

Land off Mitchells Way, Wombwell
Extended Phase 1 Habitat Survey
Report

July 2015

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Issuing office

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1 Introduction

Site Description

- 1.1 The site is a parcel of land, approximately 1.27ha in size, located between Mitchells Way and Bradberry Balk Lane in Wombwell, Barnsley at OS grid reference SK3933 0383. The extent of the site boundary is shown on Figure 1. The site comprises an arable field. Broad-leaved plantation woodland is located to the north-east of the site, factories are located to the north, residential housing is present to the west and arable farmland is located to the south.

Proposed Works

- 1.2 Lidl UK GmbH is proposing to submit a planning application to Barnsley Metropolitan Borough Council for the construction of a new Lidl Store with associated car parking and landscaping. The proposed site plan that shows the details of the proposed development is presented in Appendix 1.

Aims of study

- 1.3 BSG Ecology was commissioned by Lidl UK GmbH in June 2015 to carry out an extended phase 1 habitat survey to inform an ecological assessment of the site.
- 1.4 The objectives of the ecological survey work was to:
- Identify the existing habitats within the site.
 - Check for evidence of protected species within and adjoining the site (where possible).
 - Assess the potential for protected species to be present in the area.
 - Identify potential ecological impacts relating to the proposed works based on the information on the proposed development available at the time.
 - Identify requirements for further survey.
 - Propose initial mitigation measures to avoid or reduce ecological impacts based on currently available design information.

2 Methods

Desk study

- 2.1 A desk study was undertaken that included a data search to gather any records of non-statutory and statutory sites of nature conservation interest and protected species records for a 2km radius around OS grid reference SE 3933 0383. Barnsley Biological Records Centre was contacted to provide this information on 23 June 2015. The data were received on 30 June 2015.
- 2.2 The MAGIC website was interrogated on 23 July 2015 for information on issued European Protected Species Licences (bats and great crested newt) for a 2km radius of the site. A check was also undertaken of on-line photographs (Bing Maps, accessed on 23 June 2015) and the 1:25 000 OS map to search for any ponds located within 500 metres of the site.

Field survey

- 2.3 Senior Ecologist Katy Stiles MCIEEM, undertook the field survey on 2 July 2015. The weather was hot, dry and sunny. The site was walked over and the habitats were described using the Phase 1 habitat survey methodology (JNCC, 2010).
- 2.4 The extended element of the survey work involved checks for signs of protected species throughout the site. The trees within the site and immediately adjacent to the site boundary were inspected from the ground, to assess their potential to support roosting bats. Searches were made for evidence of badger *Meles meles* (such as setts, feeding remains, dung pits, hairs and tracks). Potential nesting habitats for breeding birds were identified, and any incidental sightings of birds were noted. The habitats were assessed for their suitability to support reptiles and amphibians including great crested newt *Triturus cristatus*. The site was also searched for the presence of invasive non-native plants such as Japanese knotweed *Fallopia japonica*.

Limitations to methods

- 2.5 There are not considered to be any constraints to the survey methods. The whole of the site was accessible and July is during the optimum survey season for undertaking Phase 1 habitat surveys.

3 Results and Interpretation

Desk Study

Designated Sites

- 3.1 There is one statutory site of nature conservation interest within a 2km radius of the site. This is known as Stairfoot Brickworks Site of Special Scientific Interest (SSSI), which is located 1.49km to the north-west of the site and is designated for its geological rather than ecological interest.
- 3.2 There are four non-statutory sites of nature conservation interest, Local Wildlife Sites (LWS) or Candidate Local Wildlife Sites (cLWS), within a 2km radius of the site. LWS are of County Level Importance. The nearest of these sites is Swaithe Flood Meadows (a Candidate Site) which is located 1.05km to the north-west.

Field Survey

Habitats

- 3.3 Refer to Figure 1 the Extended Phase 1 Habitat Results Plan for the location of the habitats described and Section 7 for the photographs.
- 3.4 The site comprises an arable field that had been recently harvested prior to the field survey (Photograph 1). An uncultivated strip of semi-improved neutral grassland is present around the field margin (Photograph 2). This is characterised by false oat grass *Arrhenatherum elatius*, Yorkshire fog *Holcus lanatus*, soft brome *Bromus hordeaceus*, red rescue *Festuca rubra*, cock's foot *Dactylis glomerata*, creeping thistle *Cirsium arvense*, white clover *Trifolium repens*, teasel *Dipsacus fullonum*, cow parsley *Anthriscus sylvestris*, goat's beard *Tragopogon pratensis*, hairy willowherb *Epilobium hirsutum*, rosebay willowherb *Chamerion angustifolium* and curled dock *Rumex crispus*.
- 3.5 In the south-eastern corner of the site is an area of dense scrub (Photograph 3) dominated by blackthorn *Prunus spinosa*. Along part of the north-eastern boundary is an area of dense bramble scrub *Rubus fruticosus* agg. with occasional dog rose *Rosa canina* and scattered young silver birch *Betula pendula*.
- 3.6 Along part of the southern boundary of the site there is a defunct species-poor hedgerow (Photograph 4) along the fence line. This is characterised by blackthorn and sycamore *Acer pseudoplatanus*. Hedgerows are a habitat of principal importance under the provisions of the NERC Act 2006.
- 3.7 Off-site, broad-leaved plantation woodland (Photograph 5) is located to the north-west of the site and this is dominated by silver birch and false acacia *Robinia pseudoacacia*. Roadside verges are present around the southern and western boundaries of the site. These are characterised by semi-improved neutral grassland, scattered trees and scrub.

Invasive Species

- 3.8 No invasive species were recorded within the site boundary. Two patches of Japanese knotweed (Photograph 6) were recorded adjacent to part of the north-eastern site boundary of the site, off-site.

Protected Species

Bats

Roosting

- 3.9 There are no trees or buildings within the site boundary that could provide suitable bat roosting opportunities.

Foraging

- 3.10 Forty three bat records were provided for a 2km radius of the site. These records are for unknown bat species, common pipistrelle *Pipistrellus pipistrellus*, unspecified pipistrelle species *Pipistrellus* sp. and Daubenton's bat *Myotis daubentonii*. These records date from 1988 to 2013. The nearest record to the site is for an unknown species of bat located 621m to the south-east of the site.
- 3.11 The site comprises an arable field which is considered to be of low value for foraging bats. The site is situated close to habitats of higher value for foraging bats including the plantation broad-leaved woodland, lakes and the River Dove which are located to the north of the site.

Nesting Birds

- 3.12 No birds were recorded during the field survey. It is considered that the dense scrub and defunct species-poor hedgerow on site, and the scattered trees and scrub along the roadside verge, provides suitable bird nesting habitat.

Badger

- 3.13 Five badger records (from 2012 and 2013) were provided for a 2km radius of the site. The nearest record is for a location over 900m to the west of the site. No evidence of the presence of badger was recorded on site.

Amphibians

- 3.14 A great crested newt record (from 1991) was provided for a location at Wombwell Golf Course approximately 1.34km to the south of the site. The location of this record is not linked by suitable terrestrial habitat to the site. There are no water bodies on site that provide suitable breeding habitat for great crested newt or other amphibians. The nearest water bodies to the site are two lakes located to the north-east of the site 381m and 453m from the site respectively. These water bodies are considered to be generally unsuitable to support great crested newt because of the likely presence of fish populations (fishing pegs were visible on aerial photographs) that are likely to predate on newts and their eggs.

Reptiles

- 3.15 Two grass snake *Natrix natrix* records (from 2005 and 2012) were provided for a 2km radius of the site. The nearest of these records is 1.23km to the west of the site. The majority of the site, the arable field, is considered to provide sub-optimal habitat for reptiles such as grass snake; however the peripheral habitats, i.e. the semi-improved neutral grassland margins, the scrub and the hedgerow bottom, do offer some suitable habitat. In addition, the off-site roadside verge habitats (grassland, scrub and trees) offer some suitable habitat.

4 Potential Impacts and Recommendations

- 4.1 There are proposals to construct a new Lidl Store on an existing arable field. Access is to be provided off Bradberry Balk Lane.

Designated Sites

- 4.2 There is one geological SSSI statutory site of nature conservation interest, located 1.49km to the north-west of the site, known as Stairfoots Brickworks. There are four non-statutory sites of nature conservation interest within a 2km radius of the site; however the nearest non-statutory site is 1.05km from the site. It is likely that the development impacts will be restricted to the site and the development is not anticipated to give rise to any direct adverse impact on any statutory or non-statutory sites of nature conservation interest due to geographical distance and lack of habitat connectivity between them and the site.

Habitats

- 4.3 The site comprises an arable field with a narrow margin of semi-improved neutral grassland, a defunct hedgerow along part of the southern boundary and patches of dense scrub. Roadside verges characterised by semi-improved neutral grassland, scattered trees and scrub are present off-site. Hedgerows are listed as a habitat of principal importance under the provisions of the NERC Act 2006.
- 4.4 The proposed development will mainly be restricted to the arable field with only a small loss of localised off-site roadside verge habitat (scrub, trees and grassland) anticipated to create access from Bradberry Balk Lane. The loss of roadside verge habitat is considered to be minimal, with the existing gateway likely to be utilised as much as possible. The loss of the roadside verge habitat is not considered to result in a significant ecological impact. The loss of the arable field as a result of the development of the site is not anticipated to result in a significant ecological impact. It is understood that the hedgerow along part of the southern boundary of the site will remain unaffected by the proposed development and there is the opportunity within the landscaping scheme to increase the length of hedgerow around the site boundary through planting of native woody hedgerow species. The proposed development is anticipated to result in a small loss of roadside scrub and tree vegetation (off-site).
- 4.5 In line with guidance within Paragraph 118 of the NPPF, it is recommended that as part of the landscaping scheme that native species are selected to create new tree and shrub planting areas, to be of maximum biodiversity benefit.

Invasive Species

- 4.6 It is an offence to plant or otherwise cause to grow in the wild invasive non-native plants (such as Japanese knotweed) listed on Schedule 9 of the Wildlife and Countryside Act 1981 (as amended). This effectively means that it is an offence to cause the spread of such plants as a result of development operations.
- 4.7 Two patches of Japanese knotweed were recorded off-site close to part of the northern boundary of the site. Because these patches of Japanese knotweed are outside the site boundary, the proposed development of the site is considered unlikely to result in the spread of this plant or result in an offence under the legislation detailed above.
- 4.8 It is recommended that Lidl considers contacting the adjacent land owner to inform them of the presence of Japanese knotweed and to discuss if it can be controlled to ensure that it does not spread onto land owned by Lidl.

- 4.9 It is recommended that during construction work, contractors are briefed on the presence of Japanese knotweed and that appropriate Heras fencing is installed along this boundary to ensure that it is not disturbed.
- 4.10 It is recommended that the extent of the Japanese knotweed is monitored, in particular if there is to be a long delay prior to any construction work commencing on-site, to ensure that the plant does not encroach onto the site.

Bats

- 4.11 The relevant legislation relating to bats is set out below and is summarised in Appendix 2. All UK bats are European Protected Species (EPS) under the Conservation of Habitats and Species Regulations 2010 (as amended) and several are Species of Principal Importance under the provisions of the Natural Environment and Rural Communities (NERC) Act 2006. Bats are protected against disturbance, killing or injuring and their roosts are protected against obstruction, damage or destruction. A bat roost may be any structure a bat uses for breeding, resting, shelter or protection. It is important to note that since bats tend to re-use the same roost sites, a bat roost is typically considered to be protected from damage or destruction whether or not the bats are present at the time.
- 4.12 There are no bat roosting opportunities present on site and as such the proposed development is not anticipated to result in an impact on roosting bats.
- 4.13 The arable field is considered to be of low value for foraging bats; however the arable field is situated close to plantation broad-leaved woodland, lakes and the River Dove which are considered to offer higher value habitat for foraging bats. The proposed development is restricted to the arable field with only a small loss of roadside scrub and tree vegetation (off-site) anticipated. There is not anticipated to be a loss of significant bat foraging habitat as a result of the development. Given the small scale of the habitat loss and the low value for foraging bats, it is not considered necessary to undertake any bat activity surveys.
- 4.14 Indirect impacts to bats could arise from lighting within the new development, as the site is currently unlit. An increase in lighting can deter bats from foraging and commuting, and may alter the behaviour of their invertebrate prey. In order to reduce the risk of adverse impacts on commuting or foraging bats from lighting, it is recommended that external lighting is minimised and that any lighting is directed away from the boundary habitats, in particular the plantation broad-leaved woodland along the northern boundary of the site, and that down-lighting or cut-off beams are used, in order to minimise disturbance to bats (Stone et. al, 2009). This would be in-line with guidance in Paragraph 125 of the NPPF.
- 4.15 In line with guidance within Paragraph 118 of the NPPF, it is recommended that as part of the landscaping scheme that native species are selected to create new species-rich hedgerows, tree and shrub planting to be of maximum biodiversity benefit including for foraging bats.

Nesting Birds

- 4.16 All nesting birds are protected under Section 1 of the Wildlife and Countryside Act 1981 (as amended) which makes it an offence to intentionally kill, injure or take any wild bird or take, damage or destroy its nest whilst in use or being built, or take or destroy its eggs. In addition to this, for some rarer species (listed on Schedule 1 of the Act), it is an offence to disturb them whilst they are nest building or at or near a nest with eggs or young, or to disturb the dependent young of such a bird.
- 4.17 The dense scrub and defunct species-poor defunct hedgerow on site, and the scattered trees and scrub habitat adjacent to the site, off-site, could provide suitable habitat for nesting birds during the bird breeding season. It is anticipated that the vegetation removal required as part of the proposed development will be minimal and will not result in a significant reduction in the availability of suitable bird nesting habitat in the local area.

- 4.18 It is recommended that any vegetation clearance that is necessary as part of the proposed development is undertaken between September and February, outside the bird breeding season, to avoid any potential impact on active nests and to avoid an offence being committed.
- 4.19 If this is not possible, then it is recommended that a check is undertaken by a suitably qualified ecologist to determine the presence or absence of active nests prior to the vegetation removal. If any active nest sites are identified, then these will need to be left in-situ with an appropriate buffer around the nest until the birds have fledged.
- 4.20 In line with guidance within Paragraph 118 of the NPPF, it is recommended as a best practice measure that any landscaping scheme includes native fruit bearing shrubs and trees to provide nesting habitat and foraging opportunities for birds.

Amphibians

- 4.21 The relevant legislation relating to great crested newt is discussed below and is summarised in Appendix 2. Great crested newt is an EPS and is protected under the Wildlife and Countryside Act 1981 (as amended), and by the Conservation of Habitats and Species Regulations 2010 (as amended). Great crested newt is also listed as a Species of Principal Importance under the provisions of the NERC Act 2006.
- 4.22 No ponds are present on site and the nearest water body identified from aerial photographs and OS maps is located 381m to the north of the site. This lake is considered highly unlikely to support great crested newt given the likely presence of fish due to the presence of fishing pegs.
- 4.23 There is limited suitable terrestrial habitat (hedgerow, scrub and semi-improved neutral grassland) available on site for amphibians, with the majority of the site (arable) being considered sub-optimal. Given the distance of the great crested record from the site (1.34km), the lack of suitable breeding ponds on site, and the limited extent and connectivity of suitable terrestrial habitat, the presence of amphibians including great crested newt is considered to be unlikely. The proposed development is therefore considered unlikely to give rise to an adverse impact on great crested newt, and as such no further survey work is recommended.

Reptiles

- 4.24 All British reptiles are protected under the Wildlife and Countryside Act 1981 (as amended) against intentional killing or injury and against sale. In addition, all British reptiles are species of principal importance under the provisions of the NERC Act 2006.
- 4.25 The majority of the development will be confined to the arable field; however it is anticipated that there will be a small loss of the roadside verge habitat (although the proposed site drawing indicates that the existing gateway will be utilised as much as possible) and some disturbance during the construction work. The works in this area could result in killing and injuring of individual reptiles that may be present.
- 4.26 Given the small scale of the proposed works and the small risk of encountering reptiles during this work, it is recommended that an ecological watching brief is put in place during the site clearance work along the roadside verge to ensure that any reptiles that may be present can be moved to a safe location to ensure that an offence is not committed under the legislation detailed above.
- 4.27 In line with guidance within Paragraph 118 of the NPPF, it is recommended as a best practice measure that the landscaping scheme includes the creation of suitable reptile habitat around the boundaries of the site, which could include the creation of log piles, native scrub planting and hedgerow creation.

Badger

- 4.28 Badger is protected under the Protection of Badgers Act 1992. This makes it an offence to wilfully kill, injure, take, possess or cruelly ill-treat a badger, or to attempt to do so; or to intentionally or recklessly interfere with a sett. Sett interference includes disturbing badgers whilst they are

occupying a sett, as well as damaging or destroying a sett or obstructing access to it. A badger sett is defined in the legislation as “a structure or place, which displays signs indicating current use by a badger”.

- 4.29 No evidence of badger was recorded during the site survey and no adverse impacts on badger are anticipated as a result of the development of the site. No further survey work or mitigation measures are recommended.

5 References

Bing Maps www.bing.com/maps 23 July 2015

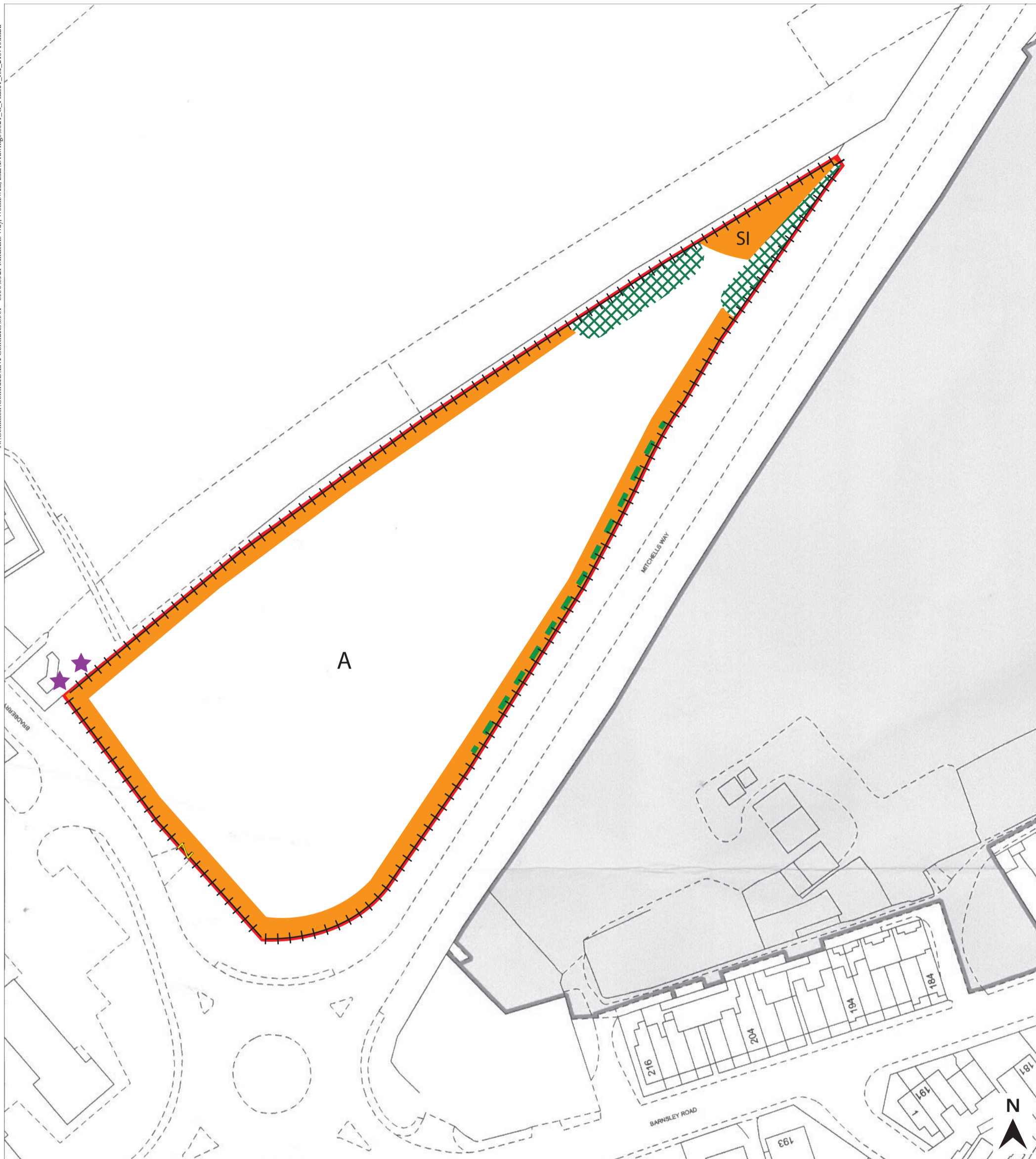
www.magic.gov.uk 23 July 2015

JNCC (2010). Handbook for Phase 1 Habitat Survey, Peterborough

Natural Environment and Rural Communities Act 2006. HMSO, London

Stone, E.L., Jones, G., & Harris, S. (2009) Street lighting disturbs commuting bats. *Current Biology* 19:1-5

6 **Figures**



LEGEND

	Arable		Site Boundary
	Semi-improved neutral grassland		
	Dense scrub		
	Species-poor defunct hedgerow		
	Fence		
	Japanese knotweed		
	Gate		

7 Photographs

Photograph 1: View of the arable field



Photograph 2: View of the field margin



Photograph 3: View of the dense scrub and semi-improved neutral grassland



Photograph 4: View of the species-poor defunct hedgerow



Photograph 5: View of the plantation broad-leaved woodland



Photograph 6: View of the Japanese knotweed recorded off-site



Appendix 1: Proposed Development Plan

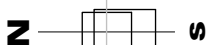
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ALL DIMENSIONS SHOULD BE CHECKED ON SITE BEFORE WORK COMMENCES.

DRAWING SUBJECT TO VEHICLE TRACKING CHECK

SUBJECT TO HGV TRACKING CHECK

SUBJECT TO TITLE PLAN CHECK



Site Area (sq m)	12,779 sq m
Store Type Reference	LOF Type 14 (19.03.15)
Sales Areas (sq m)	1,424 sq m
Number of Aisles	5 Aisle
G/F GIA (sq m)	2,270 sq m
G/F GEA (sq m)	2,345 sq m
FF GIA (sq m)	200 sq m EST
Car Park Spaces	133

Rev	Date	Description	LS	Drawn
J	21.05.15	Access into site added to site. Footprints added.	MH	
H	13.05.15	Layout updated as per previous sketch.	NJV	
G	13.05.15	Sketch - car park updated for discussion.	MH	
F	08.05.15	Planning wall updated to Mitchells Way omitted.	DW	
E	29.04.15	Scheme updated for planning issue.	DW	
D	27.04.15	FF added.	LS	
C	17.04.15	Dimensions increased from 1421 to 1424 m.	MH	
B	22.04.15	Requirements proposed for LIDL to be retained by wall.	MH	
A	13.04.15	2 Trolleys + handpicking added.	LS	

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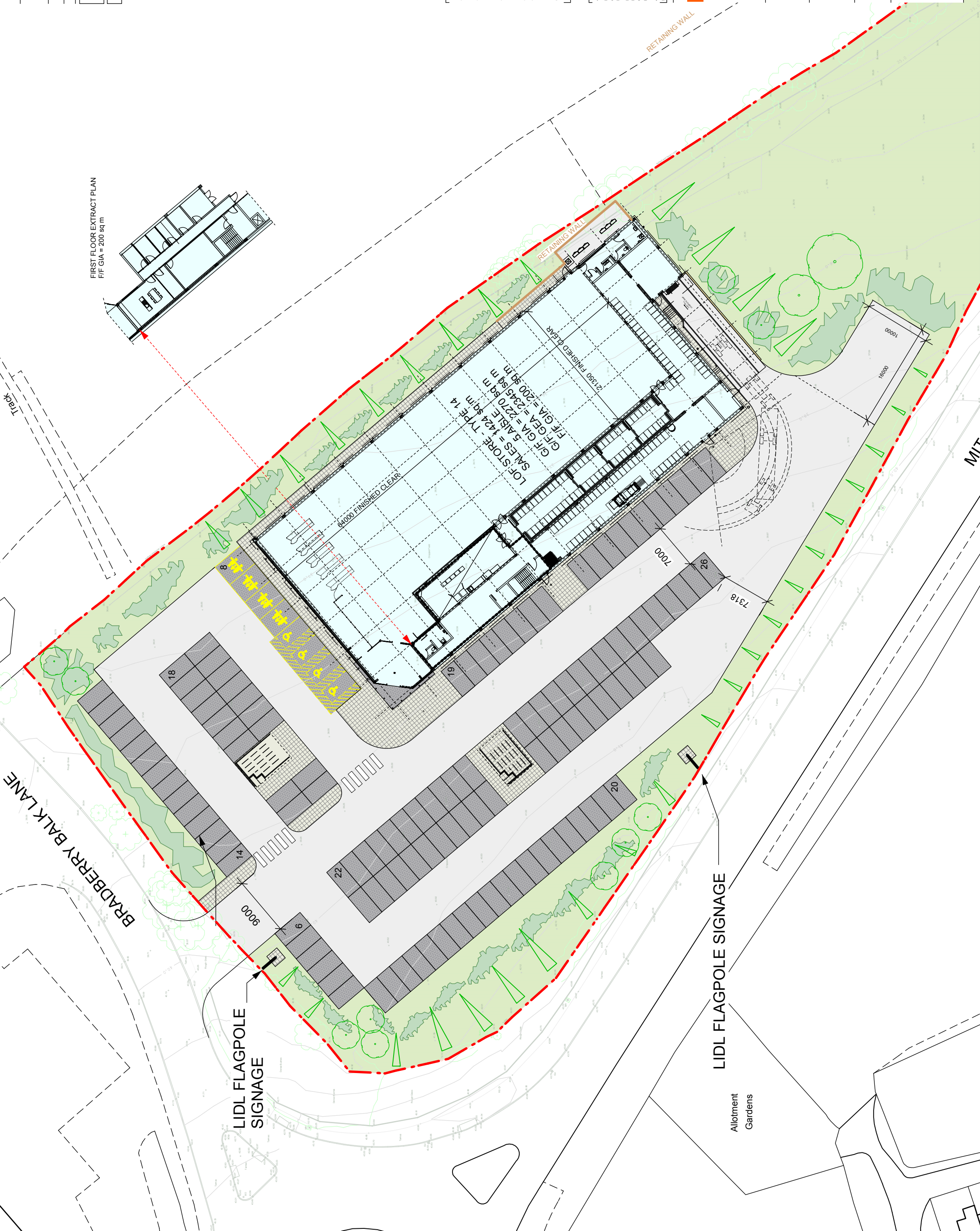
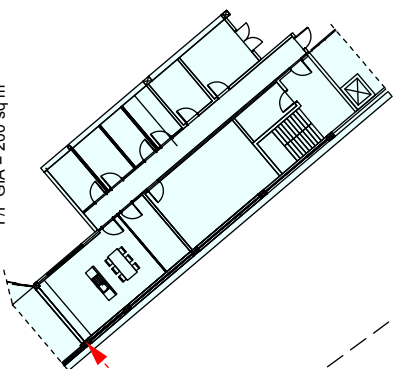
client
Lidl UK GmbH

project
**New Store
Mitchells Way, Wombwell,
Barnsley**

drawing title
Proposed Site Plan

date **April 2015**
status **Planning Issue**
scale **1:500 @ A3**
drawn **MH** checked -
job no. **1849** dwg no. **10** rev. **J**

FIRST FLOOR EXTRACT PLAN
FF GIA = 200 sq m



Appendix 2: Summaries of Relevant Policy and Legislation

This section briefly summarises the legislation, policy and related issues that are relevant to the main text of the report. The following text does not constitute legal or planning advice.

National Planning Policy Framework (England)

- 7.1 The Government published the National Planning Policy Framework (NPPF) on 27th March 2012. Text excerpts from the NPPF are shown where they may be relevant to planning applications and biodiversity including protected sites, habitats and species.
- 7.2 In conserving and enhancing the natural environment, the NPPF (Paragraph 109) states that ‘the planning system should contribute to and enhance the natural and local environment’ by:
- a. Recognising the wider benefits of ecosystem services;
 - b. Minimising impacts on biodiversity and providing net gains in biodiversity, where possible contributing to the Government’s commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;
 - c. Preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability.
- 7.3 In paragraph 111, the NPPF refers to brownfield land as follows: ‘planning policies and decisions should encourage the effective use of land by re-using land that has been previously developed (brownfield land), provided that it is not of high environmental value.’
- 7.4 Paragraph 117 refers to how planning policies should aim to minimise impacts on biodiversity, to: ‘identify and map components of the local ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity, wildlife corridors and stepping stones that connect them and areas identified by local partnerships for habitat restoration or creation;’ and to ‘promote the preservation, restoration and re-creation of priority habitats, ecological networks and the protection and recovery of priority species populations, linked to national and local targets, and identify suitable indicators for monitoring biodiversity in the plan.’
- 7.5 Paragraph 118 of the National Planning Policy Framework advises how, when determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the mitigation hierarchy. The mitigation hierarchy advises that if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
- 7.6 Where proposals or activities require planning permission, the NPPF states that ‘...local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:
- d. Proposed development on land within or outside a Site of Special Scientific Interest likely to have an adverse effect on a Site of Special Scientific Interest (either individually or in combination with other developments) should not normally be permitted. Where an adverse effect on the site’s notified special interest features is likely, an exception should only be made where the benefits of the development, at this site, clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special scientific interest and any broader impacts on the national network of Sites of Special Scientific Interest;
 - e. Development proposals where the primary objective is to conserve or enhance biodiversity should be permitted;
 - f. Opportunities to incorporate biodiversity in and around developments should be encouraged;

- g. Planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats, including ancient woodland and the loss of aged or veteran trees found outside ancient woodland, unless the need for, and benefits of, the development in that location clearly outweigh the loss; and
- h. The following wildlife sites should be given the same protection as European sites:
 - i. potential Special Protection Areas and possible Special Areas of Conservation
 - ii. listed or proposed Ramsar sites; and
 - iii. sites identified, or required, as compensatory measures for adverse effects on European sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.'

7.7 In respect of protected sites, the NPPF requires local planning authorities to make 'distinctions...between the hierarchy of international, national and locally designated sites so that protection is commensurate with their status and gives appropriate weight to their importance and the contribution that they make to wider ecological networks.'

7.8 In paragraph 125 the NPPF states that 'by encouraging good design, planning policies and decisions should limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.' This applies to protected species that are a material consideration in the planning process including bats and may also apply to other light sensitive species.

Government Circular ODPM 06/2005 Biodiversity and Geological Conservation (England only)

7.9 Paragraph 98 of Government Circular 06/2005 advises that "the presence of a protected species is a material consideration when a planning authority is considering a development proposal that, if carried out, would be likely to result in harm to the species or its habitat. Local authorities should consult Natural England before granting planning permission. They should consider attaching appropriate planning conditions or entering into planning obligations under which the developer would take steps to secure the long-term protection of the species. They should also advise developers that they must comply with any statutory species' protection provisions affecting the site concerned..."

7.10 Paragraph 99 of Government Circular 06/2005¹ advises that "it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted".

Standing Advice (GOV.UK - England only)

7.11 The GOV.UK website provides information regarding protected species and sites in relation to development proposals: 'Local planning authorities should take advice from Natural England or the Environment Agency about planning applications for developments that may affect protected species.' GOV.UK advises that 'some species have standing advice which you can use to help with planning decisions. For others you should contact Natural England or the Environment Agency for an individual response.'

¹ ODPM Circular 06/2005. *Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impacts within the Planning System* (2005). HMSO Norwich.

- 7.12 The standing advice (originally from Natural England and now held and updated on GOV.UK²) provides advice to planners on deciding if there is a 'reasonable likelihood' of protected species being present. It also provides advice on survey and mitigation requirements.
- 7.13 When determining an application for development that is covered by standing advice, in accordance with guidance in Government Circular 06/2005, Local planning authorities are required to take the standing advice into account. In paragraph 82 of the aforementioned Circular, it is stated that: 'The standing advice will be a material consideration in the determination of the planning application in the same way as any advice received from a statutory consultee...it is up to the planning authority to decide the weight to be attached to the standing advice, in the same way as it would decide the weight to be attached to a response from a statutory consultee.'

Natural Environment and Rural Communities (NERC) Act 2006 – Habitats and species of principal importance (England and Wales)

- 7.14 The Natural Environment and Rural Communities (NERC) Act came into force on 1st October 2006. Sections 41 and 42 (S41 and S42) of the Act require the Secretary of State to publish a list of habitats and species which are of principal importance for the conservation of biodiversity in England and Wales respectively. The list has been drawn up in consultation with Natural England and Countryside Council for Wales (now NRW), as required by the Act. In accordance with the Act the Secretary of State keeps this list under review and will publish a revised list if necessary, in consultation with Natural England and NRW.
- 7.15 The S41 and S42 lists are used to guide decision-makers such as public bodies, including local authorities and utilities companies, in implementing their duty under Section 40 of the NERC Act 2006, to have regard to the conservation of biodiversity in England and Wales, when carrying out their normal functions, including development control and planning. This is commonly referred to as the 'Biodiversity Duty.'
- 7.16 Guidance for public authorities on implementing the Biodiversity Duty³ has been jointly published by Defra and the Welsh Assembly Government. One of the key messages in this document is that 'conserving biodiversity includes restoring and enhancing species populations and habitats, as well as protecting them.' In England and Wales, the administration of the planning system and licensing schemes are highlighted as having a 'profound influence on biodiversity conservation.' Local authorities are required to take measures to "promote the preservation, restoration and re-creation of priority habitats, ecological networks and the protection and recovery of priority species. The guidance states that 'the duty aims to raise the profile and visibility of biodiversity, clarify existing commitments with regard to biodiversity, and to make it a natural and integral part of policy and decision making.'
- 7.17 In 2007, the UK Biodiversity Action Plan (BAP) Partnership published an updated list of priority UK species and habitats covering terrestrial, freshwater and marine biodiversity to focus conservation action for rarer species and habitats in the UK. The UK Post-2010 Biodiversity Framework⁴, which covers the period from 2011 to 2020, now succeeds the UK BAP. The UK priority list contained 1150 species and 65 habitats requiring special protection and has been used as a reference to draw up the lists of species and habitats of principal importance in England and Wales.
- 7.18 In England, there are 56 habitats of principal importance and 943 species of principal importance on the S41 list. These are all the habitats and species found in England that were identified as requiring action in the UK BAP and which continue to be regarded as conservation priorities in the subsequent UK Post-2010 Biodiversity Framework.
- 7.19 In Wales, there are 54 habitats of principal importance and 557 species of principal importance on the S42 list. This includes three marine habitats and 53 species which were not on the list of UK BAP priorities, but which are recognised as of principal importance for Wales.

² <https://www.gov.uk/protected-species-and-sites-how-to-review-planning-proposals#standing-advice-for-protected-species>

³ Defra, 2007. *Guidance for Public Authorities on Implementing The Biodiversity Duty*. (<http://www.defra.gov.uk/publications/files/pb12585-pa-guid-english-070516.pdf>)

⁴ JNCC and Defra (on behalf of the Four Countries' Biodiversity Group). 2012. *UK Post-2010 Biodiversity Framework*. July 2012. (<http://jncc.defra.gov.uk/page-6189>)

European protected species (Animals)

- 7.20 The Conservation of Habitats and Species Regulations 2010 (as amended) consolidates the various amendments that have been made to the original (1994) Regulations which transposed the EC Habitats Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora (Council Directive 92/43/EEC) into national law.
- 7.21 “European protected species” (EPS) of animal are those which are present on Schedule 2 of the Conservation of Habitats and Species Regulations 2010 (as amended). They are subject to the provisions of Regulation 41 of those Regulations. All EPS are also protected under the Wildlife and Countryside Act 1981 (as amended). Taken together, these pieces of legislation make it an offence to:
- a. Intentionally or deliberately capture, injure or kill any wild animal included amongst these species
 - b. Possess or control any live or dead specimens or any part of, or anything derived from a these species
 - c. deliberately disturb wild animals of any such species
 - d. deliberately take or destroy the eggs of such an animal, or
 - e. intentionally, deliberately or recklessly damage or destroy a breeding site or resting place of such an animal, or obstruct access to such a place
- 7.22 For the purposes of paragraph (c), disturbance of animals includes in particular any disturbance which is likely—
- a. to impair their ability—
 - i. to survive, to breed or reproduce, or to rear or nurture their young, or
 - ii. in the case of animals of a hibernating or migratory species, to hibernate or migrate; or
 - b. to affect significantly the local distribution or abundance of the species to which they belong.
- 7.23 Although the law provides strict protection to these species, it also allows this protection to be set aside (derogated) through the issuing of licences. The licences in England are currently determined by Natural England (NE) for development works and by Natural Resources Wales in Wales. In accordance with the requirements of the Regulations (2010), a licence can only be issued where the following requirements are satisfied:
- a. The proposal is necessary ‘to preserve public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment’
 - b. ‘There is no satisfactory alternative’
 - c. The proposals ‘will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

Definition of breeding sites and resting places

- 7.24 Guidance for all European Protected Species of animal, including bats and great crested newt, regarding the definition of breeding and of breeding and resting places is provided by The European Council (EC) which has prepared specific guidance in respect of the interpretation of various Articles of the EC Habitats Directive.⁵ Section II.3.4.b) provides definitions and examples of both breeding and resting places at paragraphs 57 and 59 respectively. This guidance states that ‘The provision in Article 12(1)(d) [of the EC Habitats Directive] should therefore be understood as aiming to safeguard the ecological functionality of breeding sites and resting places.’ Further the guidance states: ‘It thus follows from Article 12(1)(d) that such breeding sites and resting places also need to be protected when they are not being used, but where there is a reasonably high

⁵ Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC. (February 2007), EC.

probability that the species concerned will return to these sites and places. If for example a certain cave is used every year by a number of bats for hibernation (because the species has the habit of returning to the same winter roost every year), the functionality of this cave as a hibernating site should be protected in summer as well so that the bats can re-use it in winter. On the other hand, if a certain cave is used only occasionally for breeding or resting purposes, it is very likely that the site does not qualify as a breeding site or resting place.'

Competent authorities

- 7.25 Under Regulation 7 of the Conservation of Habitats and Species Regulations 2010 (as amended) a "competent authority" includes "any Minister of the Crown..., government department, statutory undertaker, public body of any description or person holding a public office.
- 7.26 In accordance with Regulation 9, "a competent authority, in exercising any of their functions, must have regard to the requirements of the [Habitats and Birds] Directives so far as they may be affected by the exercise of those functions". This means for instance that when considering development proposals a competent authority should consider whether EPS or European Protected Sites are to be affected by those works and, if so, must show that they have given consideration as to whether derogation requirements can be met.

Birds

- 7.27 All nesting birds are protected under Section 1 of the Wildlife and Countryside Act 1981 (as amended) which makes it an offence to intentionally kill, injure or take any wild bird or take, damage or destroy its nest whilst in use or being built, or take or destroy its eggs. In addition to this, for some rarer species (listed on Schedule 1 of the Act), it is an offence to disturb them whilst they are nest building or at or near a nest with eggs or young, or to disturb the dependent young of such a bird.
- 7.28 The Conservation of Habitats and Species (Amendment) Regulations 2012 has placed new duties on competent authorities (including Local Authorities and National Park Authorities) in relation to wild bird habitat. These provisions relate back to Articles 1, 2 and 3 of the EC Directive on the conservation of wild birds (2009/147/EC, 'Birds Directive'⁶) (Regulation 9A(2) & (3) require that 'in the exercise of their functions as they consider appropriate' these authorities must take steps to contribute to the 'preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in the United Kingdom, including by means of upkeep, management and creation of such habitat...'
- 7.29 In relation to the duties placed on competent authorities under the 2012 amendment Regulation 9A (8) states: 'So far as lies within their powers, a competent authority in exercising any function [including in relation to town and country planning] in or in relation to the United Kingdom must use all reasonable endeavours to avoid any pollution or deterioration of habitats of wild birds (except habitats beyond the outer limits of the area to which the new Wild Birds Directive applies).'

Badger

- 7.30 Badger is protected under the Protection of Badgers Act 1992. This makes it an offence to wilfully kill, injure, take, possess or cruelly ill-treat a badger, or to attempt to do so; or to intentionally or recklessly interfere with a sett. Sett interference includes disturbing badgers whilst they are occupying a sett, as well as damaging or destroying a sett or obstructing access to it. A badger sett is defined in the legislation as "a structure or place, which displays signs indicating current use by a badger".
- 7.31 ODPM Circular 06/2005⁷ provides further guidance on statutory obligations towards badger within the planning system. Of particular note is paragraph 124, which states that "The likelihood of disturbing a badger sett, or adversely affecting badgers' foraging territory, or links between them, or

⁶ 2009/147/EC Birds Directive (30 November 2009. European Parliament and the Council of the European Union.

⁷ ODPM Circular 06/2005. *Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impacts within the Planning System* (2005). HMSO Norwich.

significantly increasing the likelihood of road or rail casualties amongst badger populations, are capable of being material considerations in planning decisions.”

- 7.32 Natural England provides Standing Advice⁸, which is capable of being a material consideration in planning decisions. Natural England recommends mitigation to avoid impacts on badger setts, which includes maintaining or creating new foraging areas and maintaining or creating access (commuting routes) between setts and foraging/watering areas.

Reptiles

- 7.33 All native reptile species receive legal protection in Great Britain under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended). Viviparous lizard, slow-worm, grass snake and adder are protected against killing, injuring and unlicensed trade only. Sand lizard and smooth snake receive additional protection as “European Protected species” under the provisions of the Conservation of Habitats and Species Regulations 2010 (as amended) and are fully protected under the Wildlife and Countryside Act 1981 (as amended).
- 7.34 All six native species of reptile are included as ‘species of principal importance’ for the purpose of conserving biodiversity under Sections 41 (England) and 42 (Wales) of the NERC Act 2006.
- 7.35 Current Natural England Guidelines for Developers⁹ states that ‘where it is predictable that reptiles are likely to be killed or injured by activities such as site clearance, this could legally constitute intentional killing or injuring.’ Further the guidance states: ‘Normally prohibited activities may not be illegal if ‘the act was the incidental result of a lawful operation and could not reasonably have been avoided’. Natural England ‘would expect reasonable avoidance to include measures such as altering development layouts to avoid key areas, as well as capture and exclusion of reptiles.’
- 7.36 The Natural England Guidelines for Developers state that ‘planning must incorporate two aims where reptiles are present:
- To protect reptiles from any harm that might arise during development work;
 - To ensure that sufficient quality, quantity and connectivity of habitat is provided to accommodate the reptile population, either on-site or at an alternative site, with no net loss of local reptile conservation status.’

Wild mammals in general

- 7.37 The Wild Mammals (Protection) Act 1996 (as amended) makes provision for the protection of wild mammals from certain cruel acts, making it an offence for any person to intentionally cause suffering to any wild mammal. In the context of development sites, for example, this may apply to rabbits in their burrows.

Hedgerows

- 7.38 Article 10 of the Habitats Directive¹⁰ requires that ‘Member States shall endeavour...to encourage the management of features of the landscape which are of major importance for wild fauna and flora. Such features are those which, by virtue of their linear and continuous structure...or their function as stepping stones...are essential for the migration, dispersal and genetic exchange of wild species’. Examples given in the Directive include traditional field boundary systems (such as hedgerows).
- 7.39 The aim of the Hedgerow Regulations 1997¹¹, according to guidance produced by the Department of the Environment¹², is “to protect important hedgerows in the countryside by controlling their

⁸ <http://www.naturalengland.org.uk/ourwork/planningdevelopment/spatialplanning/standingadvice/specieslinks.aspx>

⁹ English Nature, 2004. *Reptiles: guidelines for developers*. English Nature, Peterborough. <http://publications.naturalengland.org.uk/publication/76006?category=31018>

¹⁰ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

¹¹ Statutory Instrument 1997 No. 1160 – The Hedgerow Regulations 1997. HMSO: London

¹² The Hedgerow Regulations 1997: a guide to the law and good practice, HMSO: London

removal through a system of notification. In summary, the guidance states that the system is concerned with the removal of hedgerows, either in whole or in part, and covers any act which results in the destruction of a hedgerow. The procedure in the Regulations is triggered only when land managers or utility operators want to remove a hedgerow. The system is in favour of protecting and retaining 'important' hedgerows.

- 7.40 The Hedgerow Regulations set out criteria that must be used by the local planning authority in determining which hedgerows are 'important'. The criteria relate to the value of hedgerows from an archaeological, historical, wildlife and landscape perspective.

Japanese knotweed

- 7.41 It is an offence to plant or cause the spread of Japanese knotweed in the wild under the Wildlife and Countryside Act 1981 (as amended). All waste containing Japanese knotweed comes under the control of Part II of the Environmental Protection Act 1990.
- 7.42 The Environment Agency has produced "The Knotweed Code of Practice", which provides guidance on how to manage Japanese knotweed legally on development sites¹³. This document provides ecological information on Japanese knotweed, details of how to prevent its spread, how to manage Japanese knotweed and information on disposal. Natural Resources Wales refers to Environment Agency guidance in respect of landowners responsibilities in Wales and to the Wildlife and Countryside Act 1981 (as amended).

¹³ *Managing Japanese knotweed on development sites: the knotweed code of practice* (2006). Environment Agency. <https://www.gov.uk/government/publications/japanese-knotweed-managing-on-development-sites>. See also 2013 Code of Practice update.