



14 November 2013

Sara-Kay Martindale
Winchester City Council
City Offices
Colebrook Street
Winchester
SO23 9LJ

Dear Sara-Kay,

Ecological Appraisal: North Walls, Winchester

Thank you for commissioning EPR to carry out an Ecological Appraisal of a site at North Walls, Winchester. I understand that the site represents one of two potential locations for a new leisure centre development, and that several scenarios are being considered for this site, including demolishing the existing centre and rebuilding it elsewhere within the site boundary. This letter outlines potential ecological constraints and opportunities in respect of this scenario, as this has the greatest potential to impact upon ecological features. Should a more detailed development plan emerge in the future, it may be necessary to conduct a revised appraisal.

The methodology I used for this appraisal is set out in **Appendix 1**. I commissioned a data search from Hampshire Biodiversity Information Centre (HBIC) and conducted a desktop study in order to identify features of ecological value that may be affected by the proposed development, including protected and notable species (**Maps 1 and 2**). I also visited the site on 8 November 2013 with my colleague Stephanie West (Senior Ecologist) in order to map and assess the habitats and features present within the site boundary (**Map 3**). During this visit, we also assessed the site for its potential to support protected and notable species.

I have now completed my appraisal, and set out my findings below. In considering the potential for ecological constraints and opportunities, I have also referred to legislation and national and local policies, the details of which are included in **Appendix 2**.

Site description and Zone of Influence

The site at North Walls encompasses an area of approximately 8.7 hectares and is located just north of Winchester city centre (approximate grid reference SU 484 300) (see **Map 1**). The southern half of the site contains the current River Park Leisure Centre buildings, car park, tennis courts and bowling green, and the northern half consists of open playing fields. The site is bordered to the west and south by urban areas, to the east by a tributary stream of the River Itchen and Winnall Moors Nature Reserve, and to the north by further playing fields. A wide stream also bisects the site from north to south and joins the eastern tributary stream in the south-eastern

corner of the site. This stream is itself fed by a ditch that runs along the top half of the western boundary of the site, before curving south-eastwards across the site between the leisure centre and tennis courts. These streams ultimately feed into the River Itchen approximately 300m to the south-east of the site (**Map 1**).

In order to assess any potential ecological issues or constraints related to this development, both in demolition and/or construction and in operation, I have considered the extent to which the development could impact upon the ecological features of the area, or the development's likely "Zone of Influence". Given the small scale of the proposed development and the activities likely to take place, I consider the Zone of Influence to consist of the area contained within the site boundary and its immediate surroundings, as well as a stretch of the River Itchen up to approximately 0.5km downstream of the site.

Constraints

River Itchen SAC and SSSI

The River Itchen is designated both as a Site of Special Scientific Interest (SSSI) and a Special Area of Conservation (SAC), making it a site of international importance. Winnall Moors Nature Reserve, directly adjacent to the site, forms part of the River Itchen SSSI. The SSSI is designated for its classic chalk river characteristics and the additional habitats it supports, including fen meadow, flood pasture and inland and riparian vegetation. The river also supports a range of nationally rare invertebrates, riparian mammals (including Water Vole), various breeding bird species and freshwater fish. The SAC is designated primarily due to the aquatic plants it supports and the presence of Bullhead (a freshwater fish) and Southern Damselfly, but also due to the presence of White Clawed Crayfish, Brook Lamprey, Atlantic Salmon and Otter. Under the Conservation of Habitats and Species Regulations 2010, a competent authority must determine whether a proposed development is likely to have a significant effect on an SAC when assessing a planning application, through a process commonly referred to as "Habitats Regulations Assessment".

The River Itchen is vulnerable to impacts such as siltation and diffuse pollution, which can affect water chemistry and nutrient loads and render the habitat unsuitable for the species for which it has been designated. In the absence of avoidance and mitigation measures, the proposed development activities at North Walls have the potential to contaminate the tributary streams running through and adjacent to the site, and consequently the River Itchen. Potential pollution sources include the run-off of fuel, fertiliser and soil particles from the site.

To prevent this from happening, it will be necessary to adhere to construction best practice and follow the Environment Agency's Pollution Prevention Guidance, which includes specific advice on matters such as fuel storage and wheel washing. This will be particularly important for the section of stream that runs between the current leisure centre buildings and the tennis courts, due to its close proximity to the proposed development activities. I also recommend establishing a 10 metre buffer strip between the watercourses on site and any areas of the playing fields where fertiliser and/or herbicides are applied (see also Opportunities below).

Habitats and Vegetation

The data search revealed that an area of Lowland Mixed Deciduous Woodland, a priority habitat under Section 41 of the Natural Environmental and Rural Communities (NERC) Act 2006, may be present along the course of the main tributary stream in the centre of the site. However, at the site visit we found that this amounts to scattered individual trees of common species such as Weeping Willow, Alder, Hornbeam, and Horse Chestnut. Scattered trees of other common species are also present throughout the rest of the site. The playing fields consist of short mown grass, and ornamental Leylandii hedges surround the tennis courts and bowling green.

The stream banks are mainly bare or supported by wooden boards or concrete, in contrast to the eastern bank of the main stream on the Winnall Moors side, which is heavily vegetated and dominated by Common Reed. The ditch running along the western boundary of the site is heavily vegetated and slow flowing. One section of the western bank of the central stream is overgrown with Stinging Nettle and Bramble, which suggests nutrient enrichment and disturbance.

While the habitats and vegetation found within the site are of limited botanical value in themselves, they do have the potential to support protected species, which are discussed in more detail in the sections below.

Water Vole

The data search returned a large number of records for Water Vole within 2km of the site (**Map 2**), the majority of which are associated with the River Itchen. Suitable Water Vole habitat was also observed along some sections of the watercourses on site, although these were mainly confined to the ditch and stream at the western and eastern edges respectively, rather than along the inner stream banks, which were mainly reinforced with wood or concrete and largely devoid of vegetation. Nevertheless, it is likely that Water Vole use these streams for foraging and travelling within their territories.

As the Water Vole and its habitat are protected under Section 9 of the Wildlife and Countryside Act 1981, no ground works should be undertaken within 5m of the watercourses on site, and if future (detailed) development plans include alteration of any of the stream banks, it will be necessary to undertake further survey work for this species. The mitigation measures outlined above in relation to the River Itchen SAC/SSSI also apply to Water Vole habitat.

Otter

The data search has returned records for Otter within 2km of the site (**Map 2**). The Otter is protected under Schedule 5 of the Wildlife and Countryside Act 1981 and is afforded significant further protection as a European Protected Species under the Conservation of Habitats and Species Regulations 2010.

Although Otters are present within the Itchen catchment I do not consider the habitat located within the site to provide a suitable amount of cover and structure to support any holts. In addition, as the site is by its nature used heavily for recreation, the level of disturbance is likely to be too high for Otters. However it is possible that Otters use the waterways for their nocturnal activities, such as hunting and travelling within their territories. It is therefore not necessary to carry out any further survey for this species unless future plans include changes to the banks and watercourses. The

mitigation measures outlined above in relation to the River Itchen SAC/SSSI also apply to Otter habitat.

Bats

As **Map 2** shows, several bat species have been recorded within a 2km radius of the site. The site also contains ideal bat foraging habitat along its watercourses. During the site visit, we carried out a preliminary ground-level inspection of the trees and buildings within the site boundary to assess their potential to support roosting bats, and found that some of these may have low-medium potential due to the presence of features such as woodpecker holes and dense ivy (trees) and gaps in tiles and lead flashing (buildings). I therefore recommend that further surveys are carried out if this site is taken forward for a planning application. These should include internal building inspections and bat emergence and activity surveys, in accordance with the Bat Conservation Trust's survey guidelines, but we will be able to provide detailed advice on this at a later stage if needed.

All species of British bat and their places of refuge are protected under the Conservation of Habitats and Species Regulations 2010 and the Wildlife and Countryside Act 1981. Under this legislation it is an offence to deliberately kill, capture, or significantly disturb bats, or to damage or destroy their breeding sites or resting places. Should bats be found to be roosting or foraging on site, it may be necessary to apply to Natural England for a European Protected Species Licence (EPSL), which involves designing a short and long-term mitigation strategy for bats. This could include measures such as incorporating sensitive lighting into the development design, and installing bat boxes on the site.

Nesting Birds

The trees and Leylandii hedges on the site may support nesting birds. All nesting birds are protected under the Wildlife and Countryside Act 1981, and so any clearance of trees, scrub or hedges above 50cm in height should be 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.

Opportunities

National planning policy advises that ecological enhancements should be an integral part of development proposals, and opportunities to provide enhancements should be taken wherever possible. Moreover, Policy CP16 of the Winchester District Local Plan Part 1 requires new developments to *"show how biodiversity can be retained, protected and enhanced through its design and implementation, for example by designing for wildlife, delivering BAP targets and enhancing Biodiversity Opportunity Areas."*

The Itchen Valley has been identified as a Biodiversity Opportunity Area (BOA) in Hampshire. This site presents several opportunities for ecological enhancement which would support Policy CP16 by contributing towards the recommendations and targets set out for the BOA, as well as those detailed in the Hampshire and Winchester District Biodiversity Action Plans.

Full details on local plans and policies relating to biodiversity can be found in **Appendix 2**. We will be happy to provide more detailed advice regarding the recommendations below at a later stage, if required.

Buffer zones

Currently, the grass on the playing fields is mown right up to the edge of the watercourses on the site, despite the presence of large trees with canopies extending up to approximately 10m from the banks. Leaving a 10m buffer zone between the playing fields and the watercourses, in which the grass is allowed to develop a longer, more tussocky structure and where no fertilisers or other chemicals are applied, would bring the following benefits:

- Protecting the watercourses (and the River Itchen) from diffuse pollution. This is a specific objective for the Itchen Valley BOA and an action in the Winchester District BAP, and would also support several of the principles outlined in Policy CP16;
- Protecting the stream banks from nutrient enrichment and subsequent colonisation by species such as Stinging Nettle and Bramble, which diminish the value of this habitat for species such as Water Vole. This would contribute towards the objectives of the HBAP Species Action Plan for Water Vole;
- Reducing recreational pressure and disturbance along the stream banks, which in turn reduces erosion and disturbance of wildlife;
- Creating suitable habitat for a number of Species of Principal Importance, including Grass Snake, Slow-Worm, Common Toad, Common Frog and Hedgehog;
- Creating suitable habitat for invertebrates, which in turn enhances foraging opportunities for birds and bats;
- Enhancing the recreational value of the site by creating a more diverse and attractive landscape in an urban area with the potential to support a greater variety of wildlife, which is specified as an action in the Winchester District BAP; and
- Reducing management costs by decreasing the area to be mown and treated with fertilisers.

Bank enhancements

“Rivers, Streams and Canals” are designated as a Priority Habitat in the Hampshire Biodiversity Action Plan (HBAP), and the Winchester District BAP notes that *“It is essential [for a river in good condition] that vegetation structure be maintained because species such as water vole and adult fish rely on year round vegetation cover.”* However, as explained above, many of the stream banks on the site are reinforced with wood or concrete and largely devoid of vegetation.

These banks could be re-profiled and managed to encourage vegetation such as Common Reed to establish, as can be seen on the Winnall Moors side of the eastern boundary stream. This would create suitable habitat for Water Vole (again supporting the Water Vole Species Action Plan) and enhance the ecological value of the site as part of a wider wildlife corridor that links to Winnall Moors and the River Itchen SAC/SSSI. Please note that a Water Vole survey would be required before any such works were undertaken.

Conclusion and Recommendations

In summary, the proposed development at North Walls is unlikely to be constrained by ecological issues or contravene the nature conservation related policy and legislation set out in **Appendix 2**, providing that the mitigation measures and further surveys are carried out as described above. There is also considerable opportunity to enhance the current ecological value of the site, which would support local and national biodiversity policy and contribute towards targets set out for the Itchen Valley BOA and the Hampshire/Winchester District BAPs.

Table 1 summarises the issues that should be taken into consideration when deciding whether to prepare a planning application for the North Walls site. Please note that any detailed development plans that are produced in the future may alter the Zone of Influence used for this Appraisal, in which case we may need to revise our recommendations.

Table 1: *Summary of recommended actions and further surveys*

Feature	Survey / Recommendation	Timing
Streams and ditches	Follow Environment Agency Pollution Prevention Guidelines to prevent diffuse pollution of the watercourses that feed into the River Itchen SAC/SSSI Leave a 10m buffer between the playing fields and watercourses in which grass is allowed to develop a more tussocky structure and fertilisers are not applied	During demolition, construction and operation During demolition, construction and operation
Water Vole	No groundworks to take place within 5m buffer of all watercourses, to avoid impacts on Water Vole habitat No further survey needed unless future development plans include alterations to stream banks and watercourses	During demolition and construction (if applicable) Survey to be carried out between March and October
Otter	No further survey needed unless future development plans include alterations to stream banks and watercourses	(if applicable) Survey can be carried out at any time of year in suitable weather conditions
Bats	Survey: Detailed external and internal inspection of buildings deemed to have bat roost potential, followed by emergence/ re-entry survey if required to confirm presence/ absence of bat roosts.	Internal/external building inspection: Any time of year Emergence/re-entry surveys: May-September (repeat survey may be required over this period)

	Survey: Detailed inspection of trees deemed to have bat roost potential, followed by emergence/ re-entry survey if required to confirm presence/absence of bat roosts	Inspection: During the winter months (when the trees are bare) Emergence/re-entry surveys: May-September (repeat survey may be required over this period)
	Survey: Bat activity surveys to confirm whether bats are foraging/commuting on the site	April-September inclusive
Nesting birds	Clearance of trees or scrub above 50cm in height to be done outside bird nesting season, to avoid disturbance to nesting birds	September to February inclusive

I trust that the above provides you with the information that you require to determine how best to progress with the proposals at North Walls, but please do not hesitate to contact me if you require further information or wish to discuss any of the above points with me.

Yours sincerely,

Approved for Issue by:



Jodie Southgate BA (Hons) MSc
Assistant Ecologist, EPR Ltd



Alison Hogan BSc (Hons) MSc MCIEEM
Director & Principal Ecological Consultant, EPR Ltd

MAPS AND APPENDICES

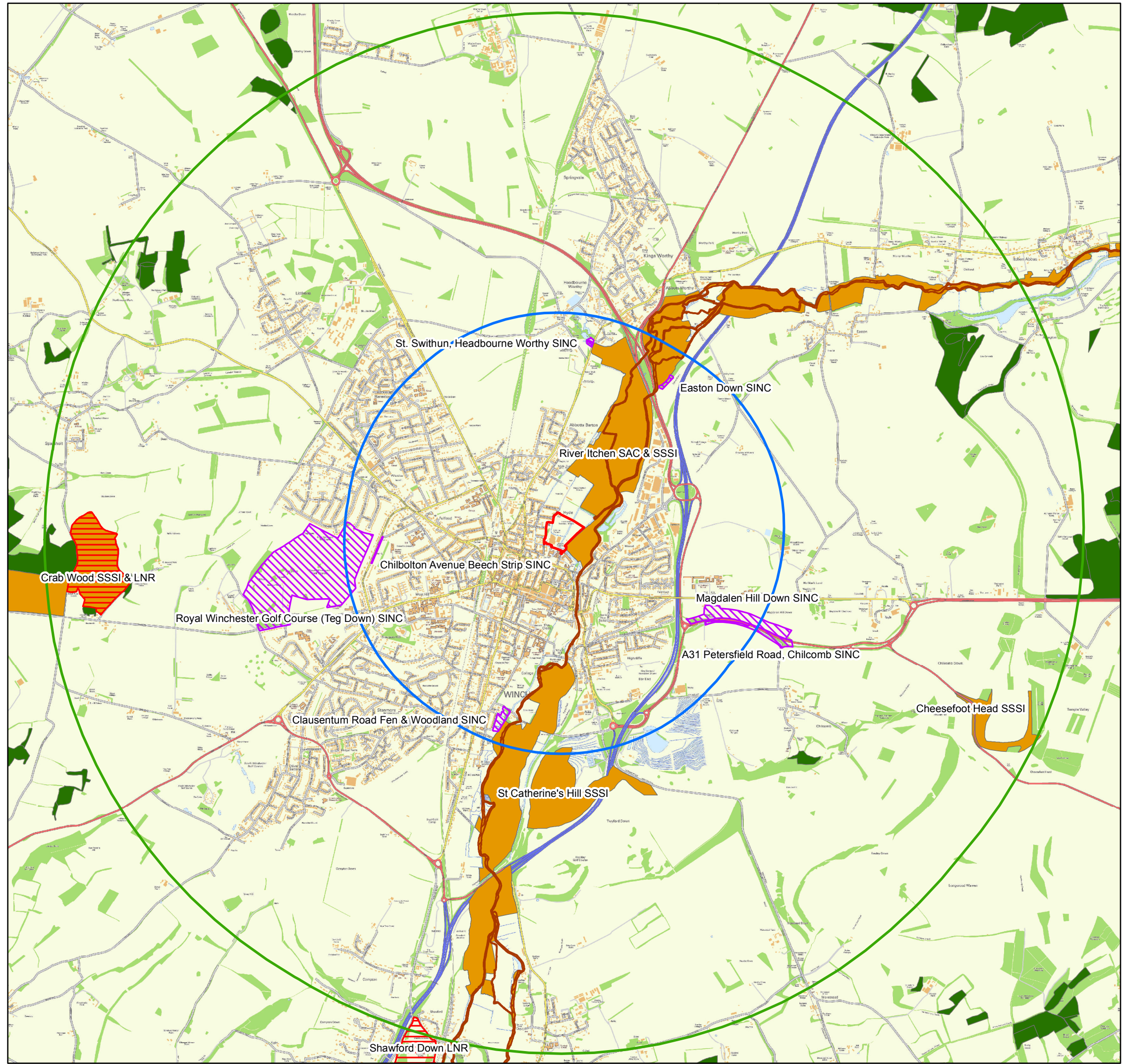
Map 1 Site Location and Nature Conservation Designations

Map 2 Protected and Notable Species (HBIC data search)

Map 3 Habitats and Features









Appendix 1 Appraisal Methodologies

Appendix 2 Relevant Nature Conservation Legislation and Planning Policy



MAP 1 Site Location & Nature Conservation Designations

KEY

-  Site boundary
-  2km linear distance to site boundary
-  2km linear distance to site boundary
-  Special Area for Conservation (SAC)
-  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



CLIENT: Winchester City Council



PROJECT: North Walls, Winchester

DATE: November 2013



MAP 2 Protected Species Records

KEY

-  Site boundary
-  2km linear distance to site boundary




Bats

-  Common Pipistrelle
-  Soprano Pipistrelle
-  Pipistrelle
-  Brown Long-eared Bat
-  Noctule Bat
-  Daubenton's Bat
-  Serotine




Fish

-  Atlantic Salmon
-  Brown/Sea Trout
-  Bullhead
-  European Eel
-  Grayling



Amphibians & Reptiles

-  Common Lizard
-  Common Toad
-  Slow-worm

Mammals

-  European Otter
-  European Water Vole
-  West European Hedgehog

Other

-  Desmoulin's Whorl Snail
-  Southern Damselfly

SCALE: 1:17,173 at A3

0 250 500 750 1,000 Metres



Ecological Planning & Research

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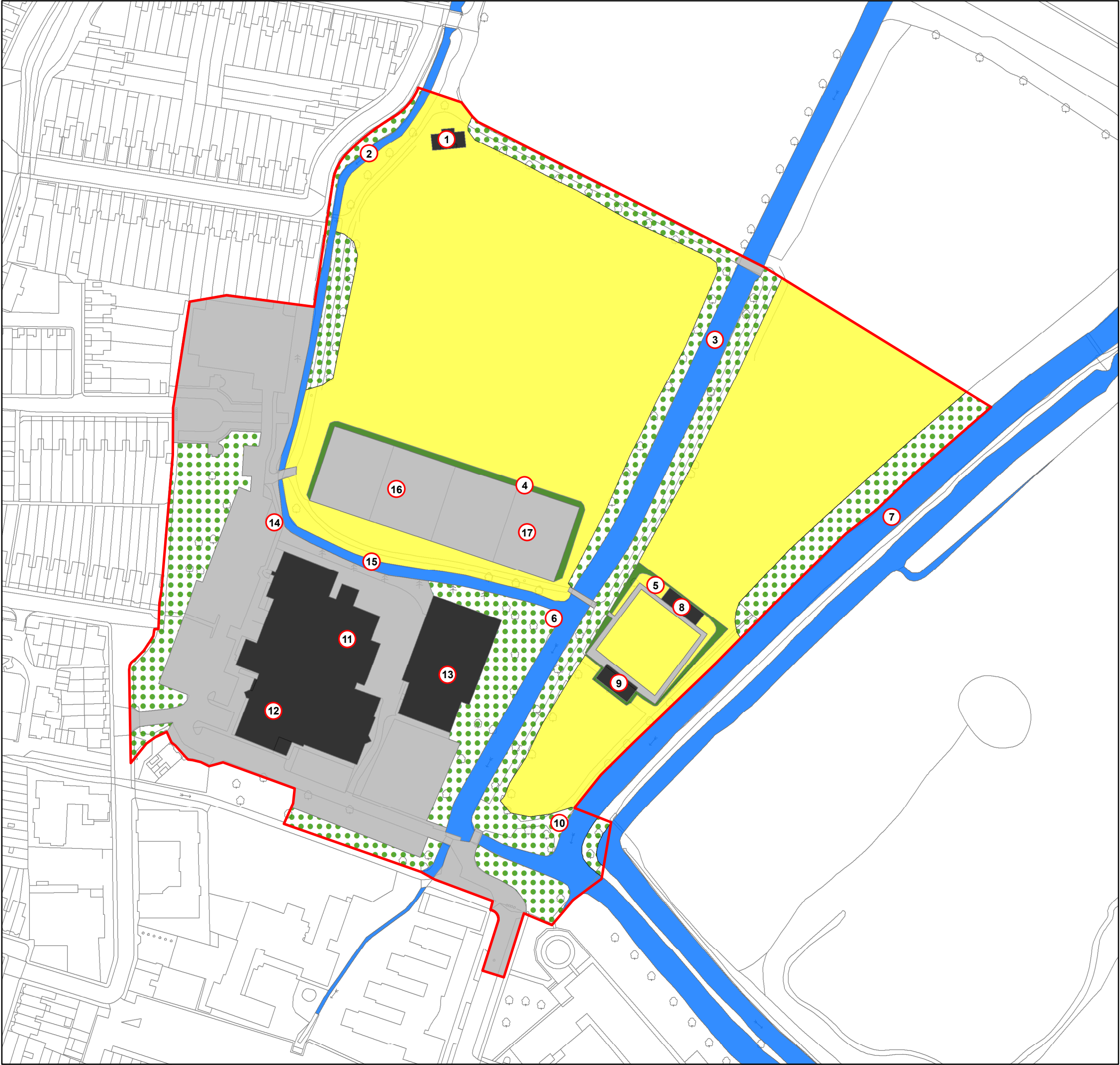
PROJECT: North Walls, Winchester

DATE: November 2013

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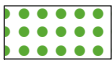

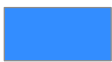



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MAP 3 Habitats & Features

KEY

-  Site boundary
-  Amenity grassland
-  Broadleaved scattered trees
-  Intact species-poor hedgerow
-  Running water
-  Buildings
-  Hardstanding
-  Target note (with ID)

TN	Description
1	Building - negligible bat potential
2	Vegetated ditch, slow running water - potential Southern Damselfly habitat
3	Degraded section of river bank
4	Continuous <i>Leylandii</i> hedge
5	Continuous <i>Leylandii</i> hedge
6	Concrete section of river bank
7	Water vole habitat on eastern bank
8	Building - low to medium bat potential
9	Building - low to medium bat potential
10	Shed - low to medium bat potential
11	Building - low to medium bat potential
12	Building - negligible bat potential
13	Building - negligible bat potential
14	Pollarded tree - medium bat potential
15	Turbid stream
16	Tennis courts
17	Astro Turf

SCALE: 1:1,750 at A3

0 25 50 75 100 Metres



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PROJECT: North Walls, Winchester

DATE: November 2013

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Appendix 1

Appraisal Methodologies

The ecological appraisal has been completed following guidance in The (now Chartered) Institute of Ecology and Environmental Management (IEEM) *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 interrogation of internet resources, including the Multi-agency Geographic Information for the Countryside (MAGIC), aerial photos, current Ordnance Survey maps and old maps. Reference was also made to the UK Biodiversity Action Plan (BAP), the Hampshire BAP and the Winchester District BAP. Citations, conservation objectives and management strategies for the River Itchen SAC and SSSI were also consulted, where available.¹

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. Trees and building were assessed as either having negligible, low, medium or high potential to support roosting bats. 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.

¹ See http://www.sssi.naturalengland.org.uk/Special/sssi/sssi_details.cfm?sssi_id=2000227 (SSSI details), <http://jncc.defra.gov.uk/protectedsites/sacselection/sac.asp?EUcode=UK0012599> (SAC details) and http://www.naturalengland.org.uk/Images/UK0012599-River-Itchen-SAC_tcm6-31835.pdf (SAC conservation objectives)

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

Water Voles

The presence and quality of watercourses with the potential to support Water Voles was recorded during the survey. Potential evidence of Water Voles, including burrows in the tops and vertical face of riverbanks, and feeding evidence was recorded where appropriate.

Common Otter

A preliminary evaluation of the quality of the riparian habitat for potentially supporting Otters was made. Any signs of Otters were recorded, including spraints which are often left in prominent places on river banks, such as logs and bare patches of ground.

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.

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

Relevant Nature Conservation Legislation and Planning Policy

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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.

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>

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

Schedule	Protected Species
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.

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.

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 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.

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;

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.

(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.

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>

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 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

The South East Plan was the Regional Spatial Strategy for Winchester District. It was revoked with effect from 25 March 2013 under Statutory Instrument No. 427 (2013) and no longer forms part of the development plan for the District.

Local Level

The development plan for the Winchester district is currently made up of the *Winchester District Local Plan Part 1 – Joint Core Strategy* and its supplementary planning documents, and saved policies from the *Winchester District Local Plan Review 2006* and its supplementary planning documents. Policies relevant to biodiversity are set out below (my emphasis).

Winchester District Local Plan Part 1 – Joint Core Strategy

Policy CP16 – Biodiversity

"The Local Planning Authority will support development which maintains, protects and enhances biodiversity across the District, delivering a net gain in biodiversity, and has regard to the following:

- protecting sites of international, European, and national importance, and local nature conservation sites, from inappropriate development.*
- supporting habitats that are important to maintain the integrity of European sites.*
- new development will be required to show how biodiversity can be retained, protected and enhanced through its design and implementation, for example by designing for wildlife, delivering BAP targets and enhancing Biodiversity Opportunity Areas.*
- new development will be required to avoid adverse impacts, or if unavoidable ensure that impacts are appropriately mitigated, with compensation measures used only as a last resort. Development proposals will only be supported if the benefits of the development clearly outweigh the harm to the habitat and/or species.*

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

- *maintaining a District wide network of local wildlife sites and corridors to support the integrity of the biodiversity network, prevent fragmentation, and enable biodiversity to respond and adapt to the impacts of climate change.*
- *supporting and contributing to the targets set out in the District's Biodiversity Action Plan (BAP) for priority habitats and species.*

Planning proposals that have the potential to affect priority habitats and/or species or sites of geological importance will be required to take account of evidence and relevant assessments or surveys."

Winchester District Local Plan Review 2006

Saved Policy DP.4

"In order to maintain or enhance the District's townscape and landscape, development will not be permitted where it would detract from, or result in the loss of:

- (i) important public views and skyline features, both in the immediate vicinity and long-range, where site analysis identifies these as being of recognised importance;*
- (ii) slopes;*
- (iii) trees and hedgerows;*
- (iv) open areas important to the townscape or the setting of buildings, including Listed Buildings;*
- (v) the landscape framework, including those 'key characteristics', landscape and built form strategies listed at Appendix 2;*
- (vi) water features, river corridors and other waterside areas;*
- (vii) areas of ecological importance."*

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.

Hampshire Biodiversity Opportunity Areas

The Hampshire Biodiversity Partnership has identified 41 Biodiversity Opportunity Areas (BOAs) in the county, including the Itchen Valley. BOAs enable the restoration and conservation of biodiversity on a landscape scale and are chosen due to their potential for the greatest positive impacts for wildlife. Specific objectives for the Itchen Valley include:

- Reducing diffuse pollution
- Reconnecting the river with its floodplain
- Restoration of floodplain and wetland grassland to support breeding wading birds.

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.

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.

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 Plans. Species and habitats listed on the UK and local BAPs are a material consideration in the planning system.

Winchester District Biodiversity Action Plan

The Winchester District Biodiversity Action Plan contains a number of recommendations and actions to conserve and enhance biodiversity in the district, and contribute towards national and regional biodiversity objectives. 'Rivers, Streams and Canals' are identified as a priority habitat in the Hampshire Biodiversity Action Plan. The following actions are of most relevance to the proposed development at North Walls (my emphasis):

- | | |
|--------------------|---|
| <i>Action:</i> | <i>Create <u>buffer areas</u> around designated BAP habitat</i> |
| <i>Activities:</i> | <i>Fragmented sites containing priority habitat protected by set-aside schemes or similar</i> |
| <i>Outcomes:</i> | <i>Reduced edge effects on BAP habitat</i> |
| | <i><u>Reduced effects of diffuse pollution in river habitats</u></i> |
| | <i>Potential enlargement of fragments through restoration"</i> |
|
<i>Action:</i> |
<i>Create wildlife habitats in urban & suburban areas</i> |
| <i>Activities:</i> | <i>[...] Habitat creation schemes and management for wildlife promoted to owners of</i> |

recreational land and gardens

Outcomes: Create wildlife habitats in urban & suburban areas
Aesthetic appeal for communities increased
Wildlife populations supported

The opportunities identified in this Ecological Appraisal also support the following recommendations outlined in the BAP (my emphasis):

"A river in good condition will have a transition of vegetation, from partially submerged species such as stream water-crowfoot and starwort, to emergent species such as fool's watercress and forget-me-not, grading into grasses, sedges and rushes along the riverbank and the adjoining fens and wet grasslands. It is essential that vegetation structure be maintained because species such as water vole and adult fish rely on year round vegetation cover. This vegetation will support many invertebrate species, which in turn provide food for species such as the pipistrelle bat, Daubenton's bat, grey wagtail, and brown trout. Streamside trees like willow and alder can increase diversity, by providing shelter for species in the form of bat roosts and otter holts." (p35)

"The River Itchen represents a corridor for aquatic species passing through the city of Winchester: the city is not a barrier for otters and trout, but is more of a barrier for water voles and insects which require bankside vegetation during migration – where feasible, removal of engineered banks on rivers and streams helps to create a corridor for such species." (p43)

"Urban parks and other public open spaces can be creatively enhanced for wildlife, adding a feature of public interest as well as enhancing biodiversity. Flower meadows provide a colourful and low-maintenance feature to an edge or corner – they also provide cover for small mammals and nectar for butterflies and bumblebees." (p45)

Species Action Plan: Water Vole

The Hampshire Biodiversity Action Plan includes a Species Action Plan for Water Vole. It identifies the current factors affecting Water Vole (my emphasis):

- *Predation by the American mink.*
- *Increasing fragmentation and isolation of populations, decreasing long-term viability.*
- *Loss of suitable habitat due to inappropriate or lack of management. For example, high intensity grazing destroys vegetation and bank structure, and extensive tree growth casts shadows on the river channel and decreases macrophyte growth.*
- *Habitat destruction due to riparian engineering works or development.*
- *Predation and/or competition with brown rats.*
- *Excessively fluctuating water levels, resulting in seasonally dry habitats or flooding that excludes water voles from burrows.*

It also outlines the following objectives:

- *Maintain existing populations and range of water voles in Hampshire. Ensure no further loss or fragmentation.*
- *Enhance the status of water voles in Hampshire. Enhance the suitability of riparian habitats currently unoccupied by water voles, to increase distribution and decrease fragmentation of populations.*
- *Establish and maintain a comprehensive understanding of water vole distribution, status and ecological requirements within Hampshire through appropriate research, surveying and monitoring.*
- *Promote communication, education and awareness of the status and needs of the water vole.*

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.

Trees & Woodlands

Tree Preservation Orders

Tree Preservation Orders (TPOs) may be declared under the Town and Country Planning Act 1990 and the Town and Country Planning (Trees) Regulations 1999 to protect individual trees and woodlands from development and cutting. TPOs are designed to preserve amenity or landscape conservation. The important of trees as wildlife habitat may be taken into account but alone is not sufficient to warrant a TPO. For this reason, TPOs do not fit comfortably under the remit of nature conservation. Further guidance on TPOs in relation to development is available from the Department for Communities and Local Government¹⁰.

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>

¹⁰ Office of the Deputy Prime Minister (2000). Tree Preservation Orders: A Guide to the Law and Good Practice. Available from:
<http://www.communities.gov.uk/publications/planningandbuilding/tposguide>

Surface & Ground Waters

Surface waters (including flowing and standing water) and ground water can directly and indirectly impact upon the conservation of nature. Careful planning and the application of the Pollution Prevention Guidelines¹¹ can help reduce the risk of construction and maintenance work causing pollution to surface and ground waters. Some activities with the potential to impact watercourses or groundwater may require consent under the Water Resources Act 1991.

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 species¹².

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 and may be affected by the proposed development at North Walls:

Water Vole

The Water Vole *Arvicola terrestris* is a UK BAP priority species and a Species of Principal Importance in England under S41 of the NERC Act 2006. The legal protection for Water Voles was increased in 2008 to fully cover the species under section 9 of the Wildlife and Countryside Act 1981 (as amended). The legislation makes it an offence to:

- Intentionally or deliberately (but not recklessly) kill, injure or take water voles;
- Intentionally, deliberately or recklessly damage, destroy or obstruct access to any structure or place used by Water Voles for shelter or protection;
- Intentionally, deliberately or recklessly disturb Water Voles whilst they occupy a structure or place used for that purpose;
- Sell water voles or offer or expose for sale or transport for sale.
- Possess or control live or dead water voles or derivatives.

¹¹ Environment Agency (2007). Pollution Prevention Guidelines Works and Maintenance In or Near Water: PPG5. Available from: <http://www.environment-agency.gov.uk/netregs/links/107968.aspx>

¹² Natural England. 2011. *Standing Advice for Protected Species*. Available from: <http://www.naturalengland.org.uk/ourwork/planningtransportlocalgov/spatialplanning/standingadvice/default.aspx>

Developers who wish to maintain, build on or alter areas used by Water Voles must ensure that unnecessary damage is avoided and all reasonable steps are taken to minimise impacts on Water Voles and their burrows. The Wildlife and Countryside Act provides a defence against the offences listed above provided the action is the incidental result of an otherwise lawful operation and could not reasonably have been avoided. A conservation licence must be obtained from Natural England before conducting any mitigation involving the capture and handling of this species.

Otter

The Otter *Lutra lutra* is a UK BAP priority species and a Species of Principal Importance in England under S41 of the NERC Act 2006. It is legally protected under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) and is afforded significant further protection as a European Protected Species under the Habitats Regulations 2010 (as amended). Collectively, this legislation makes it an offence to:

- Intentionally or deliberately kill, injure or capture Otters;
- Intentionally, deliberately or recklessly disturb Otters in such a way as to be likely to significantly affect the ability of any significant group of Otters to survive, breed, or rear or nurture their young or the local distribution of or abundance of Otters;
- Intentionally or recklessly damage, destroy or obstruct access to places used by Otters for shelter or protection (whether they occupied or not) or intentionally or recklessly disturb an Otter whilst it is occupying such a place;
- Damage or destroy a breeding site or resting place of an Otter;
- Possess or transport an Otter (or any part thereof) unless under licence; and
- Sell or exchange otters.

Development proposals affecting the Otter require a European Protected Species licence from Natural England.

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 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.

White-Clawed Crayfish

The White-Clawed Crayfish *Austropotamobius pallipes* is a UK BAP priority species and a Species of Principal Importance in England under S41 of the NERC Act 2006. Outside designated sites (e.g. SACs), the White-Clawed Crayfish receives limited protection under Schedule 5 (Sections 9.1, 9.5a and 9.5b) of the Wildlife and Countryside Act 1981 (as amended), the Habitat Regulations 2010 (as amended) and the Salmon and Freshwater Fisheries Act 1975. This legislation does not provide strict protection of individual crayfish or their habitats but it does prevent prohibit the capture of this species without a licence. A conservation licence must be obtained from Natural England before conducting any mitigation involving the capture and handling of this species.

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 relevant to the development scenarios at North Walls are discussed below.

Conservation Licences

In the context of development, conservation licences are normally only relevant to mitigation involving the capture of Water Voles or White-Clawed Crayfish. Conservation licences are granted to permit the trapping and translocation of these species on the condition that the development activity is properly planned and executed and thereby contributes to the conservation of the population of the species.

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 2006¹³. 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 Harrier¹⁴). 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.

Invasive Non-Native Species

There are a number of species not ordinarily resident to the UK. Those which pose a significant threat to our ecology and economy are listed under Schedule 9 of the Wildlife and Countryside Act 1981 (as amended)¹⁵. For an offence to be committed, a species must be released or allowed to escape into the wild. For example, if a plant listed on Schedule 9 is not adequately controlled by a land owner, once they are aware that it is present, and the species is allowed to spread onto adjoining areas, then this could constitute an offence.

¹³ 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>

¹⁴ 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.

¹⁵ The Wildlife and Countryside Act 1981 (Variation of Schedule 9) (England and Wales) Order 2010 No. 609 Article 2. Available from:
<http://www.legislation.gov.uk/uksi/2010/609/article/2/made>