

Construction Environment Management Plan

**199-203 Henley Road and Land to the
Rear of 205-207 Henley Road,
Caversham**



January 2020

Ecology | Green Space | Arboiculture | GIS

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EXECUTIVE SUMMARY

- This Construction Environment Management Plan (CEMP) has been produced by Ethos Environmental Planning to discharge Condition 39 of the granted Full planning permission for the site at Henley Road, Caversham (Planning Reference 190835).
- The CEMP sets out details of the potential impacts of construction on the biodiversity interest of the site.
- Measures to avoid impacts on protected and notable species are detailed including recommendations related to precautionary site clearance, timing of works and general good practice measures.
- A method statement for the protection of badger, bats and reptiles present on site has been included.
- Roles and responsibilities of site personnel are detailed including the requirements of the Ecological Clerk of Works.
- If all recommendations within this CEMP are followed, the habitats and species present on the site will be protected from construction activities during the construction period.

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1 INTRODUCTION

This Construction Environment Management Plan (CEMP) has been produced by Ethos Environmental Planning (Ethos) for the development of Land at 199-203 Henley Road and Land to the rear of 205-207 Henley Road, Caversham (Central Grid Reference SU 73014 75214), hereafter referred to as the 'site'. This CEMP has been produced to discharge Condition 39 of the granted Full planning permission (Planning Reference 190835), which is as follows:

Condition 39: No development shall take place (including demolition, ground works, vegetation clearance) until a construction environmental management plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall include the following:

- a) Risk assessment of potentially damaging construction activities.*
- b) Identification of "biodiversity protection zones".*
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).*
- d) The location and timing of sensitive works to avoid harm to biodiversity features.*
- e) The times during construction when specialist ecologists need to be present on site to oversee works.*
- f) Responsible persons and lines of communication.*
- g) The role and responsibilities on site of an ecological clerk of works (ECow) or similarly competent person.*
- h) Use of protective fences, exclusion barriers and warning signs.*

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

Reason: To minimise impacts on biodiversity in accordance with Paragraphs 170 and 175 of the NPPF and Policy EN12 of the Reading Borough Local Plan 2019.

This document contains details of measures to be implemented during construction in order to avoid and minimise impacts on protected and notable species present on the development site to comply with legislation. The CEMP is intended to cover the construction phase only and mitigation measures related directly to construction activities.

Implementation of all recommendations within the CEMP will be the responsibility of the Developer, with the support of a Suitably Qualified Ecologist (SQE) as and when required. Section 6 provides further details regarding the responsible persons during the construction phase.

1.1 Aims and Objectives

The key aim of the CEMP is to ensure that the ecological interest and sensitive habitats on site are protected during the construction works. The objectives of the CEMP are as follows:

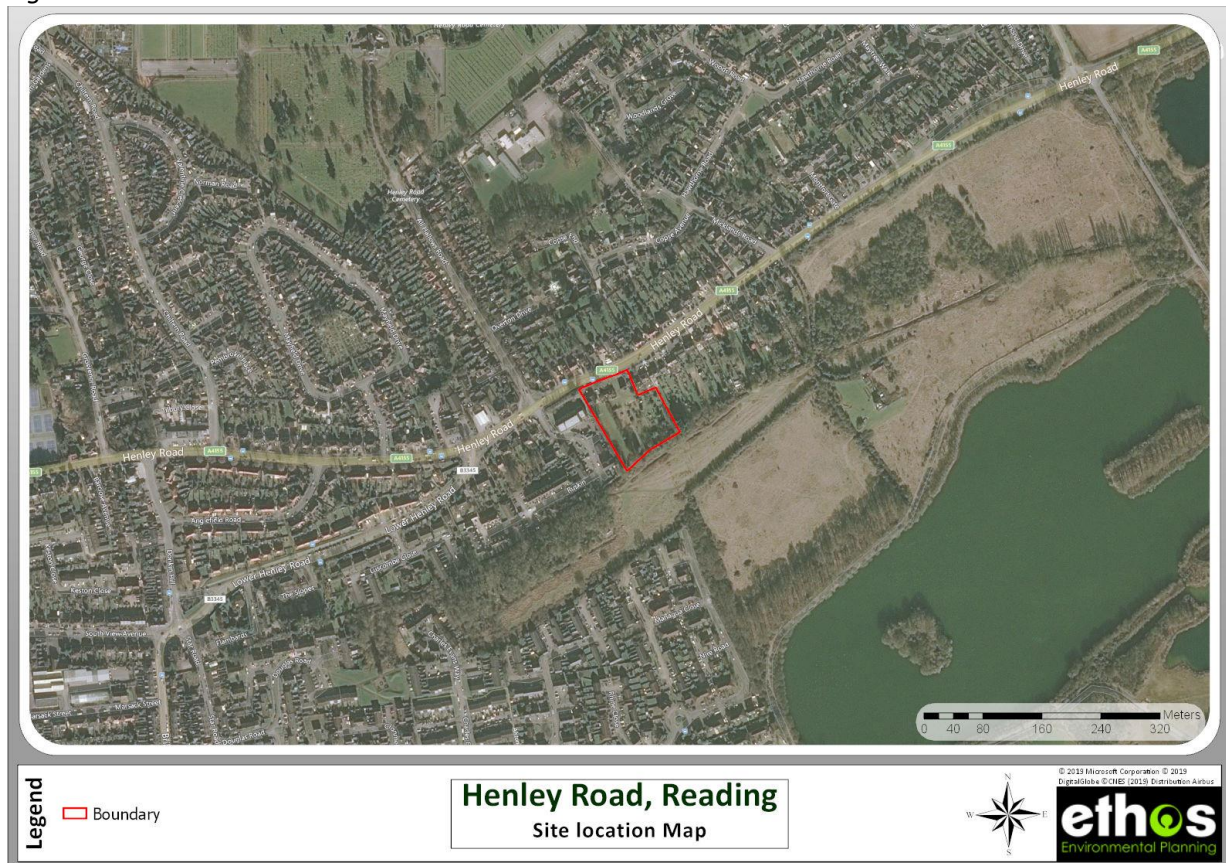
- Set out details of construction activities which have the potential to impact the biodiversity interest of the site, including details of sensitive biodiversity zones which require special protection;
- Set out measures to avoid and mitigate impacts on protected species from construction works;
- Provide details of the locations and timing of works to avoid impacts on protected and notable species;
- Provide details of the roles and responsibilities of the on-site Ecological Clerk of Works (ECoW), including the activities which will require ECoW supervision to mitigate impacts on protected species; and
- Provide details of other on-site personnel who are responsible for the implementation of the CEMP.

1.2 Site Location

The site is located to the south of Henley Road in Caversham (Central Grid Reference SU 73014 75214) and comprises three detached residential properties with associated gardens and outbuildings, as shown in Figure 1.

The site is bordered by Henley Road to the north, by other residential dwellings and gardens to the west and east and by a brook and farmland to the south. The wider environment is dominated by urban development with residential dwellings, gardens and roads to the west and a number of connected waterbodies, Caversham Lakes and farmland to the east.

Figure 1 Site location



1.3 Development Proposals

Development proposals include the demolition of existing structures and construction of a care home (Class C2), communal and ancillary facilities, associated parking and landscaping. Proposals will require the removal of several buildings on site and habitats including hedgerow, amenity grassland, semi-improved grassland and plantation woodland (orchard). Development proposals are shown in Figure 2.

Figure 2 Development proposals



1.4 Structure of the Report

The following sections are included within this report:

- Baseline ecological conditions on site;
- Construction mitigation measures;
- Mitigation and working method statements for protected and notable species;
- Location and timing of works to avoid harm to ecological features; and
- Responsible persons and lines of communication.

2 BASELINE ECOLOGICAL CONDITIONS

2.1 Ecological Survey Results

A Phase 1 Habitat survey and targeted surveys for bats, reptiles, otter and badger were undertaken by Ethos throughout the 2019 survey season. Full survey results are detailed within 'Preliminary Ecological Appraisal. 199-203 Henley Road & Land to the Rear of 205-207 Henley Road, Caversham' (Ethos, April 2019) and 'Protected Species Survey. 199-203 Henley Road & Land to the Rear of 205-207 Henley Road, Caversham' (Ethos, September 2019) and summarised below:

- Habitats present on site were assessed to have generally low botanical value, with the highest value ecological features assessed to be the plantation woodland (orchard) and hedgerows.
- The Schedule 9 invasive non-native species cotoneaster and variegated yellow archangel were identified on site within hedgerows and along the southern boundary of the site.
- Five bat roosts were identified within the buildings on site; a day roost for soprano pipistrelle roost (max count five) within 199 Henley Road, a day roost for common pipistrelle (max count two), Daubenton's bat (max count three) and brown long-eared bat (max count two) within 201 Henley Road and an occasional day roost for soprano pipistrelle (max count one) within 203 Henley Road.
- A tree in the south of the site was identified as an occasional day roost for a single common pipistrelle.
- The central hedgerow (Hedgerow 4) was identified as an important commuting route for bats.
- There were four ponds on site, three of which were assessed as 'below average' to support great crested newt (GCN) and one which was assessed as 'poor' suitability for GCN.
- The targeted reptile surveys identified grass snake (*Natrix natrix*) on the site with a max count of two individuals.
- The targeted otter survey did not identify any evidence of otter along the Berry Brook on the southern boundary of the site.
- An active outlier badger sett was identified along the southern site boundary, with evidence of badger foraging found across the southern portion of the site. Updated monitoring to facilitate the ground investigation works found that during the most recent visit (January 2020), there were no active setts on site.

3 CONSTRUCTION MITIGATION MEASURES

3.1 Risk assessment and mitigation measures

A summary of the key construction mitigation measures has been provided in Table 1

Table 1 Key construction mitigation measures

Ecological Feature	Risk Assessment of Potential Impacts	Mitigation
Retained boundary hedgerows and trees	Damage to roots from construction activities such as vehicles driving over roots or machinery/equipment being stored on roots	Before construction: Root protection zones identified by the arboricultural report and marked out in line with the approved plan with tree protection fencing. The fencing will be marked as 'tree protection fencing' and contractors will be made aware of its presence. During Construction: Any damage to the tree protection fencing will be report to the site manager who will organise for it to be repaired.
Badger (and hedgehog)	Disturbance or damage to outlier sett by vehicles or machinery Injury or death of badgers using the site to commute and forage	(Full details and method statement in section 4.1) Before construction: - Set out construction buffer zone - Pre-construction check for badger presence by suitably qualified ecologist (SQE) During construction: - Footpath construction in close proximity to sett to be undertaken under ecological supervision in a precautionary manner using hand tools if considered necessary by the SQE. - Trenches and excavations covered at night or include an escape ramp to prevent animals from becoming trapped.
Bats	Destruction of bat roosts within buildings on site. Damage or disturbance to bat roost within retained tree (Tree 85) in the south of the site. Disturbance to foraging and commuting bats from construction lighting.	(Full details and method statement in section 4.2) Before construction: - Receipt of bat mitigation licence from Natural England and implementation of mitigation discussed within licence application. - The retained roost within tree 85 will be protected by tree protection fencing. During construction: - Demolition of buildings in line with approved method statement in bat licence. To include a pre-works check for bats in buildings by licensed ecologist. - Soft demolition of suitable bat features on buildings.

Ecological Feature	Risk Assessment of Potential Impacts	Mitigation
		No lighting during construction will face onto the tree with the retained bat roost (Tree 85)
Breeding birds	Accidental damage / disturbance / destruction to nests on site during site clearance or building demolition works.	During construction / site clearance: - Clearance of suitable nesting habitat outside of the breeding bird season (March to September inclusive). - Any vegetation clearance or building demolition to be undertaken during the breeding bird season will be subject to a pre-works check by a suitably qualified ecologist (SQE). Any active nests will be protected by a minimum 5metre buffer zone until the chicks have fledged and an SQE has confirmed that works can proceed.
Reptiles	Injury or mortality of reptiles present on site, particularly during vegetation clearance. Potential for crushing of reptiles by heavy machinery	(Full details and method statement in section 4.3) Before construction / during site clearance: - Vegetation subject to two-stage clearance using hand tools under supervision of an SQE. - Timing of works to minimise impact on hibernating reptiles. - Installation of one-way reptile fencing During construction: - The reptile fencing will be inspected every 2 weeks to ensure it is in good condition. Any damage will be reported to the site manager who will organise its immediate repair; - Good working practices will be adopted by all site contractors to prevent the construction area from providing potential refuge to reptiles. These measures are included in section 3.2
WCA Schedule 9 species	Spread of invasive non-native species offsite through vehicle movements and transfer of materials	Before construction: - Pre-construction check for invasive species by SQE. - Invasive species identified will be suitably fenced and marked with signage by the SQE. During construction: - All site contractors will be briefed regarding the locations of Schedule 9 species on site and the legislation within the Wildlife and Countryside Act related to the spread of invasive species in the wild. - No contractors or machinery will enter the exclusion areas until the cotoneaster and variegated yellow archangel have been removed. - Invasive species will be removed and either buried on site, burnt or transported to a licensed landfill where they will be disposed according to guidelines for contaminated waste. A specialist contractor will be used for the invasive species removal.

3.2 General good practise mitigation measures

The following section details general good practise measures which will be adopted during the entire construction process. It will be the responsibility of the site manager to ensure that all staff are inducted and made aware of these recommendations.

3.2.1 Dust generation

Generation of dust will be mitigated by wetting down and/or the use of screening if appropriate. This will avoid dust deposition on sensitive habitats such as the retained boundary habitats and Berry Brook to the south of the site.

3.2.2 Excavations and trenches

All excavations and trenches will either be covered at night or include an escape ramp to prevent nocturnal species such as badger and hedgehog from becoming trapped. This could be in the form of a roughened plank of wood. The trenches/pits will be inspected each morning to ensure no badgers have been trapped.

3.2.3 Open pipework

Open pipework larger than 150mm outside diameter will be blanked off at the end of each working day to avoid nocturnal mammals entering the pipes and potentially becoming trapped or injured.

3.2.4 Contractors materials and hazardous waste

All chemicals and hazardous materials and waste will be stored in line with best practice guidelines, ensuring they are secure and cannot be accessed by roaming animals. No materials will be stored within the biodiversity protection zone.

3.2.5 Sympathetic working practices:

- Avoid creating potential refuges. Reptiles will use stacked materials such as wood, stone, boards or metal sheets as refugia. Keep the site tidy and store materials off the ground, for example on pallets where possible;
- Store materials away from areas of retained vegetation which are considered suitable for reptiles (e.g. hedgerows);
- Should it be necessary to store materials such as topsoil on site then the stockpile should be smoothed to prevent access by faunal species into potential cavities;
- Staff should simply demonstrate awareness when working and moving materials. Should an animal be found it should be gently moved, for example in a clean bucket, to a suitable location within habitat well away from the working area.

3.3 Biodiversity Protection Zones

Areas of retained vegetation will be protected from damage by implementation of a Tree Protection Plan (TPP) which identifies the root protection zones, as included in the arboricultural method statement. The TPP will also ensure than the confirmed bat roost T85 is protected throughout construction.

The route of the TPP has been extended in the south of the site to protect a larger area of retained habitat. This area is referred to as the Biodiversity Protection Zone, as shown on figure 3 below:

Figure 3 Biodiversity Protection Zone



4 WORKING METHOD STATEMENTS FOR PROTECTED SPECIES

4.1 Badger Method Statement

4.1.1 Background

A pre-construction badger survey will be carried out by an SQE no more than 28 days prior to the start of works on site, as detailed within Condition 37 of the approved planning permission (Application Number 190835).

'No development hereby permitted, including any vegetation clearance, shall commence until a badger sett survey of the development site and immediately adjacent areas has been undertaken (survey to be undertaken within a 28 day period prior to the start of works on site) and a report detailing the results of the surveys has been submitted to and approved in writing by the Local Planning Authority. If surveys show that a licence to disturb a badger sett is required a copy of a valid licence is to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of any licensable works.'

Therefore, a pre-construction badger survey will be carried out prior to the start of works in order to satisfy Condition 37 and ensure that any new signs of badger presence are identified on site and the need for a badger licence is assessed. The pre-works check will also determine the status of the outlier setts, including the need for additional mitigation to protect badgers during construction. This information will then be used to assess the need for a licence to disturb badgers from Natural England.

Monitoring has taken place over a 4-week period during December 2019 and January 2020 which found no evidence of active badger setts on site. A pre-works check has been programmed in for the week commencing 3rd February 2020 and Ethos will provide all results within a separate site note to discharge Condition 37. Figure 4, was created on 31st January 2020, and shows the most up-to-date results at the time.

4.1.2 Method statement

- The route of the tree protection fencing will protect the outlier badger sett in the south of the site (whether it is active or remains disused). The fencing will prevent machinery or contractors from going too close to the sett and will prevent materials from being stored on or near to the sett. The fencing will also discourage badgers from entering the construction area;
- The badgers will continue to have access to the retained habitat as shown in the Biodiversity Protection Zone, figure 4, and will be able to forage in this area throughout the construction process;
- Within this biodiversity protection zone, no works considered likely to impact badgers will be undertaken such as works requiring the breaking of ground, no heavy machinery will move through the area and no materials will be stored within the zone. Additionally, the footpath to be constructed in the south of the site will be created using lightweight machines and hand tools to avoid damaging the ground.

- Excavations and trenches will either be covered at night or include an escape ramp to prevent nocturnal mammals from becoming trapped; and,
- No construction lighting will be used in the south of the site throughout construction. Necessary security lighting will be directional to limit light spill and will be switched on for a limited period of time to provide dark periods, allowing badgers to continue to forage and commute across the south of the site.

Figure 4 Badger mitigation map



4.2 Bats Method Statement

The mitigation strategy for bats is detailed within the method statement document submitted as part of the European Protected Species (EPS) mitigation licence application and is summarised below:

- Before demolition works to 199, 201 and 203 Henley Road commence, the Named Ecologist on the mitigation licence (or accredited agents) will brief any site contractors on the presence of bat species, the legal implications of their presence and the appropriate procedures and control measures to be put in place.
- The two four-chambered free-standing bat boxes and four Schwegler 2F bat boxes will be installed in suitable retained vegetation in the east and south of the site prior to any exclusion/demolition works to buildings 199, 201 and 203 Henley Road.
- A pre-commencement bat survey will be undertaken by the Named Ecologist (or accredited agents) prior to demolition works commencing. The ecologist will inspect the buildings and plug any gaps in timbers or other features which have been recorded clear of bats. The gaps

will be plugged using clean rolls of newspaper, which will remain in place during the soft stripping operations.

- Areas of the buildings considered suitable for bats (e.g. tiles, soffits) will be destructively searched by soft demolition under supervision of the Named Ecologist (or accredited agents) in suitable weather conditions.
- Any bats found during the soft stripping works will be captured and held in accordance with the Bat Workers Manual and released along the southern boundary of the site in the evening in suitable weather conditions. If conditions are not suitable, bats will be relocated to the replacement bat boxes on site. This will be undertaken by the Named Ecologist (or accredited agents).
- Once all suitable roost features have been removed from the buildings and the buildings have been declared free of bats by the Named Ecologist, they will be mechanically demolished.

4.3 Reptile Method Statement

In order to avoid impacts on reptiles present on site, the following precautions will be undertaken:

- A toolbox talk will be given to all contractors by the Ecological Clerk of Works (ECoW) prior to works commencing, which will include key features for identification of UK reptile and amphibian species and instructions regarding sympathetic working practices;
- All areas to be cleared will be searched by the ECOW, potential natural and artificial refugia removed and any faunal species carefully moved by hand to the hibernacula which will be created in advance;
- All vegetation within the proposed construction site footprint will be strimmed down to 15 cm height during the reptile active season (March – September inclusive). Habitat clearance will begin at the north of the site and progress towards the south;
- Vegetation requiring removal which is considered suitable for reptiles (i.e. scrub, grassland, ruderal herbs, hedgerow) will be destructively searched by the ECOW. This will involve carefully checking within and underneath any suitable refugia such as leaf piles, logs, tree trunks, small mammal burrows and rubble;
- Any reptiles or amphibians (excluding GCN) found will be moved to retained habitat along the southern boundary of the site;
- Following a 24-hour period, the vegetation will then be cut down to the ground; and maintained low until commencement of construction. Again, the grassland will be cleared working from north to south;
- One-way reptile fencing will be installed along the edge of the retained wildlife buffer, in line with the tree protection fencing. This will allow any remaining reptiles within the site to move offsite to suitable habitat;
- The reptile fencing will remain in place during the whole construction process;
- The reptile fencing will be monitored every two weeks to ensure that it remains in good condition. Any damage will be reported to the site manager who will organise its immediate repair; and,

- When minor works are required create the footpath and landscaping through the biodiversity protection area, these will be undertaken using hand tools following a pre-works check by an ECoW.

Figure 5 Reptile mitigation map



5 TIMING OF SENSITIVE WORKS TO AVOID HARM TO ECOLOGICAL FEATURES

5.1 Construction Programme

The construction period is anticipated to span from February 2020 until February 2022. Should timings change, the mitigation measures detailed within the CEMP will be reviewed by the ECoW and the Developer will be informed of any necessary amendments.

5.2 Timing of Sensitive Works

The works are and will be programmed as sensitively as possible to avoid or reduce impacts on ecological features. The species-specific method statements and mitigation measures in section 3 have been prepared according to seasonal constraints and seek to avoid the most sensitive periods for protected species.

Protection of trees and hedgerows are all in accordance with BS5837:2012.

The initial vegetation removal is expected to start the week commencing the 17th February 2020. This will focus on the dense vegetation and trees to remove the suitable bird nesting habitat prior to the breeding season.

Subsequent vegetation clearance of suitable reptile habitat will commence in early March 2020, or earlier if there has been a sustained period of mild weather and reptiles are likely to be active.

The reptile fencing will be installed following the site clearance and remain in situ for the entire construction process until landscaping works commence in the propose wildlife area. It is expected that these works will be carried out at the end of the built program, when the need for reptile fencing would then be redundant.

6 RESPONSIBLE PERSONS AND LINES OF COMMUNICATION

6.1 Ecological Clerk of Works

An ECoW will be appointed to oversee matters concerning protected species during the site clearance works and the construction period (as necessary). The ECoW will also give on-going support as and when required. The contact details of the supervising ecologist will be left on site.

6.2 Toolbox Talk

The Lead Contractor, and other supervisors as deemed appropriate, will be given a toolbox talk by the appointed ECoW.

This will comprise:

- The legal protection afforded to protected species;
- The precautionary methods of working (outlined in this document);
- Photographs will be shown to make contractors/sub-contractors familiar with the characteristics of different faunal species;
- Contractors will be made aware of the sensitive habitats on site; and
- The procedures to follow in the event that any protected species are discovered during the works.

It will be the responsibility of the Lead Contractor to ensure that ALL site operatives, including sub-contractors are informed of the CEMP, the ECoW contact details, and will receive a briefing on the CEMP as and when appropriate. Site inductions will contain details on the ecologically sensitive areas present on site.

Works that require the presence of an ECoW will be preceded by a toolbox talk relevant to that activity, which will be given by the ECoW to all operatives directly involved with that activity.

6.3 CEMP Summary

Table 2 presents a summary of the construction mitigation measures, species at risk, responsibilities and timing of year the works are to be undertaken.

Table 2 Summary of construction mitigation measures to avoid impacts on biodiversity

Objective	Mitigation Measure	Responsibility	Timing of Works
Identification of 'Root Protection Zones' and protection of	Appropriately fence root protection zone areas as detailed on TPP.	Lead Contractor Site Manager	Any time of year

Objective	Mitigation Measure	Responsibility	Timing of Works
retained trees and hedgerows			
Identification of badger presence on site	Badger method statement, see section 4.1	Site Manager to instruct a Suitably Qualified Ecologist for pre-works check Site Manager to instruct contractors to cover excavations at night / include ramps	Any time of year Prior to commencement of site clearance and construction activities
Identification of the presence of breeding birds on site	Pre-works check of vegetation requiring removal during the nesting season (March – September)	Site Manager to instruct an ECoW Site Manager to make all contractors aware of the need to contact an Ecologist if an active bird nest is found in areas to be cleared	March to September inclusive
Identification and removal of Schedule 9 invasive species on site	Pre-works check of vegetation requiring removal and deployment of suitable fencing and signage as appropriate	Site manager to instruct an ECoW to mark out areas of invasive species Site manager to appoint specialist contractors for invasive species removal	March to October inclusive
Provision of replacement bat roosts on site	Deployment of free-standing bat boxes and Schwegler 2F bat boxes in suitable retained vegetation in the east and south of the site	Site manager to instruct an ECoW ECoW to advise locations and install free-standing boxes if required	Any time of year Prior to any exclusion/ demolition works to buildings 199, 201 or 203 Henley Road
Precautionary removal of buildings on site	Mitigation strategy identified within the bat mitigation licence will be followed, see section 4.2	Named licence holder will be responsible for ensuring the licence is followed Lead Contractor Site Manager Named Ecologist / Accredited Agents on bat mitigation licence	May to June 2020 Upon receipt of bat mitigation licence, within period specified within Work Schedule
Protect reptiles from impacts of construction	Reptile method statement will be followed, see section 4.3	Lead Contractor Site Manager to appoint ECoW and brief contractors. Site manager to organise monitoring and maintenance	March to October inclusive

Objective	Mitigation Measure	Responsibility	Timing of Works
	Install and maintain reptile fencing in good state of repair	of reptile fencing every 2 weeks during construction ECoW to advise location of fencing and undertake pre-works checks Vegetation clearance contractors	
Minimise light spill from construction works and compound lighting	Restrict working hours to daylight hours. Turn off any unnecessary site lighting. Use measures such as timers, motion sensors, low-level /directional lighting.	Lead Contractor Site Manager Lighting specification, position and mitigation measures to be undertaken with advice from ECoW if lighting is needed after dusk in the autumn and winter months	During all site clearance and construction works
Minimise impacts of construction on retained on and offsite habitat	Follow the general good working practice mitigation measures (section 3.2)	Lead Contractor Site Manager to ensure all site personal are inducted and made aware of these requirements. Site manager to ensure that all measures are being adhered to	During all site clearance and construction works.
Avoidance of accidentally trapping animals in open excavations / trenches	All excavations and trenches will either be covered at night or include an escape ramp	Lead Contractor Site Manager	During all site clearance and construction works.

APPENDIX 1 PROTECTED SPECIES LEGISLATION

A.1 Bats

All British bats are fully protected under Section 9 Schedule 5 of the Wildlife and Countryside Act 1981 and amendments. Agreement, and are fully protected under The Conservation of Habitats and Species Regulations 2017. In addition, they are protected under the Berne Convention; they are given migratory species protection within the Bonn Convention. Regulation 43 (1) of The Conservation of Habitats and Species Regulation 2017 makes it an offence to:

- deliberately capture, injure or kill any species of bat;
- deliberately disturb any species of bat;
- damage or destroy a breeding site or resting place of any species of bat.

It is an offence to disturb any bat roosting site, whether the bats are there or not. Under Regulations 43 (2) disturbance includes in particular any disturbance which is likely:

- To impair their ability
 - to survive, to breed or reproduce, or to rear or nurture their young; or
 - in the case of a hibernating or migratory species, to hibernate or migrate; or
- To affect significantly the local distribution or abundance of the species to which they belong.

Presence of bats does not necessarily mean that development cannot go ahead, but that with suitable, approved mitigation, exemptions can be granted from the protection afforded to bats under regulation 43 by means of a licence. Natural England (NE) is the appropriate authority for determining licence applications for works associated with developments affecting bats, including demolition of their roost sites. In cases where licences are required, certain conditions have to be met to satisfy Natural England. Before the Statutory Nature Conservation Organisation (SNCO), in this case NE, can issue a licence to permit otherwise prohibited acts three tests have to be satisfied under the requirement of Regulation 55. These are:

1. Imperative Reasons of Overriding Public Interest [Reg 55(2)(e)];
2. No Satisfactory Alternative [Reg 55(9)(a)];
3. Maintenance of Favourable Conservation Status [Reg 55(9)(b)].

In order to meet the tests, SNCO usually expects the planning position to be fully resolved as this is necessary to satisfy tests 1 and 2. Full planning permission, if applicable, will need to have been granted and any conditions relating to bats fully discharged. ahead of any licence application to the SNCO. The LPA have a legal duty under The Conservation of Habitats and Species Regulations 2017, to assess whether the application is likely to meet the Three Tests and therefore the requirements for Natural England licensing, prior to determination of an application The Licence application process may take two months before a licence is issued. Planning Permission and granting of a bat licence are separate legal functions. Therefore receiving planning permission from the Local Authority is no guarantee that the SNCO will issue a derogation licence.

A.2 Badger

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

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

Sett interference includes damaging or destroying a sett, obstructing access to a sett, and disturbing a badger whilst it is occupying a sett. It is not illegal, and therefore a licence is not required, to carry out disturbing activities in the vicinity of a sett if no badger is disturbed and the sett is not damaged or obstructed.

Development should not be permitted unless it is possible to take steps to ensure the survival of the badgers in their existing range and at the same population status, with provision of adequate alternative habitats if setts and foraging areas are destroyed. Natural England will normally only issue a licence after detailed planning permission has been granted, where applicable, so that there is no conflict with the planning process.

Before the planning application is determined, the local planning authority should request a detailed ecological survey/report and developers should be prepared to provide the following information:

- The numbers and status of badger setts and foraging areas that are affected by the proposal;
- the impact that the proposal is likely to have on badgers and what can be done by way of mitigation;
- judgment on whether the impact is necessary or acceptable; and
- a recommendation on whether a licence will be required.

A badger survey usually requires assessment of the site and a 30-50m buffer area as tunnels can extend up to 20m from sett entrances. As badgers are not a European Protected species the Three Test do not need to be applied, however Planning Permission and badger licensing are separate legal functions. Thus receiving planning permission from the Local Authority is no guarantee that development operations will not breach the Protection of Badgers Act 1992. Similarly planning permission does not guarantee that a badger licence will be granted.

A.3 Birds

All wild birds are protected under the Wildlife and Countryside Act 1981 (as amended) and cannot be killed or taken, their nests and eggs taken, damaged or destroyed while their nest is in use or being built. It also prohibits or controls certain methods of killing or taking except under licence. Other activities that are prohibited include possession and sale. Activities such

as killing or taking birds (including relocating) which would otherwise be illegal can be carried out under licence where there is suitable justification and the issue cannot be resolved by alternative means.

Specially protected or Schedule 1 birds receive full protection under the Wildlife and Countryside Act 1981 (as amended). Part I birds are protected at all times, Part II during the close season only. In addition to the protection from killing or taking that all birds, their nests and eggs have under the Act, Schedule 1 birds and their young must not be disturbed at the nest.

A.3 Reptiles

All reptile species in Great Britain receive some legal protection from legislation in the Wildlife and Countryside Act 1981 (as amended), and the two rarest species are afforded additional protection by European law (The Conservation of Habitats and Species Regulations 2017). Both the Wildlife and Countryside Act 1981 and Habitat Regulations 1994 provide mechanisms to protect species, their habitats and sites occupied by the species.

The two European protected species, **Sand lizards** (*Lacerta agilis*) and **Smooth snakes** (*Coronella austriaca*), receive all elements of protection in Section 9 of the Wildlife and Countryside Act 1981 (as amended) and Conservation of Habitats and Species Regulations 2017:

These pieces of legislation prohibits the following on any of the above species:

- Deliberately or intentionally killing and capturing (taking) or intentional injuring.
- Deliberately disturbing
- Deliberately taking or destroying eggs
- Damaging or destroying a breeding site or resting place or intentionally damaging a place used for shelter or protection.
- Intentionally obstructing access to a place used for shelter; and keeping, transporting, selling or exchanging; offering for sale or advertising.

Under Regulations 43 (2) (The Conservation of Habitats and Species Regulations 2017) disturbance includes in particular any disturbance which is likely:

- To impair their ability
 - to survive, to breed or reproduce, or to rear or nurture their young; or
 - in the case of a hibernating or migratory species, to hibernate or migrate; or

To affect significantly the local distribution or abundance of the species to which they belong.

Species that receive protection against intentional killing, injuring and sale only from Schedule 9 of the Wildlife and Countryside Act 1981 (as amended): **Slow-worm** (*Anguis fragilis*), **Common lizard** (*Lacerta vivipara*), **Adder** (*Vipera berus*) and **Grass snake** (*Natrix natrix*).

Both the Wildlife and Countryside Act 1981 and The Conservation of Habitats and Species Regulations 2017 apply to all life stages of the protected species: i.e. eggs and spawn, larvae, juveniles and adults are all protected.