAs is avoided by vehicles during the construction phase. Mechanical excavators should have tracks rather than wheels to help spread their load. They should be carefully marshalled when working close to tree canopies.

Construction Exclusion Zones (CEZ)

- 5.3.2 All machinery operatives are to be made aware of any CEZs that apply to this site and ensure that no damage occurs to trees (including T4/T24, which will be subject to removal following confirmation by the SQE that roosting bats are likely absent) due to careless use of machinery. Within the CEZs (identified within Appendix B) the following restrictions shall apply:

- Tree Protection Fencing shall be erected and maintained throughout the entire project. Fencing may be temporarily adjusted to facilitate the construction of car parking areas, upon approval by authorised personnel;
- No vehicles or plant machinery shall be driven or parked;
- No tree works, other than those specified in this report shall be undertaken;
- No alterations of ground levels or conditions shall be undertaken;

- 5.3.3 If any lighting, bollards, CCTV and associated cables are to be installed close to tree canopies or within RPAs of retained trees. installation methods shall be detailed in a specific Method Statement and approved by the local authority. Consideration should be given to the following: Wherever possible, cables should be routed in a direction directly away from the tree stem rather than tangentially across the rooting zone. The location of all such cables shall be determined after consultation with the appointed arborist.

- 5.3.4 If site hoarding or fencing shall be installed over or within the RPA of any tree, the following restrictions shall apply:
- Ground levels shall be maintained as existing. Post holes shall not exceed 300mm x 300mm.

- No post hole shall be excavated within 1.5m of any tree stem. Post holes shall be excavated using hand tools or by a post-hole auger attached to plant machinery sited outside the RPAs.
 - Roots in excess of 25mm shall be retained wherever possible. Roots in excess of 10mm shall be pruned with sharp secateurs. Pruning shall be minimal and only undertaken where absolutely necessary to facilitate the site hoarding or fencing. This will encourage healing and reduce the likelihood of infection. It shall be undertaken by a reputable tree surgeon working to BS 3998 (2010).
- 5.3.5 If it is proposed to install new pedestrian surfaces over RPAs, excavation shall be limited to the removal of existing turf/vegetation plus an additional 50mm. Excavation shall be undertaken using hand tools only. Porous materials are preferred but not essential if the new surface covers less than 10% of the RPAs. Paving with a thickness of 50mm bedded on mortar, or sand, bearing directly onto the ground, with a finished surface level with existing ground levels will be acceptable. No retaining kerbs shall be used.
- 5.3.6 The pruning of branches should be done to enable sufficient clearance for light and views, and should be removed to the branch collar as per British Standard 3998 (2010).
- 5.3.7 If scaffolding is required in areas containing ground protection measures, the protective boards will need to remain in-situ and be strengthened and stabilised to bear the weight of scaffold poles. Prior to the installation of any scaffolding within 0.5m of any tree branches, the appointed arborist shall be consulted to specify any pruning works that may be required.
- 5.3.8 In order to protect tree canopies the following restrictions shall apply throughout the site:
- No machinery shall pass beneath the crowns of trees without being carefully marshalled in order to ensure that no branches are damaged.
 - If materials require installation or delivery beneath tree canopies, this shall be done without the use of overhead cranes.
 - If materials are to be installed or delivered close to tree canopies (but not beneath them) and a crane is required, they shall be carefully marshalled in order to ensure that branches are not accidentally damaged.
- 5.3.9 Removal of fencing will be done after all major construction work is complete. Vehicular access will not be permitted within the CEZ. The local authority tree officer shall be made aware that the fencing is to be removed. Refer to the Tree Survey and Arboricultural Impact Assessment Report produced by Smeeden Foreman 2023 for further details on protection of trees.

5.4 STORAGE AND USE OF HAZARDOUS MATERIALS ON SITE

- 5.4.1 Pollution during construction could result in damage to the nearby habitats. Standard pollution prevention measures from GOV.UK should be adhered to; fuel kits are to be kept on site and fuelling of all vehicles done off-site.
- 5.4.2 All hazardous materials (including cement and petrochemical, petrol and diesel products) will:
- Need to be controlled according to COSHH regulations in order to ensure there is no detrimental impact on tree health.

- Petrol and diesel shall be stored in suitable containers as specified by current COSHH Regulations away from Root Protection Areas.
- 5.4.3 Cement products shall be mixed away from tree root protection areas (RPAs) and provision shall need to be made to ensure that cement and cement run-off are contained outside of all RPAs.
- 5.4.4 Any mixing of cement-based materials shall take place outside the Construction Exclusion Zone (CEZ). Cement is to be mixed on sturdy plastic sheeting e.g. 1200-gauge DPM considerable distances from trees and water run-off cannot enter RPAs.
- 5.4.5 Dust control measures will also be implemented throughout the construction phase for all relevant activities. These may include:
 - Materials to be kept away from the site entrance and field boundaries;
 - Materials subject to wind erosion will be dampened down/ seeded to ensure satisfactory dust control and covered with tarpaulins as appropriate;
 - Airborne dust will be kept to a minimum by the regular use of water spray systems and bowsers wetting down haul roads and pre-excavated areas;
 - All loads entering and leaving site will be securely covered;
 - Delivery of materials to site will be programmed to minimise the time stockpiles are kept on site;
 - The wheels of all vehicles will be checked on leaving the site, and if necessary cleaned by jet wash within designated washing area;
 - Construction activities within 25m of woodland, hedgerows, ditches or ponds will be avoided during heavy rain to minimise risk of sediment effects;
 - Notices will be erected to stipulate that the above measures are adhered to.

5.5 SYMPATHETIC LIGHTING

- 5.5.1 The PEA identified that a sympathetic lighting scheme should be produced and implemented during construction works and post development to minimise disturbance to nighttime foraging activity, and light spill onto adjacent habitats.
- 5.5.2 Any flood lighting used during construction works, if necessary, will be directed away from retained vegetation along the boundaries, where trees/woodland and woodland edge occur. This will aim to ensure that such areas remain attractive to wildlife species, such as foraging and commuting bats, badgers etc. Refer to the relevant guidance produced by the Institute of Lighting Professionals and the Bat Conservation Trust *“Bats and Artificial Lighting at Night”* (2023) which includes the following:
 - Remove or minimize artificial lighting close to vegetative commuting corridors;
 - Using warm white, narrow spectrum lights (LEDs) with little or no UV;
 - Directional lighting with near full horizontal cut off.
- 5.5.3 Post-construction, the use of artificial lighting should be limited where possible. Motion sensors on outside lighting will prevent prolonged disturbance.
- 5.5.4 It is recommended that lighting be set on short-timers (ideally 1 minute) and that sensitivity is set to large moving objects only.

6.0 TIMETABLE FOR IMPLEMENTATION

	Jan	Feb	March	April	May	June	July	Aug	Sep	Oct	Nov	Dec
Vegetation clearance and tree works/removal	Vegetation to be cut above ground level with root systems to be left intact to avoid harming potentially hibernating herptiles. Roots can be removed once reptiles/GCN come out of hibernation (March – October) under ECoW supervision.		<p>Nesting bird season – vegetation clearance able to be carried out following checks by an ecologist where active nests found to be absent.</p> <p>Great crested newt (GCN)/hedgehogs/reptiles – vegetation cuttings to be moved to unaffected areas of the site/off-site to avoid creation of brash piles to avoid harm to these species.</p> <p>Reptiles – directional clearance to be adopted.</p> <p>Tree works/removal should take place outside the breeding season (typically March-October) or once a suitability qualified ecologist has inspected the trees for breeding birds and confirmed that there are no active nests.</p>						Vegetation clearance can be undertaken without constraint in regard to nesting birds and hibernating herptiles. Directional clearance methods still to be adopted.		Vegetation to be cut above ground level with root systems to be left intact to avoid harming potentially hibernating herptiles. Roots can be removed once reptiles come out of hibernation (March – October) under ECoW supervision.	

Emergence/re-entry bat surveys – Bat roosts in trees	Tree protection fencing to be installed to form a Construction Exclusion Zone (CEZ) around the tree.	Surveys to be undertaken within peak active period (May – August). In the event of a bat roost being found a licence from Natural England may be required, with appropriate mitigation and working methods.		
Waterbody drain-down (GCN)	Waterbody drainage should where possible be undertaken outside the breeding season (February – October, inclusive), where practical.			Waterbody drainage should where possible be undertaken outside the breeding season (February – October, inclusive), where practical.

7.0 ECOLOGICAL CLERK OF WORKS

7.1.1 Appropriately qualified ecologists will act as the Ecological Clerk of Works for actions where supervision is required throughout the construction phase to ensure that the recommended measures are implemented appropriately. These will include destructive searches, vegetation clearance, nesting bird checks and any other ecology related works.

7.1.2 Smeeden Foreman are able to support with such works and are contactable below:

- Contact number: 01423 863369
- Email address: office@smeedenforeman.co.uk

8.0 REFERENCES

Smeeden Foreman (2024). *SF3387 Biodiversity Net Gain Assessment, CMS Rockingham*. Issued January 2024.

Smeeden Foreman (2023). *SF3387 Arboricultural Survey Report BS 5837:2012, CMS Rockingham*. Issued January 2023.

Smeeden Foreman (2023). *SF3387 Landscape and Ecology Management Plan, CMS Rockingham, Rev B*. Issued June 2023.

Smeeden Foreman (2024). *SF3387 Preliminary Ecological Appraisal, CMS Rockingham, Rev B*. Issued January 2024.

APPENDICES

Appendix A: Protected Species Legislation

Appendix B: Construction Exclusion Zones

APPENDIX A: PROTECTED SPECIES LEGISLATION

Bats

Bats and their roosts are afforded full legal protection under both UK and European legislation. Conservation of Habitats and Species Regulations 2017 transpose the Habitats Directive into UK law, making it an offence to:

- deliberately disturb a bat;
- deliberately kill, injure or capture a bat;
- damage, destroy or obstruct access to a breeding site or resting place (note this applies to both deliberate and reckless actions).

The Wildlife and Countryside Act 1981 (as amended) (Schedule 5) made it an offence to:

- intentionally kill, injure or take a bat ;
- damage, destroy or obstruct a bat roost *;
- disturb a bat at a roost *;
- possess or control a bat or any part thereof;
- sell, offer for sale, possess or transport for sale any bat or part thereof;
- set traps for catching, killing or injuring bats;
- possess articles for the purposes of committing offences against bats;

[*= intentional and reckless offences covered].

Legal protection under the Habitats Directive applies to the animals and their breeding sites and resting places. This means that bat roosts are fully protected, whether they are in use at the time or not. Where roosts or resting/breeding sites are identified, any works which may contravene the protection afforded to them require derogation from the provisions of the legislation in the form of a licence from Natural England..

Breeding birds

The Wildlife and Countryside Act 1981 (as amended) makes it an offence to:

- kill, injure, or take any wild bird;
- take, damage or destroy the nest of any wild bird while that nest is in use or being built or,
- take or destroy an egg of any wild bird.

This protection applies from the moment the nest is being built. Additional protection against disturbance on the nest or of dependent young is provided for birds included on Schedule 1.

Badger

Badgers and their setts are protected by the Protection of Badgers Act 1992. Under the Act it is illegal to:

- Wilfully kill, injure or take a badger or attempt to do so;
- Cruelly ill-treat a badger; and,
- Interfere with a sett by doing any of the following:
 - (i) damaging a badger sett or any part of it;
 - (ii) destroying a badger sett;
 - (iii) obstructing access to a badger sett;
 - (iv) causing a dog to enter a sett; and,
 - (v) disturbing a badger while it is occupying a sett.

Great crested newts

The Wildlife and Countryside Act 1981 (as amended) transposes into UK law and the Convention on the Conservation of European and Wildlife and Natural Habitats (commonly referred to as the ‘Bern Convention’). The 1981 Act was amended by the Countryside and Rights of Way [‘CRoW’] Act 2000.

The great crested newt is listed on Schedule 5 of the 1981 Act, and is therefore subject to the provisions of Section 9, which make it an offence to:

- Intentionally kill, injure or take a great crested newt [Section 9 (1)];
- Possess or control any live or dead specimen or anything derived from a great crested newt [Section 9 (2)];
- Intentionally or recklessly damage, destroy or obstruct access to any structure or place used for shelter or protection by a great crested newt [Section 9 (4)(a)];
- Intentionally or recklessly disturb a great crested newt while it is occupying a structure or place which it uses for that purpose [Section 9(4)(b)].

The Conservation of Habitats and Species Regulations 2017 transpose into the UK law Council Directive 92/43/EEC of 21st May 1992 on the conservation of Natural Habitats and of Wild Fauna and Flora (often referred to as the ‘Habitats [and Species] Directive’). The great crested newt is listed on Annex II and Annex IV of the Directive. The former Annex relates to the designation of Special Areas of Conservation (SACs) for this species; even where great crested newts occur outside SACs, the inclusion on Annex II serves to underline their conservation significance. Inclusion of the Annex IV (‘European Protected Species’) means that member states are required to put in place a system of strict protection as outlined in Article 12, and this is done through inclusion on Schedule 2 of the Regulations. Regulation 43 makes it an offence to:

- Deliberately capture or kill a great crested newt [Regulation 43(1)(a)]
- Deliberately disturb a great crested newt [Regulation 43(1)(b)]
- Deliberately take or destroy the eggs of a great crested newt [Regulation 43(1)(c)]
- Damage or destroy a breeding site or resting place of a great crested newt [Regulation 43(1)(d)]

The legislation applies to all life stages of great crested newts.

Reptiles

The Wildlife and Countryside Act 1981 makes it an offence to intentionally kill any of our native snakes and lizards. The sand lizard and smooth snake receive additional protection; for these species, it is unlawful to capture or possess them, or to damage/obstruct access to places they use for shelter or protection, or to disturb them whilst in such a place

APPENDIX B: CONSTRUCTION EXCLUSION ZONES

