ECOSA
Ecological Survey & Assessment Limited

SOUTH DOWNS COLLEGE, COLLEGE ROAD
WATERLOOVILLE

EXTENDED PHASE 1 ECOLOGICAL SURVEY

Final Document

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Invertebrate, Bird, Mammal, Reptile, Amphibian and Botanical Surveys
Management Plans • Habitat Appraisal • Marine • NVC • EcIA

ECOSA Ltd, 1 Becks Mews, 108 Stockbridge Road, Winchester, Hampshire, SO22 6RN
Tel: 01962 866113 Email: info@ecosa.co.uk Web: www.ecosa.co.uk

Registered Office: 3-4 Eastwood Court, SO51 8JJ Registered in England No: 6129868

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Appendix 1 Protected Species Legislation

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EXECUTIVE SUMMARY

- An Extended Phase 1 ecological survey was undertaken on 29th September 2011 at the South Downs College site, College Road, Waterlooville, Hampshire, PO7 8AA. Proposals for the site include the construction of a floodlit football pitch.

- The extended Phase 1 ecological survey involved a field survey to assess the potential for protected habitats and species to be present on the site.

- The site comprises a large recreational field surrounded by woodland blocks and hedgerows. The recreational field itself incorporates a basketball court, skate park and children's park.

- The habitat on site is of low ecological value and it is considered that the proposals in their current form would have a minor impact on the habitat quality of the area.

- It is considered that the site as a whole would provide suitable habitat for supporting foraging/commuting bats, dormice and breeding birds.

- Bats are likely to use the site for foraging at low densities and it is recommended that two Phase 2 bat transect surveys are completed to assess the extent of bat activity within the site.

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1.0 INTRODUCTION

1.1 Background

Ecological Survey & Assessment Limited (ECOSA) have been contracted by South Downs College to undertake an extended Phase 1 ecological survey of the amenity field west of South Downs College, College Road, Waterlooville, Hampshire, PO7 8AA, located at National Grid Reference (NGR): SU 688 074.

This report presents the findings of the Phase 1 ecological survey carried out by ECOSA on 15th August 2011. The report provides an outline assessment of potential ecological impacts of the development and recommendations based on the findings of the survey and the identified impacts.

1.2 Aims and Scope of Report

This report is based on a Phase 1 field survey which was primarily aimed at determining the suitability of the site to support protected habitats and species. This information allows an initial assessment of the biodiversity value of the site to be made.

1.3 Site Setting and Description

The site is located approximately 35 metres to the west of the South Downs College complex within the town of Waterlooville. The surrounding area comprises of residential development to the immediate south, school grounds to the west, Gundymoor Wood (West) to the north and College Road to the east.

The wider area is a matrix of residential development, interspersed by isolated areas amenity ground, grazing pasture and woodland copses. The A3 runs north to south approximately 0.37 kilometres to the east of the site.

The site itself comprises a large recreational field surrounded by woodland blocks and hedgerows. The recreational field itself incorporates a basketball court, Skate Park and children's park.

1.4 Site Proposals

Current proposals for the site include the construction of a floodlit football pitch to include land re-grading works.

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2.0 METHODS

2.1 Introduction

This section details the methods used during the Phase 1 field survey carried out at the South Downs College site on the 15th August 2011.

2.2 Desktop Study

2.2.1 Hampshire Biodiversity Information Centre (HBIC) Database Search

Hampshire Biodiversity Information Centre (HBIC) were consulted for information on the adjacent Sites of Importance for Nature Conservation, Gundymoor Wood and Littlepark Wood.

2.2.2 National Biodiversity Network Database Search

The National Biodiversity Network (NBN) database was searched for all records of protected species within 10km radius of the site.

2.3 Phase 1 Field Survey

The Phase 1 ecological survey was carried out on 15th August 2011. The survey involved a walkover of the site to identify the habitat types present and to record evidence of any protected species such as badger *Meles meles*, bats, breeding birds, reptiles and great crested newt *Triturus cristatus*. Details of the species-specific survey methods are given below.

2.3.1 Vegetation

An assessment was made of all areas of vegetation within the site using the standardised Phase 1 survey methodology[1]. This involved a walkover survey to identify broad vegetation types, which were then classified against Phase 1 habitat types. A list of characteristic plant species for each vegetation type was also compiled.

2.3.2 Badger

The survey involved a detailed investigation of the site to identify evidence of badger residence, foraging or territorial activity. Particular emphasis was placed on locating badger setts, paths, and signs of territorial activity such as dung piles.

[1] Handbook for Phase 1 habitat survey: A technique for environmental audit – Field manual (2003), *Joint Nature Conservation Committee (JNCC)*

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2.3.3 Bats

An assessment was made of the suitability of trees on the site to support roosting bats based on the presence of features such as holes, cracks, splits, loose bark and a covering of ivy. An assessment was made of the suitability of the site and the surrounding landscape to support foraging and/or commuting bat species.

2.3.4 Dormice

The assessment for the potential of the site to support dormouse was based on an assessment of habitat features that may indicate that dormice are present on the study area. This includes the presence of food sources such as common hazel *Corylus avellana* and honeysuckle *Lonicera periclymenum*. Additionally, the species requires a continuum of food supply so that habitat structure, diversity and connectivity to adjacent areas of woodland/scrub are important features for determining the potential presence of dormice.

2.3.5 Breeding Birds

The assessment of breeding birds on the site was based on the suitability of habitat present, evidence of nesting such as old or currently active nests and the presence of bird species that may potentially nest within the available habitat.

2.3.6 Reptiles

The reptile survey was based on an assessment of the suitability of habitat present within the site to support a population of common reptiles. Reptiles particularly favour scrub and grassland interfaces and the presence of these is a good indication that reptiles may be present on site. In addition, reptiles may utilise features such as bare ground for basking, tussocky grassland for shelter and compost heaps and rubble piles for breeding and/or hibernating.

2.3.7 Great Crested Newt

The great crested newt survey was based on an assessment of the presence of suitable aquatic habitats such as ponds within or adjacent to the site and the presence of suitable terrestrial habitat. Ponds that are densely shaded, highly eutrophic or that contain fish are likely to be less suitable for this species. In addition, online mapping resources were used to identify the presence of ponds or other waterbodies within a 500 metre (m) radius of the site: 500m is a standardised search radius to assist in the assessment of the potential of a site and its surrounding habitat to support this species, based on current Natural England guidance.

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2.4 Initial Protected Species Assessment

Details of the assessment criteria used to determine the ecological value of on-site attributes during the Phase 1 survey is outlined below. During a Phase 1 survey the assessment criteria is based on the potential for the site to support the species considered, this is usually based on the on-site habitat features and their suitability for the species considered. However, in many cases Phase 2 surveys will be required to assess the status of species and hence the importance of a population at the site, therefore the assessment of value should be considered a provisional assessment.

2.4.1 Bats - Tree Assessment

The trees on site were graded for their importance to bats using the following criteria:

- ***Bats Present*** - In some instances, bat presence can be confirmed from trees e.g. where droppings or staining is visible or where roosting bats have been observed entering/emerging from a tree or where roosting bats can be heard. Such trees will require further Phase 2 surveys to assess roost status.

- ***High Potential*** - High potential trees have features such as loose bark, splits and deep/extensive holes suitable for roosting bats. High potential trees are generally large and/or mature specimens. Further Phase 2 surveys will be required to assess the presence/absence of bats.

- ***Medium Potential*** - Medium potential trees have some interest for roosting bats such as broken snags, some flaking bark, a covering of ivy or shallow holes. Further Phase 2 surveys will be required to assess the presence/absence of bats.

- ***Low Potential*** - Low potential trees have some, although generally limited potential to support roosting bats. Further Phase 2 surveys may be required to assess the presence/absence of bats.

- ***Negligible Potential*** - Negligible potential trees are those that provide few or no features with bat roosting potential. Generally these trees are immature specimens. Further Phase 2 surveys are unlikely to be required to assess the presence/absence of bats.

2.4.2 Badger, Dormouse, Breeding Birds, Reptiles and Great Crested Newt

The potential for the site to support protected species is based on the results of the field survey assessment and desktop study. The potential for on-site habitat to

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support badger, breeding birds, reptiles and great crested newt is based upon the following criteria:

- **Species Present** – In some instances, the presence of a protected species can be confirmed by the presence of recorded evidence, for example badger hairs or latrines and hazel nut gnawed in the characteristic style by dormice. In these instances further Phase 2 surveys will be required in order to establish the statuses of the respective species.

- **High Potential** - Species confirmed as present during the field survey and/or on site or local records confirmed from the desktop study. The on-site habitat is of high quality for a given species/species group. The site is located within or adjacent to a national or regional stronghold. Good quality surrounding habitat and good connectivity. Further Phase 2 surveys will be required to assess the presence/absence of the species.

- **Medium Potential** - The on-site habitat is of moderate quality, providing most or all of the known key requirements of a given species/species group. The desktop study reveals local records for the species/species group, within the national distribution and with suitable surrounding habitat. Factors limiting the potential of occurrence may include small habitat area, habitat severance and disturbance. Further Phase 2 surveys will be required to assess the presence/absence of the species.

- **Low Potential** - On-site habitat is of poor to moderate quality for a given species/species group. Few or no records from the desktop study, although presence cannot be discounted on the basis of national distribution, nature of surrounding habitats, habitat fragmentation, recent on site disturbance etc. Further Phase 2 surveys may be required to assess the presence/absence of the species.

- **Negligible Potential** - Although presence cannot be absolutely discounted, the site includes very limited or poor quality habitat for a particular species/species group. There were no records from the desktop study and the surrounding habitat is considered unlikely to support wider populations of a species/species group. The site may also be outside or peripheral to known the national range for a species. Further Phase 2 surveys are unlikely to be required to assess the presence/absence of the species.

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2.5 Personnel and Timing

The Phase 1 ecological survey was carried out by a suitably experienced ECOSA surveyor on 15th August 2011.

2.6 Survey Limitations

Not all potential bat roosting features are accessible to the surveyor, e.g. holes or cracks in trees, and therefore assessments are based upon the potential for these features to provide suitable roosting opportunities.

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3.0 RESULTS AND ASSESSMENT

3.1 Introduction

This section details the results of the extended Phase 1 field survey carried out at land at the South Downs College site, College Road, Waterlooville on 15th August 2011 and provides an initial assessment of the ecological value of the site.

3.2 Desktop Study

3.2.1 Hampshire Biodiversity Information Centre (HBIC) Database Search

The HBIC consultation provided detailed and recent information on the management and vegetation communities present within the SINC woodlands located north of the site. **Table 1** summarises the data obtained.

Table 1: SINC's located north of the South Downs College Site

Site Name/Location (NGR)	Min. Distance and Direction from Site	Area (Hectares)	Current Condition
Gundymoor Wood (West) NGR: SU 6885 0760	Forms Northern Site Boundary	1.175	The site is also designated as an ancient semi-natural woodland with high species diversity including 20 ancient woodland indicators. The site incorporates both wet and dry woodland areas which receive heavy use by the public. The woodland is separated from the woodlands to the east by College Road. Management is not currently being undertaken at the site and the high use of the site by the public has left many areas of bare ground.
Gundymoor Wood (part of Littlepark Wood) NGR: SU 6900 0750	25m, East, separated by College Road	3.8	31 woodland indicators have been recorded within Gundymoor wood which forms part of Littlepark wood. Unlike Gundymoor Wood (West), this site has received management in the form of coppicing and has excellent structural and species diversity.
Littlepark Wood NGR: SU 6920 0750	230m East	6.56	The site comprises of both dry and wet woodland areas. There is high species diversity within the site with 28 ancient woodland indicators recorded including bluebell *Hyacinthoides non-scripta* which is locally dominant. The woodland is privately owned and currently unmanaged.

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3.2.2 National Biodiversity Network Gateway Search

A search of the NBN Gateway database revealed records of the following protected species held on the database within a ≤1km radius of the site.

- Slow Worm *Anguis fragilis*.

A search of the NBN Gateway database revealed additional records of the following protected species recorded within a >1km to ≤5km radius of the site:

- Great Crested Newt *Triturus cristatus*;
- Stag Beetle *Lucanus cervus*;
- Common Lizard *Zootoca vivipara*;
- Grass Snake *Natrix natrix*;
- Daubenton's bat *Myotis daubentonii*;
- Eurasian Badger *Meles meles*;
- European Water Vole *Arvicola terrestris*;
- Natterer's Bat *Myotis nattereri*;and
- Noctule Bat *Nyctalus noctula*.

A search of the NBN Gateway database revealed an additional record of the following protected species recorded within a >5km to ≤10km radius of the site:

- Pipistrelle Bat *Pipistrellus pipistrellus sensu lato*.

3.3 Phase 1 Field Survey

3.3.1 Vegetation

The vegetation is described here in general terms using Phase 1 habitat survey terminology and referring to dominant, characteristic and other noteworthy species in each vegetation type within the survey area. The following Phase 1 habitat types are present within the site:

- Semi-natural Woodland;
- Plantation woodland;
- Scrub
- Amenity grassland;
- Fence; and
- Other habitat.

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The distribution and composition of each habitat is described below.

Semi-natural Woodland

This habitat does not sit within the site; however it does form the northern boundary of the site.

Gundymoor Wood, an ancient-semi natural woodland and SINC sits immediately adjacent to the survey site. The area of woodland which borders the site has a canopy dominated by pedunculate oak *Quercus robur* with occasional ash *Fraxinus excelsior* and field maple *Acer campestre*. Ash and sycamore *Acer pseudoplatanus* dominate the woodland beyond. Typical shrub species include coppiced hazel *Corylus avellana*, holly Ilex aquifolium, sycamore and blackthorn *Prunus spinosa.* The field layer is mostly dominated by ivy *Hedera helix*, dogs mercury *Mercurialis perennis*, false brome *Brachypodium sylvaticum*, bramble *Rubus fruticosus* and bluebell.

The southern woodland edge which borders the site is very dense and scrubby with species such as blackthorn providing an impenetrable barrier preventing access (**Figure 1**). Access is still possible and the woodland is heavily used by the public; this is has created a network of paths and bare earth throughout the woodland.



Figure 1 Northern Site Boundary showing Scrubby Woodland Edge

Plantation Woodland

This habitat forms the eastern and southern boundaries of the site.

The eastern and southern boundaries of the site have been planted with native shrub and tree species to a width of approximately six to ten metres. The trees are uniform in age structure and include species such as hawthorn, hazel, field maple, pedunculate oak, wild cherry *Prunus avium*, elder *Sambucus nigra*, ash, blackthorn and wayfaring-tree *Viburnum lantana*. Wild privet *Ligustrum vulgare,* hazel and re-generating field maple occur occasionally within the shrub layer

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The field layer is species poor and either dominated by ivy over bare ground.

Scrub

An isolated area of scrub is located in front of the sites western boundary (**Figure 2**). Bramble is the dominant species with blackthorn, common nettle and common hogweed also present.



Figure 2 Isolated area of Scrub in front of Western Boundary

Amenity Grassland

This habitat dominates the survey area (**Figure 3**). Typical species present included perennial rye-grass *Lolium perenne*, white clover *Trifolium repens*, ribwort plantain *Plantago lanceolata,* daisy *Bellis perennis,* common ragwort *Senecio jacobaea* and dandelion *Taraxacum officianale* aggregate. The area shaded by the boundary habitats also held common nettle *Urtica dioica* and common hogweed *Heracleum sphondylium.*



Figure 3 Extent of Site showing Dominant Amenity Grassland

Fence

Welded mesh security fencing is present on the eastern and western site boundaries. On the western boundary the fence separates the site from the adjacent woodland

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strip associated with the school (**Figure 4**) and on the eastern boundary, College Road.



Figure 4 Fence forming Western Boundary of the Site

Other Habitats

A fenced children's play park is located in the south-western corner of the site whilst a basketball court and skate park are situated within the north-eastern corner of the site.

3.3.2 Badger Survey Results

No evidence of badger foraging activity was recorded from within the site boundary however, within the woodland to the north of the site, a considerable level of earth disturbance was recorded (**Figure 5**). This may have been caused by badger foraging activity however, no further evidence such as latrines or setts were recorded within the area. It is possible that the grassland on site could provide badgers with foraging habitat. Overall, the site is considered to offer **low potential** for supporting badger.



Figure 2 Earth Disturbance potentially caused by Badger Foraging Activity

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3.3.3 Bats - Bat Tree Survey Results

All of the trees which are located within the site boundary were assessed for their potential to support roosting bats. The trees on site which may potentially be illuminated by the proposed lighting scheme are immature or semi-mature specimens and exhibit low potential to support roosting bats. However, there are specimens within the adjacent woodland, which are outside of the range of the proposed lighting scheme, that have the potential to support roosting bats which may utilise the site for foraging. Those trees which are likely to be illuminated by the proposed lighting scheme were assessed to have **low potential** to support roosting bats.

3.3.4 Bats - Foraging and Commuting Habitat

The main potential commuting/foraging routes are the plantation woodland, scrub and woodland edge habitats along the boundaries of the site. Such edge habitats are likely to support increased invertebrate levels and shelter for bats than the adjacent amenity grassland. Overall, the site is considered to offer **medium potential** for supporting low numbers of foraging/commuting bats within the local context, particularly as the site lies close suitable bat foraging habitat in the form of Gundymoor Wood to the north

3.3.5 Dormouse Survey Results

The plantation woodland, scrub and semi-natural woodland boundaries of the site have the potential to hold this species, the vegetation is dense in places and there are suitable food plant species. However, the site and the adjacent Gundymoor Wood are isolated from other habitats considered suitable for dormice by College Road and areas of residential development. This is likely to create some restriction on movement of the species. Due to the suitability of the boundary habitat present it is considered that the site offers **medium potential** for dormice.

3.3.6 Breeding Bird Survey Results

The boundary habitats and adjacent woodland would be suitable for supporting common breeding birds. Species recorded as present on the site during the survey included blackbird *Turdus merula*, blue tit *Cyanistes caeruleus*, robin *Erithacus rubecula* and wren *Troglodytes troglodytes.* Overall, the site is considered to offer **medium potential** for supporting common breeding birds.

3.3.7 Reptile Survey Results

The species poor, improved nature of the sward and intensity of management would indicate that the grassland areas of the site would offer negligible potential for supporting reptiles because of the low vertebrate and invertebrate prey densities that this habitat offers. Additionally, this habitat lacks cover for protection. The dense

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shaded nature of the boundary habitats and adjacent semi-natural woodland indicates that these habitats have a low probability of holding reptiles. The site has been assessed as being of **low potential** to support reptile species.

3.3.8 Great Crested Newt Survey Results

There are no ponds located on site; Ordnance survey 1:25000 maps indicate that there are no ponds within 500m of the site. Great crested newts are not breeding on the site and are unlikely to use the site for terrestrial habitat given the lack of easily accessible ponds within the commutable vicinity. Overall the site is considered to offer **negligible potential** for supporting great crested newt.

3.3.9 Overall Site Assessment

Overall, the site comprises species-poor amenity grassland, scrub and plantation woodland boundaries; these are all common and widespread habitats. A small number of protected species may be utilising the site, including bats, dormice and breeding birds.

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4.0 EVALUATION, IMPACTS AND RECOMMENDATIONS

4.1 Introduction

This section presents a summary evaluation of the site based on the results of the extended Phase 1 field survey. The results and evaluation have been used to provide an outline assessment of the ecological impacts of the proposed development on the ecological features of the site. Finally, recommendations are made for further ecological work that may be required. It should be noted that current planning policy guidance requires that the results of any Phase 2 surveys that are required to fully assess the ecological value of the site are provided at Planning Application stage.

An outline of protected species legislation relevant to the findings of this report is provided in **Appendix 1**.

4.2 Vegetation

4.2.1 Summary

The site is composed of a mix of amenity grassland, isolated scrub and plantation woodland strips; Gundymoor wood, a semi-natural woodland borders the northern site boundary. The habitats within the site area are common and of low ecological value. The habitat of most intrinsic value is the woodland edge that borders the northern boundary of the site.

4.2.2 Potential Impacts of Proposed Development

A high proportion of the amenity grassland will be lost to the development. The boundary habitats that surround the site will be retained.

4.2.3 Recommendations

It is recommended that the woodland edge along the northern boundary is protected from damage during development with an adequate buffer (at least 2-3 metres from outer canopy of trees or shrubs) using Heras fencing during the development and no encroachment onto this area (for example by machinery, construction workers or storage of materials) should be permitted.

4.3 Badger

4.3.1 Summary

No evidence of badger activity was recorded within the site and it is considered that the on-site habitat is of low value for foraging badger. Potential badger foraging activity was recorded within the adjacent woodland therefore, it is possible that

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badgers enter the area to forage on occasion. Evidence of badger setts was not located during the survey.

4.3.2 Potential Impacts of Proposed Development

The proposed development work will result in loss of a large expanse of amenity grassland. The loss of this habitat will not impact on any setts and will not remove an important badger foraging resource.

4.3.3 Recommendations

Precautionary measures are recommended during the construction period to prevent harm to foraging badgers which may occasionally occur on site. This would include covering any foundation trenches at night, or inserting ramps to enable badgers to escape trenches and holes, should they fall in.

4.4 Bats

4.4.1 Summary

The site does not contain any built structures and the trees which are likely to be illuminated within the proposed lighting scheme offer low potential for roosting bats. The site is considered to be of more value for commuting/foraging bats which may utilise the edge habitats on site. The whole site offers medium potential for commuting/foraging bats within the local area.

4.4.2 Potential Impacts of Proposed Development

The proposed development will involve the construction of a floodlit football pitch. This will result in the loss of the bulk of the amenity grassland habitat within the site; however the greatest impact is associated with the proposed lighting scheme. The proposed lighting scheme will result in the illumination of sections of the boundary habitats on site which would render them unsuitable as foraging/commuting routes for bats. The dense, scrubby vegetation within the southern edge of Gundymoor wood will prevent light spillage further into the woodland.

4.4.3 Recommendations

As the proposals will result in the illumination of the boundary habitats, which have the potential to support commuting/foraging bats, it is recommended that two Phase 2 bat transect surveys are carried out to assess the use of the site by bats and identify any important commuting/foraging routes which may be present.

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4.5 Dormice

4.5.1 Summary

The plantation woodland strips, scrub and woodland edge habitat are considered to offer medium potential for dormice.

4.5.2 Potential Impacts of Proposed Development

No vegetation is to be lost within the site development. It is considered that the illumination of sections of the boundary vegetation by the proposed lighting scheme will have only a minimal effect on dormice at the site, if present, given the extent of available habitat within the surrounding area.

4.5.3 Recommendations

As no impacts on dormice are considered likely, no further recommendations relating to dormice are considered necessary.

4.6 Breeding Birds

4.6.1 Summary

The site contains plantation woodland strips and scrub which provide suitable habitat for breeding birds.

4.6.2 Potential Impacts of Proposed Development

The proposed development will not result in the removal of any of the identified habitats which have the potential to support breeding birds.

4.6.3 Recommendations

As no impacts on breeding birds are considered likely, no further recommendations relating to breeding birds are considered necessary.

4.7 Reptiles

4.7.1 Summary

The species amenity grassland and hedgerow features are considered to be of low potential for supporting reptiles.

4.7.2 Potential Impacts of Proposed Development

As there are no areas of rough grassland or other suitable habitat on site it is not anticipated that the proposal will have any impact on reptiles.

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4.7.3 Recommendations

As no impacts on reptiles are considered likely, no further recommendations relating to reptiles are considered necessary.

4.8 Great Crested Newt

4.8.1 Summary

There is no pond on-site and the site and there are no ponds within 500m of the site, therefore it is considered unlikely that this species is present.

4.8.2 Potential Impacts of Proposed Development

The development proposals will not impact on suitable ponds or great crested newt habitat. It is therefore considered that the proposed development works will not impact on this species.

4.8.3 Recommendations

As impacts on great crested newts are not anticipated, no further recommendations relating to great crested newts are considered necessary.

4.9 Updating Surveys

Due to the mobile nature of the species surveyed it is suggested that if the proposed development has not commenced by August 2013 an updating Phase 1 survey would be required to reassess the sites potential for protected species.

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Appendix 1 Protected Species and the Law

European Protected Animals - Bats and Great Crested Newts[2]

In England, all bat species and great-crested newts are fully protected under the Wildlife and Countryside Act 1981 through inclusion in Schedule 5. In addition, bats and great-crested newts are protected under the Conservation of Habitats and Species Regulations 2010. Taken together, these legislative instruments make it illegal to carry out the following activities:

1. Deliberately or recklessly capture or kill any wild animal of a European protected species;
2. Deliberately or recklessly disturb any such animal;
3. Deliberately or recklessly take or destroy eggs of any such wild animal;
4. Damage or destroy a breeding site or resting place of such a wild animal; and
5. Keep, transport, sell or exchange, or offer for sale or exchange, any live or dead wild animal of a European protected species, or any part of, or anything derived from such a wild animal.

Any activity that would result in a contravention of the above legislation would require a licence to avoid committing an offence. Natural England has powers to grant a licence for the following purposes:

- Preserving 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; or

- Preventing the spread of disease; or

- Preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property or to fisheries.

The Conservation of Habitats and Species Regulations contain three "derogation tests" which must be applied by Natural England when deciding whether to grant a licence to a person carrying out an activity which would harm an European protected species. For development activities this licence is obtained after Planning Permission has been obtained. The three tests are that:

[2] Summarised from www.defra.gov.uk

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- The activity to be licensed must be for imperative reasons of overriding public interest or for public health and safety;

- There must be no satisfactory alternative; and

- Favourable conservation status of the species must be maintained.

A recent court judgment[3] makes it clear that, notwithstanding the licensing regime, the Local Planning Authority must also address its mind to these three tests when deciding whether to grant planning permission for a development which could harm a European protected species. A Local Planning Authority failing to do so would be in breach of Regulation 3(4) of the Conservation (Natural Habitats, &c.) Regulations 1994 (revised in 2010 to become the Conservation of Habitats and Species Regulations) which requires all public bodies to have regard to the requirements of the Habitats Directive in the exercise of their functions.

In order to determine whether an activity requires a licence, Natural England advises that the guidance of a consultant ecologist is sought. However, Natural England offer the following advice as a guide:

- A licence is needed if the consultant ecologist, on the basis of survey information and specialist knowledge of the species concerned, considers that on balance the proposed activity is reasonably likely to result in an offence under Regulation 41[4] of the Conservation of Habitats and Species Regulations; or

- If the consultant ecologist, on the basis of survey information and specialist knowledge of the species concerned, considers that on balance the proposed activity

[3] Judgment handed down by His Honour Judge Waksman QC sitting as a judge of the High Court at the start of June 2009 in the case of R (*on the application of Simon Woolley) v Cheshire East Borough Council*. The judgment clarified for the first time the legal duty of a Local Planning Authority when determining a planning application for a development which may have an impact on European Protected Species ("EPS"), such as bats, great crested newts, dormice or otters.

[4] **Regulation 41 of the Conservation of Habitats and Species Regulations 2010 state:**

41. (1) A person who:
(a) deliberately captures, injures or kills any wild animal of a European protected species,
(b) deliberately disturbs wild animals of any such species,
(c) deliberately takes or destroys the eggs of such an animal, or
(d) damages or destroys a breeding site or resting place of such an animal,
is guilty of an offence.
(2) For the purposes of paragraph (1)(b), 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.
(3) It is an offence for any person:
(a) to be in possession of, or to control,
(b) to transport,
(c) to sell or exchange, or
(d) to offer for sale or exchange.

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is reasonably unlikely to result in an offence under Regulation 41 of the Conservation of Habitats and Species Regulations then no licence is required. However, in these circumstances Natural England would urge that reasonable precautions be taken to minimise the effect on European protected species should they be found during the course of the activity. If they are found then work should cease and an application be made to the Wildlife Licensing Unit at Natural England, Bristol.

Badger

The Protection of Badgers Act 1992 is based primarily on the need to protect badgers from baiting and deliberate harm or injury. It also contains restrictions that apply more widely and it is important for developers to know how this may affect their work. All the following are criminal offences:

- to willfully kill, injure, take, possess or cruelly ill-treat a badger;
- to attempt to do so; or
- to intentionally or recklessly interfere with a sett.

Sett interference includes damaging or destroying a sett, obstructing access to a sett, and disturbing a badger whilst it is occupying a sett. The Act defines a badger sett as '*Any structure or place, which displays signs indicating the current use by a badger'* and Natural England take this definition to include seasonally used setts. The legislation does not directly protect badger habitat or foraging grounds.

It is not illegal, and therefore a licence is not required, to carry out disturbing activities in the vicinity of a sett if no badger is disturbed and the sett is not damaged or obstructed.

Since development operations may take place over a protracted period, Natural England recommends that plans consider the effect of the development on seasonally-used setts as well as currently occupied setts. If a sett has shown signs of occupation within the past few months, it could be in use by badgers when development starts and should therefore be taken into account during the survey and any planning stages of the development. Where interference with a sett showing signs of use cannot be avoided during the development, a licence should be sought from Natural England[5].

Where works are likely to disturb a badger sett, it is necessary to obtain a licence from the relevant Statutory Nature Conservation Agency, in compliance with the 1992 Protection of Badgers Act. In England this would be obtained from Natural England.

[5] Badgers and Development, A guide to Best Practice and Licensing, Natural England Version 09/07

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Licences cannot be issued retrospectively so an application should be made at least one month in advance of the proposed work. Work that disturbs badgers without a licence is illegal.

Natural England currently administers licence applications for the following purposes:

- Preventing serious damage to land, crops, poultry or any other form of property (e.g. a house, garden, road etc.);
- Any agricultural or forestry operations;
- Any operation to maintain or improve any existing watercourse or drainage works, or to construct new works required for the drainage of land, including works of defence against sea or tidal water;
- Preventing the spread of disease;
- Development;
- Controlling foxes in order to protect livestock or penned game;
- Ringing and marking;
- Scientific or educational purposes, or conservation; and
- Preservation of ancient monuments or an archaeological investigation.

Common Reptiles

All common reptile species (grass snakes, adders, common lizards and slow worms) native to Britain are protected by the Wildlife & Countryside Act, 1981 (as amended). This legislation makes it illegal to intentionally kill or injure a common reptile. As a result, reptiles must be removed from areas of development and relocated onto suitable release sites before any site works can commence.

Wild Birds[6]

The Wildlife & Countryside Act 1981 (as amended) is domestic legislation for Great Britain that repeals existing wildlife legislation such as:

- Protection of Birds Acts 1954 to 1967; and
- Conservation of Wild Creatures and Wild Plants Act 1975.

The Act covers the provisions made in these previous acts and provides additional provision for species and countryside protection. The Act is the primary legislation in Great Britain for the protection of flora, fauna and the countryside. The Act includes the UK's domestic implementation of the species protection of the European Directive on the Conservation of Wild Birds (79/409).

[6] www.naturenet.net

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Under the Wildlife and Countryside Act 1981 all birds, their nests and eggs are protected by law and it is thus an offence, with certain exceptions to intentionally:

- Kill, injure or take any wild bird.
- Take, damage or destroy the nest of any wild bird while it is in use or being built.
- Take or destroy the egg of any wild bird.
- Have in one's possession or control any wild bird (dead or alive) or any part of a wild bird which has been taken in contravention of the Act or the Protection of Birds Act 1954.
- Have in one's possession or control any egg or part of an egg which has been taken in contravention to the Act. This includes items taken or killed before the passing of the Act.
- Have in one's possession or control any live bird of prey of any species in the world (with the exception of vultures and condors) unless it is registered and ringed in accordance with the Secretary of State's regulations.
- Have in one's possession or control any bird of a species occurring on Schedule 4 of the Act unless registered (and in some cases ringed) in accordance with the Secretary of State's regulations.
- Disturb any wild bird listed on Schedule 1 while it is nest building, or at a nest containing eggs or young, or disturb the dependent young of such a bird.

Status of Wild Birds

The leading governmental and non-governmental conservation organisations in the UK have reviewed the population status of the birds that are regularly found in the UK. A total of 247 regularly breeding or wintering species were assessed and each placed onto one of three lists - Red, Amber or Green. Forty species are Red-listed, 121 are Amber-listed and 86 are Green-listed. Seven quantitative criteria were used to assess the population status of each species and place it onto the Red, Amber or Green List. These criteria are listed below. The review excluded species that are not native to the UK and those that occur irregularly as vagrants or scarce migrants.

Global Conservation Status - Species assessed as Globally Threatened using IUCN11 criteria were placed on the Red List.

Recent Decline - Species whose breeding or non-breeding population declined, or range contracted, rapidly (by more than 50%) or moderately (by between 25 and 49%) over the last 25 years were placed on the Red and Amber Lists respectively.

Historical Decline - Species whose populations declined severely between 1800 and 1995 were placed on the Red List, except for those that have recovered substantially (more than

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doubled) in the last 25 years, which were Amber Listed. In earlier assessments, all species showing a serious historical decline were Red Listed, but in this assessment the success of recent conservation action has been recognised by moving recovering species to the Amber List.

European Conservation Status - Species whose population status is unfavourable in Europe (but which are not Globally Threatened) were placed on the Amber List.
Rare Breeders - Species with a mean population size of 1-300 pairs breeding annually over the last five years were placed on the Amber List. If a full census was carried out in a single year, the result of this was used instead of a five-year mean.

Localised Species - Species for which 50% or more of the breeding or non-breeding population occurs at 10 or few sites were placed on the Amber List. This criterion was used because a species whose population is confined to a few sites faces a greater threat from chance events than one whose population is widespread. The sites considered were either Important Bird Areas (identified by BirdLife International) or Special Protection Areas (designated under the European Union's Directive on the Conservation of Wild Birds).

International Importance - Species with 20% or more of their European population breeding in the UK were placed on the Amber List, as were non-breeding wildfowl with 20% or more of their northwest European population occurring in the UK and non-breeding waders with 20% or more of their East Atlantic Flyway population occurring in the UK. This criterion is different from the others as it is a measure of the UK's responsibility for each species rather than the extent to which species are threatened.

- Red List species are those that are Globally Threatened according to IUCN criteria; those whose population or range has declined rapidly in recent years; and those that have declined historically and not shown a substantial recent recovery.

- Amber List species are those with an unfavourable conservation status in Europe, those whose population or range has declined moderately in recent years; those whose population has declined historically but made a substantial recent recovery; rare breeders; and those with internationally important or localised populations.

- Species that fulfil none of the criteria are Green-listed.

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