

4/5 The Droveway, St Margarets Bay, Kent

## Preliminary Ecological Appraisal

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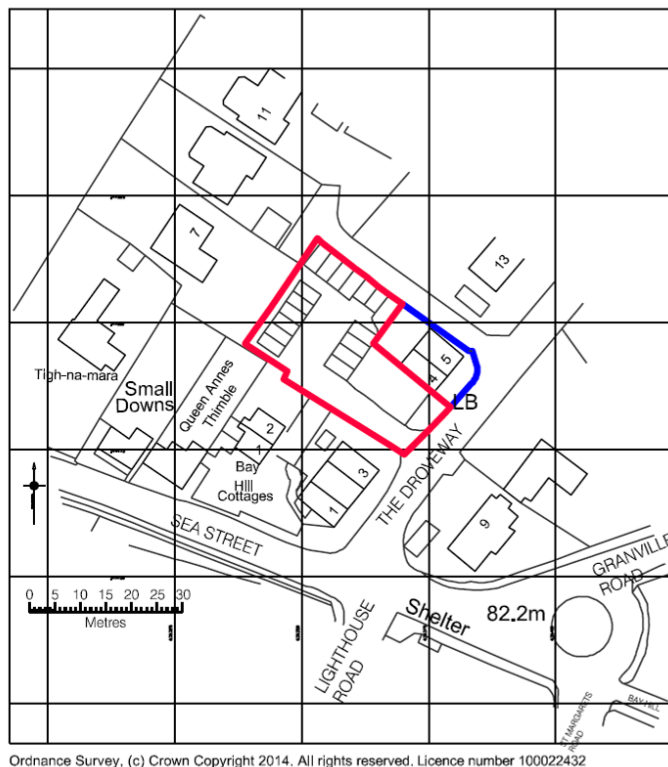
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# 1 Introduction

## 1.1 Background to the Scheme

KB Ecology Ltd has been commissioned to undertake a baseline ecological survey and a preliminary ecological appraisal with regards to a proposed development at 4/5 The Droveaway, St Margarets Bay, Kent, in support of a planning application for the demolition of garages prior to erection of a number of new dwellings.

The extent of site to be surveyed is shown on the map below, as sent by the client:



## 1.2 Survey Location/Area

The site is located at approximately TR 363 444. The location of the site is shown on Figure 1 and Figure 2.

## 1.3 Survey Objectives

The purpose of this survey is to provide a scoping assessment and to assist in demonstrating compliance with wildlife legislation and planning policy objectives.

The key objectives are as follows:

- Identify all relevant statutory and non-statutory designated sites and features of ecological significance within the site and its surroundings.

- Assess the potential for the presence of protected species and species of principal conservation importance, important habitats or other biodiversity features within the site and its surroundings.
- Provide recommendations for further surveys where assessed as necessary and suggest potential enhancements.
- Present the likely significance of ecological impacts on the proposed development.
- Provide an early indication of potential ecological mitigation and compensation requirements necessary as part of any development proposals.

A summary of wildlife legislation and policy has been included in Appendix A.

## **1.4 Limitations**

This report has been prepared and provided in accordance with the Chartered Institute of Ecology and Environmental Management's Code of Professional Conduct and the opinions expressed are true and professional bona fide opinions. It records the potential for flora and fauna evident on the days of the site visits. It does not record any flora or fauna that may appear at other times of the year and, as such, were not evident at the time of visit.

The findings of this report represent the professional opinion of a qualified ecologist and do not constitute professional legal advice. The client may wish to seek professional legal interpretation of the relevant wildlife legislation cited in this document.

## 2 Methodology

### 2.1 Desk Study

Web-based resources were consulted to identify designated nature conservation sites within 1km of the site and habitats of potentially high ecological importance and sensitivity within 500m of the site (e.g. ancient woodlands, ponds).

A data search was carried out with the Kent Reptile and Amphibian Group KRAG<sup>1</sup>.

### 2.2 Scoping Survey

The site and its immediate surroundings were considered in terms of habitats, protected species and species of principal conservation importance during a walkover survey undertaken on 10<sup>th</sup> December 2015 by Katia Bresso CEnv MCIEEM, a qualified professional consultant ecologist with over 15 years of experience<sup>2</sup>, licensed bat surveyor (Class Survey Licence Registration Number 2015-11917-CLS-CLS (CL15 Bat Roost Visitor Level 1) and 2015-11918-CLS-CLS (CL18 Bat Survey Level 2)) and Registered Consultant of the Bat Low Impact Class Licence with Natural England, licensed dormouse surveyor and licensed great crested newt surveyor (Class Survey Licences Registration Number 2014-6520-CLS-CLS and 2015-16268-CLS-CLS). Evidence of the use of the site by species was recorded (i.e. field signs).

The habitat survey was undertaken in general accordance with Phase 1 Habitat Survey (JNCC 2010), i.e. within the survey area every parcel of land is classified, recorded and mapped in accordance with a list of ninety specified habitat types using standard colour codes to allow rapid visual assessment of the extent and distribution of different habitat types.

The survey and report aim at following the guidance and recommendations in the 'British Standard Biodiversity Code of Practice for Planning and Development (BS 42020: 2013)'.

Particular attention was given to signs of use by bats and barn owls. A visual survey was undertaken looking for evidence of roosting bats and roosting/nesting barn owls, including signs such as live or dead bats/owls, feathers, droppings, pellets, nest debris and eggs, using an endoscope<sup>3</sup>, high powered torch (Cluson CB1 Clubman Standard High Power, 500,000 candle power), night vision scope and binoculars where needed. Please note that only four garages could be accessed internally on the day of site visit.

All trees were also checked for potential for roosting bats (from the ground only, using binoculars).

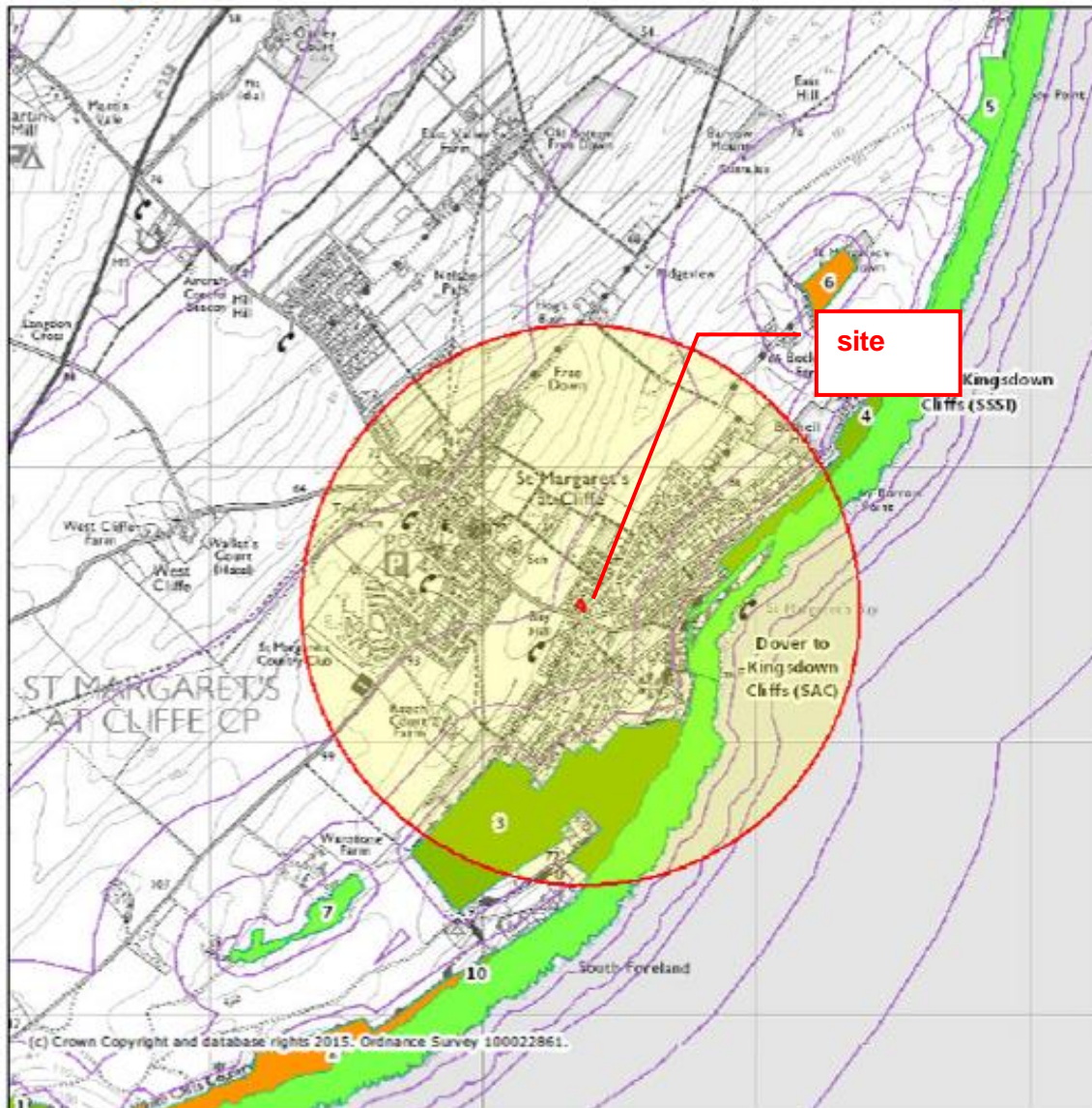
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<sup>1</sup> Please note that absence of records should not be taken as confirmation that a species is absent from the search area.

<sup>2</sup> Katia Bresso is a Suitably Qualified Ecologist with regards to Code for Sustainable Homes assessment and BREEAM

<sup>3</sup> Teslong 5.5mm Inspection NTS200 Digital Endoscope with 3.5 Inch full color LCD Screen

Figure 1



Legend

- Limestone Pavement Orders (England)
- Local Nature Reserves (England)
- Moorland Line (England)
- National Nature Reserves (England)
- National Nature Reserves (Scotland)
- National Nature Reserves (Wales)
- National Parks (England)

Projection = OSGB36

xmin = 632700

ymin = 142300

xmax = 639800

ymax = 147000

Map produced by MAGiC on 10 December, 2015.  
Copyright resides with the data suppliers and the map must not be reproduced without their permission. Some information in MAGiC is a snapshot of the information that is being maintained or continually updated by the originating organisation. Please refer to the metadata for details as information may be illustrative or representative rather than definitive at this stage.



FIGURE 2



Scale 1:5,000

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Map Dated: 10 Dec 2015







## 3 Baseline Ecological Conditions

### 3.1 Designated Nature Conservation Sites

Dover to Kingsdown cliffs is a Designated Special Area of Conservation (SAC) and a Site of Special Scientific Interest (SSSI), which support a full zonation of maritime cliff communities found on chalk substrates, reflecting different levels of exposure to wind and salt spray. The coastline from Dover harbour to Kingsdown is of extreme importance geologically and physiographically, and for its varied floral and faunal communities which include many rare species. It is located 350m to the East of the site.

### 3.2 Habitats

The site is surrounded by dwellings. It consists of a number of single storey garages with hard standing and a small side garden where vegetation has colonised a gravel base. Some trees (sycamore *Acer pseudoplatanus* and elder *Sambucus nigra*) are present along the access road. Ground flora included common nettles *Urtica dioica*, dandelion *Taraxacum officinale* agg., fat hen *Chenopodium album*, ribwort plantain *Plantago lanceolata*, scentless mayweed *Tripleurospermum inodorum*, smooth sow-thistle *Sonchus oleraceus*. A patch of bramble *Rubus fruticosus* agg is present in the side garden. A hedge of ornamental tree species is present.

Plates are present in Appendix B. Figure 3 below shows the location of the habitats.

Legend of Phase 1 habitat survey map hereafter:




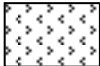



	Site boundary
	Hard standing
	Building
	Bare ground/ gravel base colonised by perennials
	Individual tree (number and location approximate)
	Hedge
	Bramble scrub

FIGURE 3



Scale 1:1,250

© Crown copyright and database rights Ordnance Survey 100024029

Map Dated: 10 Dec 2015



### 3.3 Amphibians

No ponds were present on site or within 250m, the nearest pond being 360m to the South east.

The data search carried out with Krag (Enquiry No: CES15/573) revealed that the closest recorded Great Crested Newt *Triturus cristatus* site is located at Folkestone Warren, approximately 13.67 km to the SW (record id: 4532).

Krag's database risk assessment indicates that the likelihood of presence of great crested newts in the overall area is 'Unlikely'<sup>4</sup>.

It is considered that the site offered negligible potential for amphibians, and great crested newts in particular, due to the lack of ponds near-by and the quality of habitat on site.

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<sup>4</sup> Likelihood of Presence Scores are described using the following categories: Unlikely<Possible<Likely<High



### 3.4 Reptiles

The Krag datasearch revealed that the closest recorded reptile is Viviparous Lizard, located at St. Margaret's Bay, approximately 0.22 km to the NE (record id: 2790). The likelihood of reptiles to be present in the overall area is judged as per table below:

<u>Reptiles</u>		
	<u>Likelihood of Presence</u>	
	<u>Score</u>	<u>Dist (km)</u>
Viviparous Lizard:	HIGH	0.22
Slow-worm:	Likely	0.58
Sand Lizard:	unlikely	17.24
Grass Snake:	Possible	1.84
Adder:	Possible	3.42
Smooth Snake:	n/a	n/a

Reptile survey effort in local area is considered to be below average. Results should be interpreted with caution.

The habitat of site is not judged as providing suitable habitat for reptiles.

### 3.5 Birds

It is considered that the site has potential to support breeding birds within the trees and bramble.

No signs of barn owl *Tyto alba* were found during the survey. No white droppings, black/grey pellets or white/buff feathers (specific signs of barn owls) were found.

All species of bird whilst actively nesting are afforded legal protection under the Wildlife & Countryside Act 1981 (as amended) and special penalties are available for offences related to birds listed on Schedule 1. Some species are also listed as species of principal conservation importance, including sky lark, common cuckoo, house sparrow, tree sparrow and song thrush (See Appendix A).

For more information, guidance from Natural England is available at <https://www.gov.uk/wild-birds-protection-surveys-and-licences>

### 3.6 Hazel Dormouse

It is considered that the site has no potential to support the hazel dormouse *Muscardinus avellanarius* due to lack of connection to suitable woodlands and lack of habitat on site.

### 3.7 Badger

No setts or signs of badgers *Meles meles* were identified during the survey.

### 3.8 Bats

No bats or signs of bats were found during the survey. The garages are brick or wooden built with corrugated single skin tin/asbestos roof and are not judged suitable for roosting bats.

Two trees present directly at the entrance of the access drive were covered in thick ivy. It is possible (but not very likely) that a single or slow number of bats could be roosting under the ivy in the summer months (due the stature of the trees, it is not expected that the ivy would hide significant features for roosting bats).

All species of bat are afforded full legal protection under Schedule 5 of the Wildlife & Countryside Act 1981 (as amended). They are also listed under Schedule 2 of the Conservation of Habitats and Species Regulations 2010 and are therefore a “European Protected Species” (EPS). Some species of bats (noctule, soprano pipistrelle, brown long-eared bat, barbastelle) are also listed as species of principal conservation importance.

Bats rarely use the same roosting place all year round as they need different conditions for breeding and hibernating. But bats are creatures of habit and tend to return to the same sites at the same time year after year. For this reason, roosts are legally protected even if bats don't seem to be living there at certain times of year.

The legislation makes it a criminal offence to:

- Deliberately capture, injure or kill a bat;
- Intentionally or recklessly disturb a bat in its roost or deliberately disturb a group of bats;
- Damage or destroy a bat roosting place (even if bats are not occupying the roost at the time);
- Possess or advertise/sell/exchange a bat (dead or alive) or any part of a bat;
- Intentionally or recklessly obstruct access to a bat roost.

For more information, guidance from Natural England is available at <https://www.gov.uk/bats-protection-surveys-and-licences>

## 4 Ecological constraints and opportunities, recommendations for mitigation, compensation and further survey

The details of the proposed development were not known at the time of writing this report.

Should the scope of the proposed works be amended following the completion of this scoping survey, or be deferred for an extended period of time, there may be a requirement to update this scoping report and its recommendations.

### 4.1 Designated Nature Conservation Sites

A site check report was generated for the site using the Impact Risk Zones on the Magic website<sup>5</sup>:

Site Check Report generated on Thu Dec 10 2015  
You selected the location: Centroid Grid Ref: TR363444  
The following features have been found in your search area:

SSSI Impact Risk Zones – to assess planning applications for likely impacts on SSSIs/SACs/SPAs & Ramsar sites (England)

**GUIDANCE – How to use the Impact Risk Zones**

**1. DOES PLANNING PROPOSAL FALL INTO ONE OR MORE OF THE CATEGORIES BELOW?**

All Planning Applications  
Infrastructure

Wind & Solar Energy  
Quarry

Rural Non Residential

Residential  
Rural Residential  
Air Pollution

Combustion

Waste

Composting

Discharges

Water Supply

[/Metadata for magic/SSSI IRZ User Guidance v2.3 MAGIC 14Aug2015.pdf](#)

**2. IF YES, CHECK THE CORRESPONDING DESCRIPTION(S) BELOW. LPA SHOULD CONSULT NATURAL ENGLAND ON LIKELY RISKS FROM THE FOLLOWING:**

Pipelines, pylons and overhead cables. Any transport proposal including road, rail and by water (excluding routine maintenance). Airports, helipads and other aviation proposals.

Solar schemes with footprint > 0.5Ha, all wind turbines.

Planning applications for quarries, including: new proposals, Review of Minerals Permissions (ROMP), extensions, variations to conditions etc.

Large non residential developments outside existing settlements/urban areas where footprint exceeds 1Ha.

Residential development of 10 units or more.

Any residential development of 10 or more houses outside existing settlements/urban areas.

Pig & Poultry Units. Any other development/ industrial or commercial process that could cause AIR POLLUTION.

All general combustion processes. Incl: energy from waste incineration, other incineration, landfill gas generation plant, pyrolysis/gasification, anaerobic digestion, sewage treatment works, other incineration/ combustion.

Mechanical and biological waste treatment, inert landfill, non-hazardous landfill, hazardous landfill, household civic amenity recycling facilities construction, demolition and excavation waste, other waste management

Any composting proposal. Incl: open windrow composting, in-vessel composting, anaerobic digestion, other waste management.

Any discharge of water or liquid waste that is discharged to ground (ie to seep away) or to surface water, such as a beck or stream. Discharges to mains sewer are excluded.

Large infrastructure such as warehousing / industry where net additional gross internal floorspace is > 1,000m<sup>2</sup> or any development needing its own water supply.

Residential housing is listed as being a category for which the LPA should consult Natural England, but only for 10 units or more. The proposal is not judged detrimental to the near-by protected sites.

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<sup>5</sup> The Impact Risk Zones (IRZs) dataset is a GIS tool which maps zones around each SSSI according to the particular sensitivities of the features for which it is notified and specifies the types of development that have the potential to have adverse impacts.

Natural England uses the IRZs to make an initial assessment of the likely risk of impacts on SSSIs and to quickly determine which consultations are unlikely to pose risks and which require more detailed consideration. Publishing the IRZs will allow LPAs, developers and other partners to make use of this key evidence tool.

<http://www.naturalengland.org.uk/ourwork/planningdevelopment/impactriskzonesgistoolfeature.aspx>



## **4.2 Habitats**

Habitats present outside the works footprint should be suitably protected against any damages during works.

Trees to be retained should be protected during any construction work and guidance is given in the 'BS 5837:2012 Trees in relation to design, demolition and construction. Recommendations' document. This standard requires a tree protection plan to be developed which involves erecting physical barriers to prevent damage to existing trees, with an exclusion area around the trees. It also looks at defining a root protection area and requires consideration when compulsory work is carried out within the root protection area.

## **4.3 Amphibians**

Due to the absence of ponds in the general area, no further work is recommended with regards to amphibians and great crested newts in particular.

## **4.4 Reptiles**

No further work is recommended with regards to reptiles.

## **4.5 Birds**

Although a breeding bird survey is not deemed to be necessary, on the basis that the site contains suitable habitat for breeding birds, consideration must be given to the timing of vegetation removal, if any is to take place.

Should there be a requirement to remove any trees/bramble that have the potential to be used by breeding birds, such works should be undertaken outside of the bird breeding season. The breeding bird season extends from March – August inclusive. It should be noted however that certain species are known to breed throughout the year (e.g. collard dove) and remain protected.

If trees cannot be removed outside of the bird breeding season, an inspection by a qualified ecologist must first be completed a maximum of 48hrs before works commence. If during the inspection a nest considered to be in use is discovered, works must be delayed until the young have fledged.

## **4.6 Hazel Dormouse**

No further work is recommended with regards to dormice.

## **4.7 Badger**

No further work is recommended with regards to badgers.

## **4.8 Bats**

Should the trees with ivy be impacted by the proposed works, it is recommended to cut back the ivy when the bats are unlikely to be present, i.e. in the winter months (November to March included). No other work is recommended with regards to bats.

## 4.9 Additional Recommendations: Enhancements

Ecological enhancements should where possible be incorporated into the proposed development to contribute towards the objectives of planning legislation below:

On 27 March 2012, the UK Government published the National Planning Policy Framework (NPPF) which states that “opportunities to incorporate biodiversity in and around developments should be encouraged”(Para 118).

The design and implementation of habitat enhancements could also be used to contribute towards the ‘Home Quality Mark’ or similar accreditation, should this be a consideration for this site.

Biodiversity enhancements for the site could include the following:

- Provision of 12cm square gaps under any new fencing to allow hedgehogs access onto all garden areas.
- Provision of ready-made bird boxes (sparrow terrace timber boxes or house martin nests for instance<sup>6</sup> or mix of open-fronted and hole-nesting boxes and constructed from woodcrete)<sup>7</sup>.
- Provision of bat roosting spaces within the new buildings (examples can be found in: Williams, C (2010). *Biodiversity for Low and Zero Carbon Buildings: A Technical Guide for New Build*. RIBA) or installation of ready-made bat boxes (such as Kent Bat Box<sup>8</sup>, Habibat<sup>9</sup>, EcoSurv Bat Box or Schwegler Bat tube<sup>10</sup>)<sup>11</sup>.
- Tree / shrub/ hedgerow planting (native species to be used only).
- Establish climbing plants on walls and other vertical structures<sup>12</sup>.
- Establish wildflower plug/bulb planting in amenity grassland<sup>13</sup>.
- Use of grass-free tapestry lawns<sup>14</sup>
- Establish Fruit Espaliers<sup>15</sup>.

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<sup>6</sup> to benefit these declining urban bird species

<sup>7</sup> In order not to damage trees, free-hanging nesting boxes can be hung from a loop or hook over a branch. This method avoids the use of nails. It is also helpful to avoid predation.

<sup>8</sup> [http://www.teach-organic.org.uk/uploadedfiles/CMS/pdf/bat\\_box.pdf](http://www.teach-organic.org.uk/uploadedfiles/CMS/pdf/bat_box.pdf)

<sup>9</sup> Habibat is a large, solid bat box made of concrete with an internal roost space, which can be incorporated into the fabric of a building <http://www.habibat.co.uk/>

<sup>10</sup> [http://www.bats.org.uk/publications\\_download.php/1109/BCT\\_BatBoxProductList\\_v4a.pdf](http://www.bats.org.uk/publications_download.php/1109/BCT_BatBoxProductList_v4a.pdf)

<sup>11</sup> It is highly recommended to install bird boxes near bat boxes to avoid birds from using the bat boxes to the detriment to bats.

<sup>12</sup> More information can be found here: <http://www.greenblueurban.com/climbing-plant-guide.php> and <http://www.london.gov.uk/priorities/environment/urban-space/parks-green-spaces/green-roofs-walls>

<sup>13</sup> Spring flowering bulbs and plugs of nectar rich flowering plants should be embedded into amenity grassland to increase the biodiversity and amenity value of the grassland and to provide early sources of nectar for insects. Suitable bulbs include Snake’s head fritillary *Fritillaria meleagris*, Ramsons *Allium ursinum*, Snowdrop *Galanthus nivalis*, Primrose *Primula vulgaris*, Bluebell *Hyacinthoides non-scriptus*, Wild daffodil *Narcissus pseudonarcissus*, Lesser celandine *Ranunculus ficaria*

<sup>14</sup> Tapestry lawns are a researched turf lawn alternative made by using specific mowing tolerant plants instead of grass <http://www.grassfreelawns.co.uk/articles.html>

<sup>15</sup> <http://apps.rhs.org.uk/advicesearch/profile.aspx?PID=319> for more information

Priority should be given to species present on the Kent BAP species list, which include great crested newt, common toad, viviparous lizard, slow-worm, grass snake, adder, house sparrow, tree sparrow, hedgehog, noctule, soprano pipistrelle, brown long-eared bat, brown hare, water vole, harvest mouse, dormouse, otter as well as many more species (see <http://www.kentbap.org.uk/habitats-and-species/priority-species/> ).



## 5 References and Bibliography

- Joint Nature Conservation Committee (2003). *Handbook for Phase 1 Habitat Survey: A Technique for Environmental Audit*. JNCC, Peterborough.<sup>16</sup>

### Websites Visited:

- [http://maps.tunbridgewells.gov.uk/LocalViewPublic/Sites/khs2012\\_navigator/#](http://maps.tunbridgewells.gov.uk/LocalViewPublic/Sites/khs2012_navigator/#)
- [https://cms.esriuk.com/tunbridgewells/Sites/KWT\\_External/](https://cms.esriuk.com/tunbridgewells/Sites/KWT_External/)
- <http://magic.defra.gov.uk/MagicMap.aspx>

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<sup>16</sup> [http://www.jncc.gov.uk/pdf/pub90\\_HandbookforPhase1HabitatSurveyA5.pdf](http://www.jncc.gov.uk/pdf/pub90_HandbookforPhase1HabitatSurveyA5.pdf)

## Appendix A – Wildlife Legislation & Policy

The following is a summary of wildlife legislation and planning policy which affords protection to plants and animals and seeks to conserve, enhance and restore biodiversity. This section is provided for general guidance only. While every effort has been made to ensure accuracy, this section should not be relied upon as a definitive statement of the law.

For further information, please see:

<https://www.gov.uk/protected-species-and-sites-how-to-review-planning-proposals>

and

<https://www.gov.uk/government/policies/protecting-biodiversity-and-ecosystems-at-home-and-abroad/supporting-pages/species-protection>

### Commonly encountered protected species

Many species of plants, invertebrates and animals receive protection under the legislation detailed above. However, of these, the following are the most likely to be affected by development in the southeast:

Species	Legislation
Bats (all species) Dormice Great crested newts Otters Sand lizards and smooth snakes	<p>The Wildlife and Countryside Act 1981 (as amended) &amp; The Conservation of Habitats and Species Regulations 2010. These make it an offence to:</p> <ul style="list-style-type: none"><li>• Deliberately or recklessly capture, injure or kill any wild animal of a European protected species</li><li>• Deliberately or recklessly disturb wild animals of any such species</li><li>• Damage or destroy their breeding site or resting place</li><li>• Keep, transport, sell or exchange, or offer for sale or exchange, any live or dead animal, or any part of, or anything derived from these species.</li></ul> <p>Disturbance of animals includes in particular any disturbance which is likely</p> <ul style="list-style-type: none"><li>• to impair their ability:<ul style="list-style-type: none"><li>-to survive, to breed or reproduce, or to rear or nurture their young, or</li><li>-in the case of animals of a hibernating or migratory species, to hibernate or migrate;</li></ul></li><li>• to affect significantly the local distribution or abundance of the species to which they belong.</li></ul>

Species	Legislation
Breeding birds (in particular barn owls)	The Wildlife and Countryside Act 1981 (as amended). This makes it illegal to intentionally kill, injure or take any wild bird and to take, damage or destroy the nest (whilst being built or in use) or eggs.
Adders, grass snakes, common lizards and slow worms	The Wildlife and Countryside Act 1981 (as amended) (intentional killing and injuring only). This makes it illegal to kill or injure these animals.
Water voles	The Wildlife and Countryside Act 1981 (as amended). This makes it illegal to intentionally damage, destroy or obstruct access to any structure or place which water voles use for shelter or protection; it is also an offence to intentionally disturb water voles while they are using these places.
White clawed crayfish	The Wildlife and Countryside Act 1981 (as amended). This makes it an offence to: <ul style="list-style-type: none"> <li>intentionally, or recklessly, kill or injure any of the above species, and/or;</li> <li>sell, or attempt to sell, any part of the species, alive or dead. Advertises that he buys or sells, or intends to buy or sell.</li> </ul>
Badgers	The Protection of Badgers Act 1992. This makes it an offence to: <ul style="list-style-type: none"> <li>Willfully killing, injures or takes, or attempts to kill, injure or take, a badger.</li> <li>Cruelly ill-treating a badger, digging for badgers, using badger tongs, using a firearm other than the type specified under the exceptions within the Act.</li> <li>Interfering with a badger sett by damaging, destroying, obstructing, causing dog a dog to enter a sett, disturbing an occupied sett - either by intent or by negligence.</li> <li>Selling or offering for sale a live badger, having possession or control of a live badger.</li> <li>Marking a badger or attaching any ring, tag, or other marking device to a badger.</li> </ul>

### **The Wildlife and Countryside Act 1981 (as amended)**

The Wildlife and Countryside Act 1981 (as amended) implements the Birds Directive (1979) and the Berne Convention (1979) into national legislation. The Wildlife and Countryside Act 1981 (as amended) includes a number of Schedules which are reviewed (usually every five years) on which details of the protected species, and their level of protection, are detailed. A



detailed summary of the sections of the Wildlife and Countryside Act, along with the protection afforded under them can be found within Paragraphs 118-122 of ODPM Circular 06/2005 (Circular06/2005)

Full details of the legislation can be found at [www.jncc.gov.uk/page-3614](http://www.jncc.gov.uk/page-3614) and details of the species listed on the Schedules can be found at:

- Birds [www.jncc.gov.uk/PDF/waca1981\\_schedule1.pdf](http://www.jncc.gov.uk/PDF/waca1981_schedule1.pdf)
- Animals [www.jncc.gov.uk/page-1815](http://www.jncc.gov.uk/page-1815)
- Plants [www.jncc.gov.uk/page-1816](http://www.jncc.gov.uk/page-1816)

There are no licensing functions within the Wildlife and Countryside Act for development activities which may affect a species protected under The Wildlife and Countryside Act 1981 (as amended) and works need to proceed following good practice and if appropriate rely on the 'incidental result of an otherwise lawful operation defence'. However, with regards to the water vole, where translocation of animals is proposed, Natural England does not feel this could be considered the incidental result of other activities and so would not be covered by the defence in the legislation. If there is no alternative to translocation, Natural England may be able to issue a licence to trap and translocate the water voles for the purpose of conservation.

### **The Countryside and Rights of Way Act 2000**

The Wildlife and Countryside Act 1981 was amended by the Countryside and Rights of Way Act (CRoW Act) in 2000. The CRoW Act strengthened the protection afforded to species listed within the Schedules of the Wildlife and Countryside Act by adding 'reckless' to several of the offences and increased the penalties for wildlife offences.

In addition, Section 74 of the CRoW Act introduced a new duty on Government Ministers and Department to further the conservation of biodiversity for habitats and species of principal importance. This was superseded by Sections 40 and 41 of the Natural Environment and Rural Communities (NERC) Act of 2006. Section 40 provides that every public authority must, in exercising its functions, have regard to the purpose of conserving biodiversity. Details of the lists of habitats and species provided for at Section 41 of the NERC act can be found at [www.ukbap-reporting.org.uk/news/details.asp?X=45](http://www.ukbap-reporting.org.uk/news/details.asp?X=45). The ODPM Circular 06/2005 (Circular06/2005) place a clear responsibility on Local Planning Authorities to further the conservation of habitats and species of principal importance where a planning proposal may adversely affect them.

Full details of the legislation contained within the Countryside and Rights of Way Act can be found at [www.opsi.gov.uk/acts/acts2000/ukpga\\_20000037\\_en\\_1](http://www.opsi.gov.uk/acts/acts2000/ukpga_20000037_en_1).

### **The Protection of Badgers Act 1992**

The legislation affording protection to badgers is primarily concerned with animal welfare and the need to protect badgers from activities such as baiting and deliberate harm. The Protection of Badgers Act 1992 makes it an offence to:

- Wilfully kill, injure, take, possess or cruelly ill-treat a badger, or attempt to do so;
- To intentionally or recklessly interfere with a sett (this includes disturbing badgers whilst they are occupying a sett, as well as damaging or destroying a sett or obstructing access to it).

As with The Wildlife and Countryside Act 1981 (as amended), there are several defences to prosecution in the legislation and the text should be consulted for details of these. Penalties for offences include fines up to £5,000, plus up to six months imprisonment for each illegal sett interference, or badger death or injury.

Full Details of the legislation can be found at  
[www.opsi.gov.uk/ACTS/acts1992/ukpga\\_19920051\\_en\\_1](http://www.opsi.gov.uk/ACTS/acts1992/ukpga_19920051_en_1).

**Conservation of Habitats and Species Regulations 2010 (SI 2010/490) came into force (the "2010 Regulations").**

From 1st April 2010, these are now the principal means by which the Habitats Directive is transposed in England and Wales. This updates and consolidates all the amendments to the Regulations since they were first made in 1994.

The 2010 Regulations implement the European Habitats Directive into national legislation. Details of those species (often referred to as European protected species or EPS) which receive protection under these regulations can be found in Schedule 2 of the 2010 Regulations.

Full details of the legislation can be found at  
[http://www.opsi.gov.uk/si/si2010/ukxi\\_20100490\\_en\\_1](http://www.opsi.gov.uk/si/si2010/ukxi_20100490_en_1)

The Regulations state that:

Part 3 - 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, anything to which this paragraph applies.

- (4) Paragraph (3) applies to—
- (a) any live or dead animal or part of an animal—
    - (i) which has been taken from the wild, and
    - (ii) which is of a species or subspecies listed in Annex IV(a) to the Habitats Directive; and
  - (b) anything derived from such an animal or any part of such an animal.
- (5) Paragraphs (1) and (3) apply regardless of the stage of the life of the animal in question.
- (6) Unless the contrary is shown, in any proceedings for an offence under paragraph (1) the animal in question is presumed to have been a wild animal.
- (7) In any proceedings for an offence under paragraph (3), where it is alleged that an animal or a part of an animal was taken from the wild, it is presumed, unless the contrary is shown, that that animal or part of an animal was taken from the wild.
- (8) A person guilty of an offence under this regulation is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.
- (9) Guidance as to the application of the offences in paragraph (1)(b) or (d) in relation to particular species of animals or particular activities may be published by—
- (a) the appropriate authority; or
  - (b) the appropriate nature conservation body, with the approval of the appropriate authority.
- (10) In proceedings for an offence under paragraph (1)(b) or (d), a court must take into account any relevant guidance published under paragraph (9).
- (11) In deciding upon the sentence for a person convicted of an offence under paragraph (1)(d), the court must in particular have regard to whether that person could reasonably have avoided the damage to or destruction of the breeding site or resting place concerned.

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Licences may be obtained to permit activities that would otherwise be unlawful, but they can only be granted for certain purposes. Those purposes include that of 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 (Regulation 42(10)). It is the imperative reasons of overriding public interest element of this that is relied upon by those seeking to carry out development where those activities affect a European protected species or their places used for shelter or protection. Even where that purpose is met, however a licence may only be granted where:

- There is “no satisfactory alternative”; and
- The action authorised “will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range”

Natural England issues licences for this purposes under Regulation 44(2)(e).

It is not the responsibility of Natural England staff to decide when a licence is required/recommended. This decision is down to the proposer of the operation who should consider whether, on balance and usually with the assistance of an ecological consultant, the operation would be reasonably likely to result in the commission of an offence under these Regulations. This view should be formed in the light of survey information and specialist knowledge. A licence simply permits an action that is otherwise unlawful. A licence should be

applied for if, on the basis of survey information and specialist knowledge, it is considered that the proposed activity is reasonably likely to result in an offence (killing, breeding site destruction, etc – see above).

It should be noted that the protection afforded to species under the UK and EU legislation referred to here is in addition to that provided by the planning system and the applicant must ensure that any activity they undertake on the application site (regardless of whether or not planning permission has been obtained ) complies with the appropriate wildlife legislation. Failure to do so may result in fines and, potentially, a custodial sentence.

### **Biodiversity Action Plans**

Biodiversity Action Plans (BAPS) set out actions for the conservation and enhancement of biological diversity at various spatial scales. They consist of both Habitat Action Plans (HAPs) and Species Action Plans (SAPs).

The UK BAP was the UK's response to the 1992 Convention on Biological Diversity in Rio de Janeiro. Following a review in 2007 a list of 1149 priority species and 65 priority habitats has been adopted, which are given a statutory basis for planning consideration under Section 40 of the NERC Act 2006.

The UK Post-2010 Biodiversity Framework was published on 17 July 2012. It covers the period from 2011 to 2020, and was developed in response to two main drivers: the Convention on Biological Diversity's (CBD's) Strategic Plan for Biodiversity 2011-2020 and its 5 strategic goals and 20 'Aichi Biodiversity Targets', published in October 2010; and the EU Biodiversity Strategy (EUBS), released in May 2011. <http://jncc.defra.gov.uk/page-6189>

Further information about Kent BAP can be found here: <http://www.kentbap.org.uk/habitats-and-species/priority-species/>

### **Red Data Books**

British Red Data Books (RDB) are an additional method for classifying the rarity of species, and are often seen as a natural progression from Biodiversity Action Plans.

RDB species have no automatic legal protection (unless they are protected under any of the legislation previously mentioned). Instead they provide a means of assessing rarity and highlight areas where resources may be targeted. Various categories of RDB species are recorded, based on the IUCN criteria and the UK national criteria based on presence within certain numbers of 10x10km grid-squares (see <http://www.jncc.gov.uk/page-3425>). As with Biodiversity Action Plans, where possible, steps should be taken to conserve RDB species which are to be affected by development.

## Appendix B – Plates



IMG\_3208



IMG\_3209



IMG\_3210



IMG\_3211



IMG\_3212



IMG\_3213



IMG\_3214



IMG\_3215



IMG\_3216



IMG\_3217



IMG\_3221



IMG\_3222



IMG\_3223