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Fareham Borough Council
Innovation Centre

FAREHAM BOROUGH COUNCIL
Development Management

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Ecology Statement
Ecological Planning & Research Ltd.

31 January 2014



10 January 2014
Our Ref: P13/71-1A

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Dear Neil,

Daedalus Airfield, Lee-on-Solent - Ecological Appraisal

Thank you for commissioning EPR to identify any ecological issues which are likely to arise from the proposed construction of an Innovation Centre with 100 associated car parking spaces at Daedalus Airfield in Lee-on-Solent, Hampshire. Based on the information you have provided me with, the aim of the Innovation Centre is to support the further growth of the Solent Enterprise Zone and it will include approximately 620m² of general office floor space and 1000m² of Workshop floor space. The recommendations in this letter are therefore based on this information and the results of my site visit on the 20 December 2013 which included the site and its surroundings.

The location of the proposed Development Site (hereafter referred to as the 'Site') is shown in **Map 1** (Grid Reference - SU56836 01766), and the appraisal method I have used is set out in **Appendix 1**. In considering the potential for ecological constraints and opportunities, I have referred to relevant nature conservation legislation and national and local planning policy, the details of which are included in **Appendix 2**. A desktop study was also completed which included a review of historical Ordnance Survey maps and citations for local designated wildlife sites, and the commissioning of a search of data pertaining to protected and notable habitats and species, and non-statutory designated sites for nature conservation from Hampshire Biodiversity Information Centre (HBIC).

Site Description and Context

The Site is approximately 0.76 hectares in size and is roughly 145m long and 69m wide at its longest and widest points respectively. As shown in **Map 2**, the Site is located within the boundary of Daedalus Airfield and is surrounded by a mixture of grassland and hard standing to the north, east and west. A Fareham College Centre for Engineering and Manufacturing Advanced Skills Training (CEMAST) is currently under construction to the south of the Site.

The site contains a hangar building near its centre, shown on **Map 2**. However, the hangar building is being proposed for demolition as part of a separate project, and I have not therefore considered this building or its potential to support ecological features (for example nesting birds or roosting bats) within my Ecological Appraisal. The remaining habitats present within the Site are discussed further below.

Zone of Influence

In order to highlight the potential ecological issues or constraints related to the proposed development it is necessary for me to predict the spatial extent over which the development may exert biophysical changes which could lead to impacts upon the valued ecological features within this area. This is known as the development's potential 'Zone of Influence' (Zoi) as described by the Chartered Institute of Ecology and Environmental Management's (CIEEM) guidelines for Ecological Impact Assessment (see **Appendix 1**).

I consider that the Zoi for this proposal is likely to remain within the site boundary and immediate surrounds, where direct habitat loss and disturbance (e.g. from light, noise and dust) from development activity will occur. The potential exception to this could be where the development could contribute towards effects that exert themselves over a longer distance that could affect designated sites for nature conservation, such as air pollution from increased traffic, water abstraction or surface/ground water pollution. Each of these potential effects has been taken into account in giving the advice pertaining to designated sites that I set out below.

Designated Sites

Records received from data sources (see **Appendix 1** for details) show that there are several designated sites within 2 km of the site (see **Map 1**). 'The Wilds Grounds' Local Nature Reserve (LNR) and Site of Special Scientific Interest (SSSI) is approximately 1 km to the south-east of the Site with the 'West of the River Alver' LNR approximately 1.75 km to the south-east of the Site.

The 'Lee-on-Solent' SSSI is a component unit of the 'Solent & Southampton Water' Special Protection Area (SPA) and RAMSAR site which lies approximately 1.4 km to the west of the Site. It qualifies as a RAMSAR as it is one of the few major sheltered channels between a substantial island and mainland in European waters and the fact that it supports an important assemblage of rare plants and invertebrates and an assemblage of waterfowl such as Dark-bellied Brent Geese, Black-tailed Godwit, Teal and Ringed Plover which are of international importance.

Further afield, 'Portsmouth Harbour', which is designated as a SPA, RAMSAR and SSSI, is approximately 2.9 km to the east of the Site. It qualifies as a SPA for its overwintering population of Dark-bellied Brent Geese, as a RAMSAR for its intertidal mudflats supporting extensive eelgrass beds and Dark-bellied Brent Geese, and finally as a SSSI for its physical characteristics which support a wide variety of flora and fauna.

There are several SINC's (Site of Importance for Nature Conservation) within 2km of the Site, the closest of which are 'Shoot Farm Wood & Fen' SINC, which is designated for its semi-natural woodland and fens, and 'Lee-on-Solent Golf Course' SINC which is designated for its heathland vegetation.

Fareham Borough Council have undertaken a Habitats Regulations Assessment (HRA) of their Core Strategy (UE Associates, Dec 2010), including Policy CS12 which relates to the development of the Daedalus site (Please refer to **Appendix 2**). The HRA has concluded that the Core Strategy, including

Policy CS12, will not result in an adverse effect on the integrity of European sites, subject to the inclusion of certain measures within the Core Strategy.

Specifically with respect to development at Daedalus (Policy CS12), the HRA considers that recreational pressure is not an issue due to the commercial nature of the development (i.e. it does not, as would be the case for residential development, introduce additional residents into the area that could pursue recreational activity). The HRA 'screens in' Policy CS12 for further consideration in respect of potential effects on European sites from water resources/abstraction, air pollution (traffic related) and waste water pollution, but ultimately concludes that the Core Strategy will not adversely affect the integrity of European sites due to the inclusion of text in the Core Strategy Policy CS12 that requires individual proposals coming forward under the policy to be assessed.

Fareham Borough Council's Core Strategy (August 2012) which forms part of the Development Plan for Fareham Borough, includes Policy CS12 'Daedalus Airfield Strategic Development Allocation' (**Appendix 2**), which identifies the airfield as a strategic employment allocation. With respect to European sites, it states that development will only be permitted if "*it can demonstrate that there will be no adverse impacts on European designated sites*".

In view of the above, I have considered the potential for the proposals to affect the abovementioned European sites through the mechanisms that were identified by the HRA of the Core Strategy. In my view, the proposals are not likely to have a likely significant effect on European Sites through any means, when considered *alone*, although it is less clear whether they might contribute to a likely significant effect in combination with other plans and projects.

With respect to air pollution, I note that Gosport Borough Council has produced a Supplementary Planning Document (SPD) for the southern section of the Daedalus site which lies within their area of responsibility (GBC, 2011). This document suggests that air pollution impacts on European Sites from development at Daedalus is unlikely, as the envisaged development will reduce car travel in the area by providing local people with employment opportunities closer to home, and because traffic will be routed further from the SPA than currently is the case. Fareham Borough Council were preparing a similar SPD for the part of the Daedalus site that lies within their Borough, but have placed this on hold due to the designation of the site as an Enterprise Zone. Water resources/abstraction, and waste water pollution are issues usually addressed strategically and controlled by the Environment Agency through the abstraction and discharge consents processes.

Further to the above, I note that Natural England (NE) provided consultation advice in respect of the adjacent CEMAST proposals on 14 March 2013, which are similar to the current proposals in that they are for employment related uses. NE concluded that they had no objection to the CEMAST proposals in respect of potential effects on Natura 2000 sites.

In view of the above, I consider it unlikely that the proposals will contribute towards a likely significant effect on European or RAMSAR sites within the potential ZoI. I recommend however that this view is confirmed with Fareham Borough Council, as they are the competent authority under the Conservation of Habitats and Species Regulations 2010 (as amended). They must undertake a Habitats Regulations Assessment (HRA) of the proposals, and may require information to be submitted to enable them to carry out an Appropriate Assessment (AA) if they are not able to conclude that the proposals will not contribute towards a likely significant effect on European (Natura 2000) or RAMSAR sites.

Map 1 shows further designated sites located between 2-5 km from the Site boundary, however as none of these are within the Zol of the proposals they have not been considered further.

Habitats and Vegetation

Map 2 illustrates the distribution of the different habitat types on Site. The Site is comprised of a large expanse of grassland with a hangar, areas of hard standing and two small areas of scrub.

The majority of the Site is covered by semi-improved grassland with low species diversity, dominated by Yorkshire Fog *Holcus lanatus*, Rye-Grass *Lolium sp.* and Clover *Trifolium sp.*. Continual management has also ensured that the sward length is low.

There are two small areas of scrub adjacent to the hangar. The area to the south of the hangar is dominated by Blackthorn *Prunus spinosa* with Cleavers *Galium aparine* and Ivy *Hedera helix* also present. Elder *Sambucus nigra*, Bramble *Rubus sp.* and Ribwort plantain *Plantago lanceolata* were recorded in the area to the north of the hangar.

The number of botanical species recorded on Site was low and they were all common species, indicating that the vegetation types present on Site are of negligible botanical value.

Potential for Protected or Valued Species

During the appraisal I recorded the presence of habitats with the potential to support protected and notable species and habitats following the methods detailed in **Appendix 1**. It should be noted that, at your request, the hangar present on Site was not included within this Ecological Appraisal and therefore its potential to support roosting bats or nesting birds was not assessed. Notwithstanding this, in accordance with best practice guidance issued by the Bat Conservation Trust (BCT, 2012) and in order to ensure legal compliance, I would recommend that this structure should be adequately surveyed before its proposed demolition.

Birds

During the ecological appraisal, a couple of areas of scrub were noted adjacent to the hangar. These areas have the potential to support common and widespread species of nesting bird. Whilst the assemblage present is not likely to be of significant ecological interest in itself, almost all birds are protected whilst nesting by the Wildlife & Countryside Act 1981 (as amended). Therefore it is advised that the clearance of any vegetation over 50cm in height is undertaken between September and February inclusive, while birds are not nesting.

If this is not possible, works should be preceded by a check for nests by a suitably qualified ecologist. If nesting birds are discovered during this check, then a suitable buffer area will need to be retained around nests to ensure their protection until any young have fledged. This approach will ensure the development complies with relevant nature conservation legislation and planning policy.

The Site forms part of Site F13 in the 2010 Solent Waders & Brent Goose Strategy (SWBGS). This strategy relates to internationally important Brent Goose and wading bird populations within and around the SPA and RAMSAR sites of the Solent Coast. Site F13 is classified as 'uncertain' for waders under the SWBGS and it was surveyed comprehensively over 2008/2009 where a total of eleven surveys only recorded the presence of a small number of Oystercatcher (11) feeding on a single occasion.

Due to the grassland present on Site and its current management regime, suitable foraging opportunities may be present on Site for waders and Brent Geese. However these opportunities are likely to be extremely limited due to the close proximity of an operational airfield, the close proximity of

an active construction site (CEMAST) and the high level of disturbance due to aeroplane and vehicular movements within the airfield. Additionally, the Site only forms a very small portion of the wider Site F13, meaning that it is unlikely that the Oystercatcher recorded were actually present within the current Site boundary. As a result of this information, it is highly unlikely that the Site is being utilised by overwintering birds and therefore it is not necessary to consider potential impacts to these species further.

Previous ecological surveys on the wider Daedalus Airfield site have noted the fact that Skylark *Alauda arvensis* have been recorded once on the Daedalus Airfield site (Campbell Reith, 2013). However, this was in an area of the Daedalus Airfield site containing suitable nesting habitat for this species, which is not present within the Site. For this reason, coupled with the levels of disturbance the Site is exposed to, as detailed above, it is highly unlikely that Skylark will be utilising the Site and therefore it is not necessary to consider potential impacts to Skylark further.

Other Protected Species

The previous ecological work indicated that whilst there was some habitat present within the wider Daedalus Airfield site capable of supporting protected species such as Great Crested Newts (GCN) and reptiles, this habitat was not located within the current Site. Further species specific surveys then determined that no GCN were present within the local vicinity and that only a small reptile population was recorded. This information corroborates my view that there will not be any other ecological constraints within the current Site.

Ecological Issues: Constraints and Opportunities

The Site at Daedalus Airfield comprises a mixture of grassland and hard standing with a couple of small areas of scrub. The habitats on Site have negligible ecological value, however the Site has potential to support nesting birds.

In respect of potential effects on these legally protected species, providing the recommendations made within this letter (summarised in the table below) are implemented, the future development is considered unlikely to have a negative ecological impact, and will comply with nature conservation legislation and planning policy set out in **Appendix 2**.

Since the Site lies in proximity to 'Solent & Southampton Water' and 'Portsmouth Harbour' SPA/ RAMSARs, the need, or otherwise, to provide information towards a Habitats Regulations Assessment should be discussed with Fareham Borough Council as suggested above.

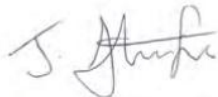
In line with the National Planning Policy Framework (DCLG, 2012), steps should be taken, where possible, to provide net gains (enhancements) for biodiversity. If any of the semi improved grassland on Site is retained as part of the development, this could be enhanced by implementing a specific management regime based on cutting it at specific times of the year in order to increase the wildflower content over time. Additionally, if the soft landscape planting strategy for the development were to include native tree and shrub species with a high yield of berries, fruits or pollen, this would create a valuable food source for a variety of bird species as well as increasing the invertebrate biomass on site. Finally, bird nesting boxes and/or bat boxes could be incorporated into any potential new buildings, or fixed externally after the construction phase, as this would help compensate for a lack of mature trees on site.

Table 1: Summary of Recommendations

Recommendation	Aims	Period
Solent & Southampton Water' and 'Portsmouth Harbour' SPA/ RAMSARs: Contribution towards a likely significant effect considered unlikely, but recommend discussing the need to submit information to inform a HRA with Fareham Borough Council	To ensure that the proposals are not likely to contribute towards a significant effect upon Solent & Southampton Water' and 'Portsmouth Harbour' SPA/ RAMSARs , and that the proposals comply with The Habitats Regulations	ASAP
Nesting Birds: Supervised clearance of vegetation above 50cm in height if done within bird nesting season	To ensure nesting birds are not injured or killed during works	March – August inclusive: Supervision required
		September to February inclusive: Supervision not required

I trust that the above provides you with the information that you require to determine how best to progress with the future proposals for the site at Daedalus Airfield. Please do not hesitate to contact me if you require further information.

Yours sincerely,



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Senior Ecologist, EPR Ltd

Approved for issue by:



Ben Kite BSc (Hons) MSc AIEMA MCIEEM
Director & Principal Ecological Consultant, EPR Ltd

References

Bat Conservation Trust. 2012. *Bat Surveys – Good Practice Guidelines 2nd Edition*. BCT, London

Campbell Reith, 2013. *Ecology Statement – Fareham College Development*.

Department for Communities and Local Government. 2012. *National Planning Policy Framework*.

Gosport Borough Council 2011. Local Development Framework. *Daedalus Supplementary Planning Document*. <http://www.gosport.gov.uk/sections/your-council/council-services/planning-section/local-development-framework/supplementary-planning-documents/daedalus-spd/>

Solent Waders & Brent Goose Strategy (SWBGS). 2010. *Hampshire & Isle of Wight Wildlife Trust*.

UE Associates 2010. *Habitats Regulations Assessment for the Fareham Core Strategy*. http://www.fareham.gov.uk/planning/local_plan/habregassess.aspx

Maps and Appendices

Map 1	Site Location, Nature Designations
Map 2	Habitat Survey Map
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Map 3b	Protected and Notable Species Records – Other

Appendix 1	Appraisal Methodologies
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MAP 1 Site Location & Nature Conservation Designations

KEY

- Site boundary
- 5km linear distance to site boundary
- 2km linear distance to site boundary
- Special Protection Area (SPA)
- RAMSAR site
- Site of Special Scientific Interest (SSSI)
- Local Nature Reserve (LNR)
- Site of Importance for Nature Conservation (SINC)
- Ancient Woodland

SCALE: 1:37,500 at A3

0 500 1,000 1,500 2,000 Metres



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PROJECT: Daedalus

DATE: January 2014

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MAP 2 Habitat Survey Map

KEY

- Site boundary
- Grassland
- Hangar
- Hardstanding
- Scrub

SCALE: 1:800 at A3

0 10 20 30 40 Metres



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CLIENT: Leadbitter

PROJECT: Daedalus

DATE: January 2014

MAP 3a Protected & Notable Species Records - Birds

KEY

- Site boundary
- 2km linear distance to site boundary
- Record only accurate to 1km. Record is placed in SW corner.
- Bar-tailed Godwit
- Barnacle Goose
- Black Tern
- Black-tailed Godwit
- Common Redshank
- Common Scoter
- Common Shelduck
- Common Snipe
- Common Tern
- Corn Crake
- Dunlin
- Eurasian Curlew
- Eurasian Dotterel
- Eurasian Oystercatcher
- Eurasian Reed Warbler
- Eurasian Spoonbill
- European Golden Plover
- European Nightjar
- ▲ Ferruginous Duck
- ▲ Gadwall
- ▲ Garganey
- ▲ Glossy Ibis
- ▲ Goosander
- ▲ Greater White-fronted Goose
- ▲ Green Sandpiper
- ▲ Grey Plover
- ▲ Kentish Plover
- ◆ Little Plover
- ◆ Little Tern
- ◆ Long-tailed Duck
- ◆ Northern Lapwing
- ◆ Northern Shoveler
- ◆ Pied Avocet
- ◆ Purple Sandpiper
- ◆ Red Knot
- ◆ Roseate Tern
- + Ruddy Shelduck
- + Ruddy Turnstone
- + Ruff
- + Sanderling
- + Sandwich Tern
- + Sky Lark
- + Smew
- + Velvet Scoter
- + Whimbrel
- ✱ White Stork
- ✱ Whooper Swan
- ✱ Wood Sandpiper

SCALE: 1:20,000 at A3

0 250 500 750 1,000 Metres



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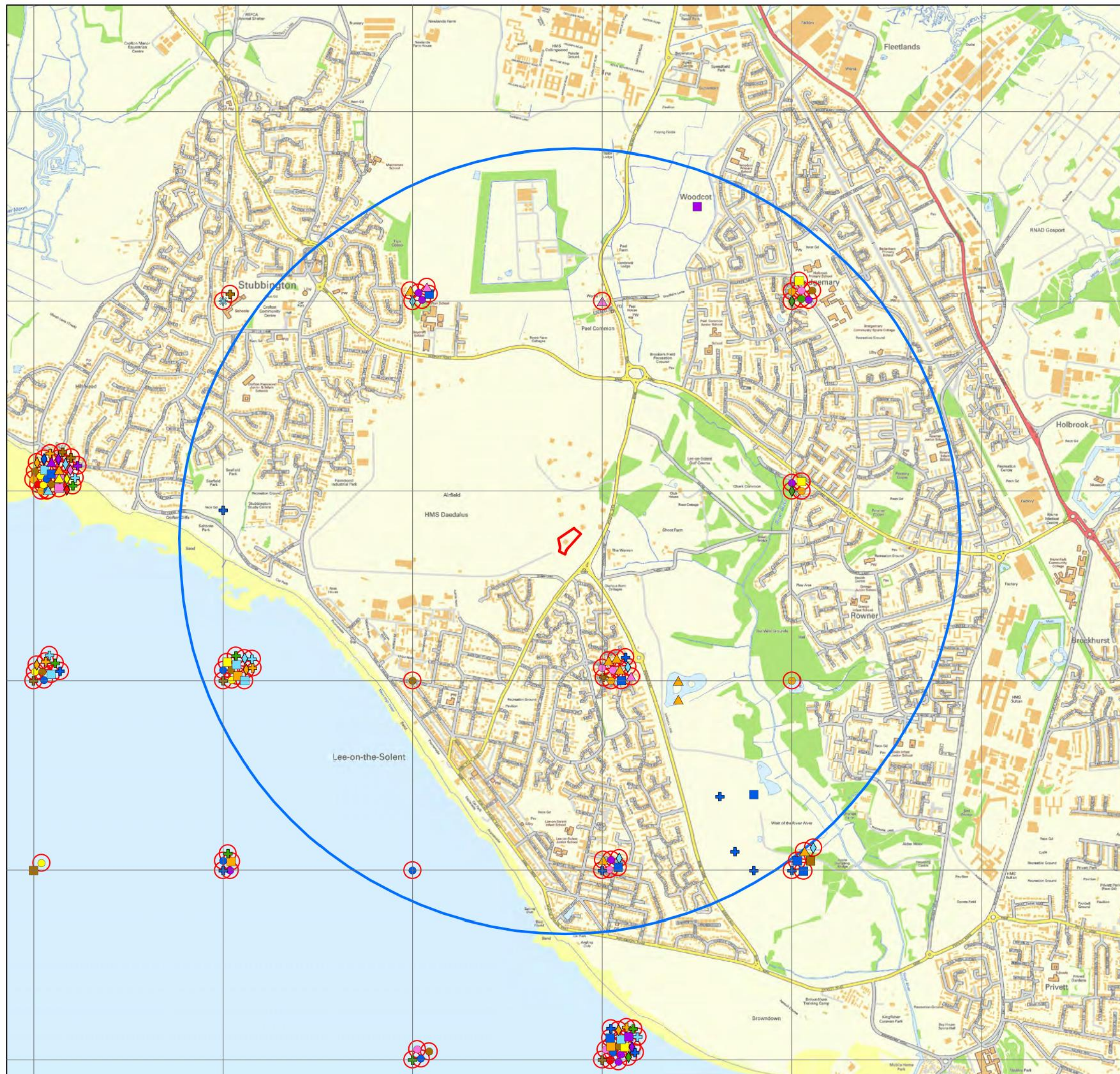
PROJECT: Daedalus

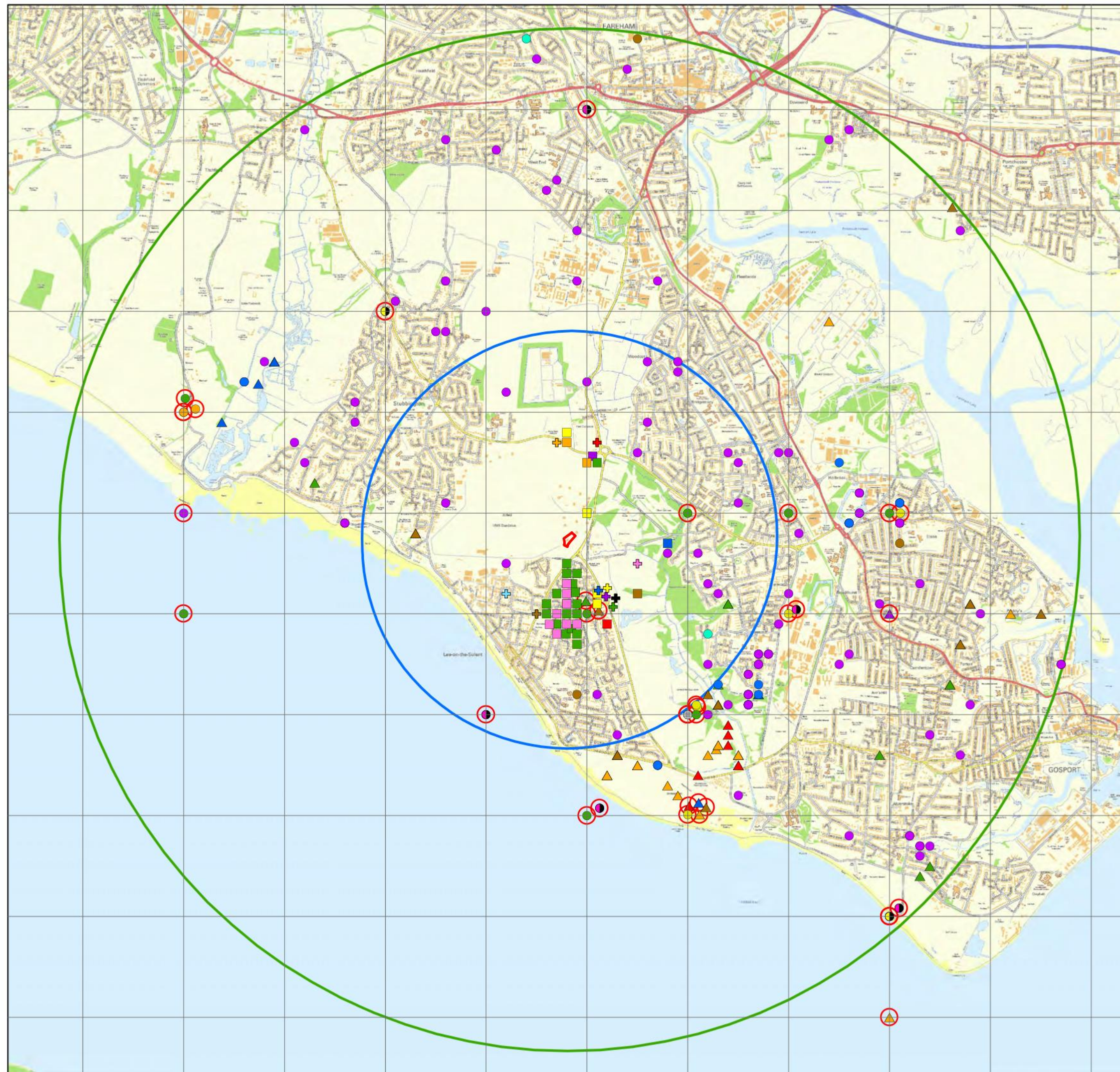
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MAP 3b Protected & Notable Species Records - Other

KEY

- Site boundary
- 2km linear distance to site boundary
- 5km linear distance to site boundary

Bats

- Common Pipistrelle
- Soprano Pipistrelle
- Pipistrelle Bat species
- Brown Long-eared Bat
- Long-eared Bat species
- Noctule Bat
- Daubenton's Bat
- Serotine
- Natterer's Bat
- Whiskered/Brandt's Bat
- Unidentified Bat

Inverts

- + Blood-Vein
- + Brassy Pigmy
- + Chamomile Shark
- + Oak Hook-tip
- + September Thorn
- + Shaded Broad-bar
- + Small China-mark
- + Small Heath
- + Small Square-spot
- + Stag Beetle

Herptiles

- ▲ Adder
- ▲ Common Lizard
- ▲ Common Toad
- ▲ Grass Snake
- ▲ Sand Lizard
- ▲ Slow-worm
- Record only accurate to 1km, record is placed in SW corner.

Plants

- Annual Beard-grass
- Austrian Yellow-crest
- Corn Spurrey
- Early Meadow-grass
- Fringed Water-lily
- Knotted Hedge-parsley
- Meadow Brome
- Purple Small-reed

SCALE: 1:37,500 at A3

0 500 1,000 1,500 2,000 Metres



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Appendix 1

Appraisal Methodologies

Insofar as they are relevant at this early stage of the planning process, the ecological appraisal has been completed following guidance in The Chartered Institute of Ecology and Environmental Management (CIEEM) *Guidelines for the Ecological Impact Assessment in the United Kingdom* (26 June 2006).

DESK STUDY METHODOLOGY

A desk study was carried out in order to gather and refer to existing biodiversity and contextual information with respect to the zone of influence and the wider area. This involved investigation of internet resources, including the Multi-agency Geographic Information for the Countryside (MAGIC) and National Biodiversity Network (NBN), Natural England's Nature on the Map, aerial photos, current Ordnance Survey maps and Old Maps.

In order to obtain contextual information, data on statutory and non-statutory designated wildlife sites within 5 and 2 km respectively was obtained, along with existing biological records of protected and/or notable species within 5 and 2 km respectively.

FIELDWORK METHODOLOGY

Land Use, Habitat Types, Vegetation Communities and Flora

Within the study area the land use, habitat types and landscape features (such as hedgerows and veteran trees) were described and mapped. For each main habitat type the dominant vegetation communities were recorded, along with any notable or indicator plant species, (including Japanese Knotweed where present). A preliminary evaluation of the structure, quality and likely management of each habitat or feature was also carried out.

The survey method used to record this information was based on Phase 1 Habitat Survey methodology (JNCC 1993).

Badgers

Consideration was given to the presence of habitat potentially suitable for supporting Badgers, including woodland and grassland. Potential evidence of the presence of Badgers was looked out for and noted, including earthworks that might be Badger setts, and signs such as dung pits, mammal pathways through ground vegetation and under fences, and hairs on fences.

Bats

Bats use buildings and trees for roosting and breeding and, where present, a preliminary assessment of the potential for these features to support bats was undertaken during the survey. Potential may include gaps beneath roof or hanging tiles, in soffits, or beneath the end of ridge tiles, but also under

the edge of felt on flat roofs. In trees potential roosting features include woodpecker holes, splits in branches and peeling bark.

Preliminary evidence was obtained through noting any staining around potential roost entrances, and looking for bat droppings, for example on window sills.

A preliminary evaluation was also undertaken of potential bat foraging habitat in the area, including woodland, pasture, hedges and watercourses.

Dormouse

The type and quality of habitat with the potential to be suitable for supporting Dormice, such as woodland and hedgerows, was considered during the survey. In particular the presence of oak, hazel and berry-bearing shrubs was noted, and the connectivity of habitat recorded.

Birds

Any birds seen whilst carrying out the survey were recorded, and the type and quality of habitats available for birds was considered, including vegetation suitable for nesting, and habitat with the potential to support valued species, including breeding and wintering birds.

Amphibians

Consideration was given to the presence of habitat potentially suitable for supporting amphibians, including woodland, scrub and rough grassland, and features such as log piles that might provide hibernation areas. Where appropriate, effort to gather direct evidence of amphibians was undertaken by making a preliminary search for resting animals on land by looking under potential refuges, such as stones, wood and rubbish.

Reptiles

The presence and quality of habitat considered potentially suitable for supporting reptiles was recorded. This included areas providing basking and foraging areas, hibernation and breeding sites, such as rough grassland and scrub, banks, burrows, rubble piles, compost heaps, hedgebanks and water bodies.

Invertebrates

Readily identifiable invertebrates seen during the survey were recorded, and habitats and features likely to support noteworthy groups and species were noted, for example herb-rich grasslands, areas of bare ground and deadwood habitats, including woodland and veteran trees.

Appendix 2

Legislation & Planning Policy Relating to Wildlife & Development in England

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This Appendix is intended to provide an overview of the main features of legislation and policy relating to nature conservation in England and the implications for development.

KEY WILDLIFE LEGISLATION

Conservation of Habitats and Species Regulations 2010 (as amended)

The Conservation of Habitats and Species Regulations 2010¹ (known as the “Habitats Regulations”) transpose Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the “Habitats Directive”) into UK legislation. These regulations consolidate all the various amendments made to the preceding “Conservation Regulations” 1994 for England and Wales.

The Habitats Regulations were amended by the Conservation of Habitats and Species (Amendment) Regulations 2012.

The Habitat Regulations provide for the designation of both Special Protection Areas (SPAs) and Special Areas of Conservation (SACs) in the UK, which form part of the Natura 2000 network of protected areas across Europe. The Regulations also prohibit the deliberate capture, killing or disturbance of European Protected Species (EPS), which include *inter alia* Dormouse *Muscardinus avellanarius*, Great Crested Newt *Triturus cristatus*, Otter *Lutra lutra* and all native species of bat, and make it an offence to destroy or damage either the nesting or breeding sites of these species. The above actions can be made lawful through the granting of licenses after Natural England (the licensing authority in England) is satisfied that there are no satisfactory alternatives and that such actions will have no detrimental effect on wild population of the EPS.

Further information on SPAs, SACs and European Protected Species (Licensing and Protected Species) is provided in the relevant sub-sections of this Appendix.

Wildlife & Countryside Act 1981

The Wildlife and Countryside Act 1981² is the principal mechanism for the legislative protection of wildlife in Great Britain. Various amendments have occurred since the original enactment. Certain species bird, animal and plant (including all of the European Protected Species listed above) are afforded protection under Schedules 1, 5 and 8 of the Act. Reference is made to the various Schedules and Parts of this Act (Table A1.1) in the section of this Appendix dealing with Legally Protected Species. The Act also contains measures for the protection of the countryside, National Parks, Sites of Special Scientific Interest (SSSIs) and public rights of way as well as preventing the establishment of invasive non-native species that may be detrimental to native wildlife.

Table A1.1 Key Schedules of the Wildlife & Countryside Act 1981 (as amended)

Schedule	Protected Species
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¹ The Conservation of Habitats and Species Regulations 2010 SI 2010/490. Available from: <http://www.legislation.gov.uk/ukSI/2010/490/contents/made>

² The Wildlife and Countryside Act 1981. Available from: <http://www.legislation.gov.uk/ukpga/1981/69/contents>

Schedule 1 Part 1	Protects listed birds through special penalties at all times
Schedule 1 Part 2	Protects listed birds through special penalties during the close season
Schedule 5 Section 9.1 (killing/injuring)	Protects listed animals from intentional killing or injuring
Schedule 5 Section 9.1 (taking)	Protects listed animals from taking
Schedule 5 Section 9.2	Protects listed animals from being possessed or controlled (live or dead)
Schedule 5 Section 9.4a	Protects listed animals from intentional damage or destruction to any structure or place used for shelter or protection
Schedule 5 Section 9.4b	Protects listed animals from intentional disturbance while occupying a structure or place used for shelter or protection
Schedule 5 Section 9.5a	Protects listed animals from being sold, offered for sale or being held or transported for sale either live or dead, whole or part
Schedule 5 Section 9.5b	Protects listed animals from being published or advertised as being for sale
Schedule 8	Protects listed plants from: intentional picking, uprooting or destruction (Section 13 1a); selling, offering for sale, possessing or transporting for the purpose of sale (live or dead, part or derivative) (Section 13 2a); advertising (any of these) for buying or selling (Section 13 2b).
Schedule 9	Prohibits the release of species listed in the Schedule into the wild.

Further information on legally protected species, designated wildlife sites and invasive non-native species is provided in the relevant sub-sections of this Appendix.

Countryside & Rights of Way Act 2000

Many of the provisions of the Countryside and Rights of Way (CROW) Act 2000³ have been incorporated as amendments into the Wildlife and Countryside Act (1981) and some provisions have now been superseded by later legislation such as The Natural Environment and Rural Communities Act (2006).

The most relevant changes provided by the CROW Act include the added protection given to SSSIs and other important sites for nature conservation. Importantly, under the Act it became a criminal offence to "recklessly disturb" Schedule 1 nesting birds and species protected under Schedule 5 of the Wildlife and Countryside Act. It also enabled heavier penalties on conviction of wildlife offences.

The Natural Environment and Rural Communities Act 2006

The Natural Environment and Rural Communities (NERC) Act 2006⁴ was intended to raise the profile of biodiversity amongst all public authorities (including local authorities, and statutory undertakers) and to make biodiversity an integral part of policy and decision-making process. The NERC Act also improved wildlife protection by amending the Wildlife and Countryside Act 1981.

³ The Countryside and Rights of Way (CROW) Act 2000. Available from: <http://www.legislation.gov.uk/ukpga/2000/37/contents>

⁴ The Natural Environment and Rural Communities Act 2006. Available from: www.legislation.gov.uk/ukpga/2006/16/contents

Section 40 (S40) of the Act places a 'Biodiversity Duty' on all public bodies to have regard to the conservation of biodiversity when carrying out their normal functions. This includes giving consideration for the restoration and enhancement of species and habitats.

Section 41 (S41) of the Act requires the Secretary of State to publish a list of habitats and species which are of Principal Importance for the conservation of biodiversity in England⁵. Public authorities have a responsibility to give specific consideration to the S41 list when exercising their normal functions. For planning authorities, consideration for Species and Habitats of Principal Importance will be exercised through the planning and development control processes. Further information on species and habitats of Principal Importance is provided in the relevant sub-section of this Appendix.

⁵ The S40 list replaces the previously prepared list of habitats and species of Principal Importance for the conservation of biological diversity in England that was published under Section 74 (2) of the Countryside and Rights of Way Act 2000.

PLANNING POLICY & GUIDANCE

Listed below is the main planning policy and government guidance that relates to the conservation of nature and development at all levels of government.

National Level

National Planning Policy Framework (NPPF)

The National Planning Policy Framework sets out the Government's planning policies for England and how these should be applied. The NPPF has a clear "*presumption in favour of sustainable development*" (paragraph 14), with a requirement to consider its economic, social and environmental dimensions. With regard to protecting the natural environment, the NPPF requires that planning decisions should enhance the natural environment and where possible provide net gains for biodiversity.

Section 11 of the NPPF provides guidance on conserving and enhancing the natural environment through the planning system and replaces the preceding *Planning Policy Statement 9 (PPS9): Biodiversity and Geological Conservation*. Section 11 of the NPPF specifies that the planning system should contribute to and enhance the natural and local environment by:

- (i) protecting and enhancing valued landscapes, geological conservation interests and soils;
- (ii) recognising the wider benefits of ecosystem services;
- (iii) 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;
- (iv) 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; and
- (v) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

To minimise impacts on biodiversity, planning policies should:

- (i) plan for biodiversity at a landscape-scale across local authority boundaries;
- (ii) 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;
- (iii) 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; and

(iv) where Nature Improvement Areas are identified in Local Plans, consider specifying the types of development that may be appropriate in these Areas.

When determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:

(i) 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;

(ii) 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;

(iii) development proposals where the primary objective is to conserve and enhance biodiversity should be permitted

(iv) opportunities to incorporate biodiversity in and around developments should be encouraged

(v) 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

(vi) the following wildlife sites should be given the same protection as European sites:

- potential Special Protection Areas and possible Special Areas of Conservation;
- Listed or proposed Ramsar sites; and
- 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.

Paragraph 119 of the NPPF makes it clear that the presumption in favour of Sustainable Development set out by the NPPF does not apply where development requiring Appropriate Assessment under the Birds or Habitats Directive is being considered, planned or determined.

The aim of planning decisions should be to conserve and enhance biodiversity and geological conservation interests. Where granting planning permission would result in significant harm to those interests, local planning authorities will need to be satisfied that the development cannot reasonably be located on any alternative sites that would result in less or no harm. In the absence of any such alternatives, local planning authorities should ensure that, before planning permission is granted, adequate mitigation measures are put in place. Where a planning decision would result in significant harm to biodiversity and geological interests which cannot be prevented or adequately mitigated against, appropriate compensation measures should be

sought. If that significant harm cannot be prevented, adequately mitigated against, or compensated for, then planning permission should be refused.

Government Circular 06/05: Biodiversity and Geological Conservation

The Government produced Circular 06/05⁶ to provide guidance on the application of the law to conservation of nature. The circular covers implications of internationally designated wildlife sites, habitats and species outside of designated sites and protected species. Although some of the information in the circular is now out of date, paragraphs 98 and 99 of the document remain relevant as it sets out the obligation for data on protected species to be collected prior to the submission of an application.

Paragraph 98

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.

Paragraph 99

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. However, bearing in mind the delay and cost that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development. Where this is the case, the survey should be completed and any necessary measures to protect the species should be in place, through conditions and/or planning obligations, before the permission is granted.

Good Practice & Standards

Various forms of guidance are available to manage biodiversity through the development process. Of particular note are 'Planning for Biodiversity & Geological Conservation: A Guide to Good Practice'⁷ and 'Planning to Halt the Loss of Biodiversity (PAS 2010): Biodiversity conservation standards for planning in the United Kingdom - Code of Practice'⁸. These

⁶ ODPM (2005). *Circular 06/05: Biodiversity and Geological Conservation - Statutory Obligations and Their Impact Within the Planning System*. Available from: <http://www.communities.gov.uk/publications/planningandbuilding/circularbiodiversity>

⁷ Office of the Deputy Prime Minister (2006). *Planning for Biodiversity and Geological Conservation: A Guide to Good Practice*. Available from: <http://www.communities.gov.uk/publications/planningandbuilding/planningbiodiversity>

⁸ British Standards Institution (2006). *Planning for Biodiversity & Geological Conservation: A Guide to Good Practice*. Publicly available from: http://www.ukgbc.org/site/document/download/?document_id=590

documents were principally designed to help local planning authorities deliver the national policies in the former PPS9 and comply with legislation. They are also useful to developers and their agents as they outline the expectations of the local authority for the conservation of nature in the development control process.

Regional Level

Regional Planning Policy: The Regional Spatial Strategy (RSS) for the South East

The South East Plan Regional Spatial Strategy (RSS) no longer provides Regional level planning policy applicable to the proposals, as the planning provisions of the Localism Act 2011 came into force in March 2013, revoking the South East Plan.

Sub-Regional Planning Policy: Partnership for Urban South Hampshire (PUSH) – South Hampshire Strategy October 2012

This strategy is not part of Fareham Borough Council's development plan but provides guidance for local plan preparation. The following biodiversity related policy of the South Hampshire Strategy is of potential relevance to the proposals:

Local Level

Fareham Borough Council Development Plan

The following biodiversity related policies are relevant to the proposed development. These are located in the Fareham Local Development Framework which incorporates saved policies of the Fareham Borough Local Plan Review 2000 and the Core Strategy August 2012.

CS12 Daedalus Airfield Strategic Development Allocation

The Daedalus Airfield is allocated for strategic employment development. Development will be permitted where:

- it is demonstrated that it does not adversely affect the existing or future potential general aviation operation of the airfield;
- it does not unacceptably diminish the integrity and function of the strategic gap between Stubbington/Lee-on-the-Solent and Fareham/Gosport;
- it does not adversely affect the integrity of the landscape character of the countryside;
- it can demonstrate that there will be no adverse impacts on European designated sites;
- primary access is from Broom Way (Hangars East) and Gosport Road (Hangars West);
- it does not have an adverse impact on air quality;
- prior consideration is given to the potential extraction of mineral deposits;
- it incorporates the site's heritage where feasible;
- both archaeological and contamination assessments and evaluations are carried out prior to the commencement of development;
- it delivers, or facilitates the delivery of high quality development including:

- a. employment development that retains and strengthens the marine and aviation employment clusters, particularly those that require direct access to an operational airfield;
- b. between 10,000 sq.m and 33,000 sq.m of net additional general, or light industrial or warehousing (associated with aerospace or marine) employment floorspace with only ancillary office accommodation, to contribute towards the overall provision set out in Policy CS1;
- c. the creation of local employment opportunities that take advantage of and develop local skills, including during construction;
- d. open space accessible to residents particularly those of Stubbington and Hill Head;

- e. landscaping and green infrastructure including allotments together with linkages to the existing footpath network and the Alver Valley;
- f. environmental and biodiversity protection and enhancement;
- g. minimising increases in traffic levels and congestion, through sustainable transport arrangements;
- h. a reorganisation and consolidation of existing and new floorspace, including the phased removal of some existing built structures to create an efficient arrangement of buildings and associated activities sympathetic to the landscape and strategic gap, whilst having regard to the specific space and operational requirements of aviation related employment uses;
- i. appropriate utility service provision (water, waste water, energy and communications).

Replacement and new buildings will be energy efficient and be designed to reflect existing building heights and mass and take advantage of site topographical and built features that help to reduce adverse impacts upon residential amenity, landscape character and the integrity of the strategic gap.

Development must take account of the odour contour on the north of the site from the Peel Common waste treatment works.

Policy CS4 Green Infrastructure, Biodiversity and Geological Conservation

Habitats important to the biodiversity of the Borough, including Sites of Special Scientific Interest, Sites of Importance for Nature Conservation, areas of woodland, the coast and trees will be protected in accordance with the following hierarchy of nature conservation designations:

- (i) International - Special Protection Areas (SPA), Special Areas of Conservation (SAC) and RAMSAR;
- (ii) National - Sites of Special Scientific Interest (SSSI) and National Nature Reserves;
- (iii) Local - Sites of Importance for Nature Conservation (SINC), Local Nature Reserves (LNR), other Ancient Woodland not identified in (ii) above;
- (iv) Sites of Nature Conservation Value.

Where possible, particularly within the identified Biodiversity Opportunity Areas, sites will be enhanced to contribute to the objectives and targets set out in UK, Regional, County and Local Biodiversity Action Plans. Green Infrastructure networks, which buffer and link established sites, whilst also enabling species to disperse and adapt to climate change will be maintained and enhanced.

Networks of accessible multi-functional Green Infrastructure will be planned around existing green spaces in urban, urban fringe and rural areas and will be appropriate to the extent and distribution of the existing and proposed population.

Development Proposals will be permitted where Green Infrastructure provision in accordance with the Green Infrastructure Strategy has been integrated within the development where this is appropriate. Development proposals will provide for appropriate access to greenspace for informal recreation to avoid adverse impacts from recreation and other impacts on European and Ramsar sites and on nationally and locally important sites.

In order to prevent adverse effects upon sensitive European sites in and around the Borough, the Council will work with other local authorities (including the Partnership for Urban South Hampshire) to develop and implement a strategic approach to protecting European sites from recreational pressure and development. This will include a suite of mitigation measures, with adequate provision of alternative recreational space for access management measures within and around the European sites and mitigation for impacts on air quality due to road traffic, supported by developer contributions where appropriate. Development likely to have an individual or cumulative adverse impact will not be permitted unless the necessary mitigation measures have been secured.

The Council will, through its Annual Monitoring Report, Local Air Quality Management and ongoing visitor surveys and related activities, scrutinise the effectiveness of the joint strategic approach to avoidance and mitigation of effects on European sites. It will adjust the rate, scale and/or distribution of housing or employment development across the Borough to respond to the findings of new evidence where appropriate, including the Solent Disturbance and Mitigation Project in order to preserve the integrity of European sites.

Sites of geological importance will be protected and enhanced.

Policy C17: Sites of Nature Conservation Value

Development which would adversely affect non-designated sites or features of nature conservation value will be not permitted unless, where possible, provision is made to offset the adverse impact. Where appropriate, a legal agreement will be sought to secure the replacement of habitats or features lost to development.

Policy C18: Protected Species

Development which would adversely affect species, or their habitats, protected by the Habitats Regulations 1994, the Wildlife and Countryside Act 1981 or other legislation will not be permitted unless measures can be undertaken which prevent harm to the species or damage to the habitats. Where appropriate, a permission will be conditioned or a legal agreement sought to secure the protection of the species or their habitats.

The following documents are also relevant to the proposed development;

- **Gosport Borough Council** - Local Development Framework. Daedalus Supplementary Planning Document.
- **UE Associates** - Habitats Regulations Assessment for the Fareham Core Strategy.

Delivering Biodiversity Opportunities

Planning policy and development should avoid adversely impacting features of nature conservation interest as a first principle. If it is not possible to avoid adverse impacts, consideration should be given to ways of minimising the impacts by changes to design, timing or working practices, ideally to the point that the impacts are no longer significant. Where practicable, opportunities should also be sought to achieve a net gain (i.e. enhancement) of biodiversity.

Support for biodiversity enhancement is provided in the key principles of the NPPF and in the Public Authority 'Biodiversity Duty' under the NERC Act 2006. Many ideas for incorporating ecological enhancement into the planning and development can be found in the biodiversity action plans relevant to the policy or development area. Enhancement projects may not just benefit biodiversity. There are many functional benefits to won from strategically planned green infrastructure projects such as semi-natural urban green spaces, sustainable urban drainage schemes (SUDS) and green roofs. Planning conditions and obligations are increasingly being used to mandate biodiversity enhancement on or off a development site, either through design or through financial support.

SITES DESIGNATED FOR THE CONSERVATION OF NATURE

There is a hierarchy of nature conservation sites which is based on the level of statutory protection and the administrative level of importance. Other features of nature conservation interest outside designated sites may also be a material consideration in the determination of planning applications.

Statutory Sites

International & European Important Sites

Ramsar Sites, Special Areas of Conservation (SAC) and Special Protection Areas (SPA)

The Conservation of Habitats and Species Regulations 2010 (as amended) provide the primary legal basis for the protection of Special Areas of Conservation (SAC) and Special Protection Areas (SPA) in Great Britain. Ramsar sites are, as a matter of National planning policy, subject to the same strict protection. Any plan or project considered likely to affect a SAC, SPA or Ramsar Site must be subject to an assessment, as set out under Regulation 61, and Regulation 102 in respect of Land Use Plans.

Ramsar sites are wetlands of international importance. The majority of terrestrial Ramsar sites in England are also notified as SPAs and/or Sites of Special Scientific Interest (SSSIs).

SACs are sites which support internationally important habitats and/or species listed as being of Community Importance in the Annexes of the EU Habitats Directive 1992. SPAs are sites which support internationally important numbers of bird species listed as being of Community Importance in the Annexes of the EU Birds Directive 1979. Together, SACs and SPAs make up the Natura 2000 network of Sites of Community Importance throughout Europe.

Development Control

Development proposals or damaging activities which may affect a European or international site will be subject to rigorous examination by local planning authorities (or other 'competent authority'), through a process commonly referred to as "Habitats Regulations Assessment". The onus is on the developer to provide the necessary information to inform this process.

Under the Conservation of Habitats and Species Regulations 2010 (as amended), the competent authority must determine in the first instance whether a proposed development is likely to have a significant effect on the European or Ramsar site, either alone or in combination with other plans and projects.

If a likely significant effect cannot be precluded on the basis of objective information, the competent authority must undertake an "Appropriate Assessment" to fully assess these implications against the site's conservation objectives. A precautionary approach must be taken with respect to determining whether or not there would be an impact, and the appropriate nature conservation body (in most cases Natural England) should be consulted. Except in certain exceptional circumstances prescribed by the Regulations where there are imperative reasons of

overriding public interest for allowing a development to proceed, the competent authority may not undertake or authorise the plan or project until they have established (based on the conclusions of the Appropriate Assessment) that the activity will not adversely affect the integrity of the European or Ramsar site. This should be the case where no reasonable scientific doubt remains as to the absence of such effects.

Nationally Important Sites

Sites of Special Scientific Interest (SSSI)

The Wildlife and Countryside Act 1981 (as amended) and the CRoW Act 2000 provide the primary legal basis for the protection of Sites of Special Scientific Interest (SSSI). These sites have been designated to capture the best examples of England's flora, fauna, geological or physiographical diversity.

National Nature Reserve (NNR)

NNRs are declared under the National Parks and Access to the Countryside Act 1949 or the Wildlife and Countryside Act 1981. As amended by Environmental Protection Act 1990. They are managed to conserve their habitats or to provide special opportunities for scientific study of the habitats communities and species represented within them. NNRs represent the very best parts of England's SSSIs. The majority of NNRs also have European nature conservation designations.

Development Control

A development proposal that is likely to affect nationally important sites will be subject to special scrutiny by the local authority and Natural England. Certain operations may be permitted. Any potentially damaging operations that could have an adverse effect directly or indirectly on the special interest of the site will not be permitted unless the reasons for the development clearly outweigh the nature conservation and/or geological value of the site itself and the national policy to safeguard such sites.

Regionally & Locally Important Sites

Local Nature Reserves

Local Nature Reserves are declared by local authorities under the National Parks and Access to the Countryside Act 1949 as living green spaces in towns, cities, villages and countryside. They provide opportunities for research and education, or for simply enjoying and having contact with nature. LNRs are usually protected from development through local planning documents which may be supplemented by local by-laws.

Non-Statutory Sites

Local Wildlife Sites

Local authorities may designate non-statutory sites for their nature conservation value based on important, distinctive and threatened habitats and species within a national, regional and local context. These sites are not legally protected but are given some protection through the planning system. These sites may be declared as 'County Wildlife Sites', 'Sites of Importance for Nature Conservation' (SINCs), or 'Sites of Nature Conservation Importance' (SNCIs) in local and structure plans. Non-statutory sites are a material consideration when planning applications are being determined. The precise amount of weight to be attached however will

take into account the position of the site in the hierarchy of sites as set out above. Further information is typically provided in local level planning policy.

Nature Conservation in Areas Outside Designated Sites

Various other features exist outside designated sites that are important for the conservation of nature and which are a material consideration in the planning system.

Biodiversity Action Plans

The UK Biodiversity Action Plan (UK BAP) is the UK Government's response to the Convention on Biological Diversity (CBD) signed in 1992. The UK BAP describes the UK's biological resources and details action plans to conserve the most threatened species and habitats. A review of the UK BAP priority list in 2007 led to the identification of 1,150 species and 65 habitats that meet the BAP criteria at the UK level. The UK BAP is implemented at a local level through county and district level Biodiversity Action Plan. Species and habitats listed on the UK and local BAPs are a material consideration in the planning system.

Habitats of Principal Importance in England

56 of the priority habitats listed on the UK Biodiversity Action Plan 2007 have been identified as Habitats of Principal Importance in England for the conservation of biodiversity under Section 41 (S41) of the NERC Act 2006⁹. The NPPF, Government Circular 06/05, good practice guidance and the NERC Act 2006 place a clear responsibility on planning authorities to further the conservation of these habitats. The conservation of these habitats can be a material consideration in development control decisions and so developers are advised to take reasonable measures to avoid or mitigate impacts to prevent their net loss and to enhance them where possible. Additional guidance to developers is typically provided in local level planning policy.

Networks of Natural Habitats

Networks of natural habitats link sites of biodiversity importance and provide routes or stepping stones for the migration, dispersal and genetic exchange of species in the wider environment. Examples include rivers with their banks, traditional field boundary systems (such as hedgerows), ponds and small woods. Local planning authorities are encouraged through the NPPF to maintain networks by avoiding or repairing the fragmentation and isolation of natural habitats through planning, policies and development control.

⁹ The S41 List of Species & Habitats of Principal Importance in England is available from:
<http://www.naturalengland.org.uk/ourwork/conservation/biodiversity/protectandmanage/habsandspeciesimportance.aspx>

SPECIES PROTECTION

Legally Protected Species

The species listed in the following subsections are protected by law in England. It is essential to determine the presence or likely absence of legally protected species and the extent that they may be affected by proposed development. This can best be achieved by undertaking surveys early in the planning process. Mitigation measures are required to minimise disturbance to protected species and may necessitate a licence. Natural England offers further detailed advice which can be applied to planning applications that affect protected species¹⁰.

Mammals

All wild mammals are protected against cruelty under the Wild Mammals (Protection) Act 1996, which makes it an offence to mutilate, kick, beat, nail or otherwise impale, stab, burn, stone, crush, drown, drag or asphyxiate any wild mammal with intent to inflict unnecessary suffering.

The following species of mammal are protected further by law in England.

Badger

The Protection of Badgers Act 1992 offers considerable protection to both badgers and badger setts. This legislation was enacted to protect the Badger *Meles meles* against baiting and not as a means of species recovery for it is common in England. It is an offence to cruelly treat, kill or take Badgers, but it is also illegal to intentionally or recklessly damage or disturb a badger sett whilst it indicates signs of current use by a Badger.

Natural England has issued guidance to help developers and their proponents avoid sett disturbance and to identify setts that are in current use¹¹. It is important to maintain adequate foraging territory in development proposals affecting badgers as the destruction or severance of large areas of foraging territory could also be taken to include habitat loss. Licences to disturb Badgers and their setts in respect of development may be issued by Natural England provided provisions are made to minimise disturbance.

Bats

There are 18 species of bat in the UK, 7 of which are UK BAP priority species and Species of Principal Importance in England under S41 of the NERC Act 2006. All bats and bat roosts are protected under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended). Bats are also a European Protected Species protected under the Habitat Regulations 2010 (as amended). It is an offence to:

- Intentionally or deliberately kill, injure or capture bats;
- Intentionally, deliberately or recklessly disturb bats in such a way as to be likely to significantly affect the ability of any significant group of

¹⁰ Natural England. 2011. *Standing Advice for Protected Species*. Available from: <http://www.naturalengland.org.uk/ourwork/planningtransportlocalgov/spatialplanning/standingadvice/default.aspx>

¹¹ Natural England (2009). Protection of Badgers Act 1992 (as amended) Interpretation of 'Disturbance' in relation to badgers occupying a sett. Available from: http://www.naturalengland.org.uk/Images/WMLG16_tcm6-11814.pdf

Natural England (2009). Guidance on 'Current Use' in the definition of a Badger Sett. Available from: http://www.naturalengland.org.uk/Images/WMLG17_tcm6-11815.pdf

bats to survive, breed, or rear or nurture their young or the local distribution of or abundance of a species of bat;

- Intentionally, or recklessly damage, destroy or obstruct any place used for shelter or protection (i.e. bat roosts) or intentionally or recklessly disturb a bat whilst it is occupying such a place;
- Damage or destroy a breeding site or resting place of a bat; and
- Possess, sell or transport a bat, or anything derived from it.

Development proposals affecting bats or their roosts require a European Protected Species licence from Natural England.

Birds

48 species of bird on the UK BAP exist in England. These species, plus the Hen Harrier, are also listed as Species of Principal Importance in England under S41 of the NERC Act 2006. All birds are protected under the Wildlife and Countryside Act 1981 (as amended), making it an offence, with certain exceptions (e.g. game birds), to intentionally kill, injure or take any wild bird and to take, damage or destroy their nests or eggs.

Schedule 1 of the Wildlife and Countryside Act 1981 affords extra protection for a number of species and applies harsher penalties for offences. Any intentional or reckless disturbance of a Schedule 1 bird, whilst it is nesting or rearing dependant young, constitutes an offence.

Licences for Development

Licences are required to permit activities prohibited under wildlife legislation, namely the disturbance or capture of protected species or damage to their habitats. Natural England is the licensing authority in England. Licences are only issued for certain purposes, which are set down in the law, and only where there is a valid justification. The licences most relevant to development scenarios are discussed below.

Badger Licences

Licences to disturb Badgers and their setts in respect of development may be issued by Natural England provided provisions are made to minimise disturbance.

European Protected Species Licences

A European Protected Species Licence is required from Natural England to undertake any development that is reasonably likely to result in an offence in respect of a European Protected Species protected under Schedule 2 of the Habitat Regulations 2010 (as amended); including *inter alia* all species of bats, Dormouse *Muscardinus avellanarius*, Great Crested Newt *Triturus cristatus* and Otter *Lutra lutra*. Natural England must be satisfied that the following three tests are satisfied before it will issue a licence covering a European Protected Species:

- 1) 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;

- 2) There is no satisfactory alternative; and
- 3) The proposal will have no detrimental effect to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

Species of Principal Importance in England

943 species have been identified as being of Principal Important in England for the conservation biodiversity under Section 41 (S41) of the NERC Act 2006¹². This list of species includes species found in England which have been identified as requiring action under the UK Biodiversity Action Plan 2007 (plus the Hen Harrier¹³). While these species may not be legally protected there is a clear responsibility on planning authorities to further their conservation. These species can be a material consideration in development control decisions and so developers are advised to take reasonable measures to avoid or mitigate impacts to prevent the net loss of these species and habitats and to enhance them where possible. Additional guidance to developers is typically provided in level planning policies.

¹² The S41 List of Species & Habitats of Principal Importance in England is available from: <http://www.naturalengland.org.uk/ourwork/conservation/biodiversity/protectandmanage/habsandspeciesimportance.aspx>

¹³ The Hen Harrier has also been included on the List because without continued conservation action it is unlikely that the Hen Harrier population will increase from its current very low levels in England.