

# Preliminary Ecological Appraisal Land off Selbourne Road, Leek



Final Report

Report no. P57.T88.12  
31<sup>st</sup> May 2012

Dave Haslam MSc MIEEM

Staffordshire  
Ecological Services  
The Wolseley Centre  
Wolseley Bridge  
Stafford  
ST17 0WT

Tel: 01889 880 124



# Project

Preliminary Ecological Appraisal  
Land off Selbourne Road, Leek

Report No: P57.T88.12

Date: 31<sup>st</sup> May 2012

Description: Preliminary Ecological Appraisal

## Client Details

Mr M Briand

## Author

Dave Haslam MSc MIEEM

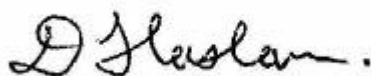
## Checked by



Principal Ecologist

## Disclosure

*The information which I have prepared and provide is true, and has been prepared and given in accordance with the guidance of my professional institution's Code of Professional Conduct, and I confirm that the opinions expressed are my true and professional opinions*



Dave Haslam MSc MIEEM  
Principal Ecologist  
Staffordshire Ecological Services  
Direct dial: 01889 880 124  
Switchboard: 01889 880 100  
Email: [d.haslam@ses-gb.co.uk](mailto:d.haslam@ses-gb.co.uk)  
Web: [www.ses-gb.co.uk](http://www.ses-gb.co.uk)

# Executive Summary

## *Background*

- On 23<sup>rd</sup> May 2012 SES conducted a Preliminary Ecological Appraisal in the form of an Extended Phase 1 Habitat survey of land at Selbourne Road, Leek to support a proposal to remove vegetation from the site for sewer works.

## *Habitats*

- Main habitats onsite include ruderal, species poor grassland, scrub and standard trees.
- No protected or Biodiversity Action Plan habitats are present onsite.
- It is recommended that prior to the removal of trees and scrub, they are inspected for nesting birds.
- No further survey regarding habitats or plant species is required.
- No invasive species were identified during the survey.

## *Protected Species*

- There were no signs of protected species use of the site at the time of the survey.
- No further survey regarding protected species is recommended.
- The site is considered to be of low value to ground nesting birds. The only potential bird nesting habitat affected is the scrub and standard trees on the boundary of the site. Reasonable avoidance measures are recommended when removing trees and scrub (see section 5.4).

# Contents

1	Introduction .....	3
2	Methodology .....	4
3	Results.....	8
4	Evaluation and Impacts.....	13
5	Recommendations & Mitigation .....	16
6	Legislative and planning context.....	18
7	Bibliography .....	21
	Appendix A – Legal information .....	22
	a) Badger.....	22
	b) Bats.....	23
	c) Nesting Birds .....	24
	Appendix B: Wildlife friendly planting list.....	26

# Figures

Figure 2.1: Site boundary .....	5
Figure 3.1: Designated sites within 1km.....	8
Figure 3.2: Aerial photography.....	9
Figure 3.3: Phase 1 Habitat Map .....	10

# Tables

Table 2.1: Survey schedule.....	4
Table 2.2: Scope.....	4
Table 3.1: Bat records within 1km.....	12

# Plates

Plate 3.1 Species poor grassland. ....	11
--	----

# 1 Introduction

1.1 Staffordshire Ecological Services Ltd. was commissioned in May 2012 by Mark Briand to undertake a Preliminary Ecological Appraisal of land off Selbourne Road, Leek (OSGR SJ982 559).

1.2 The Preliminary Ecological Appraisal has been commissioned to inform a proposal to remove the vegetation in the south western corner of the site for sewer works.

1.3 Approach :

- Record and map habitats on the site
- Record dominant botanical species and check for invasive species
- Assess the potential for protected species presence
- Evaluate (where appropriate) the ecological features recorded
- Assess which ecological features may be subject to impact
- Identify the requirement for further, more detailed survey in order to establish potential impacts
- Identify potential for contravention of statutory and non-statutory nature conservation legislation and policy
- Make recommendations regarding further survey, mitigation or enhancements to ensure compliance with statutory and non-statutory nature conservation legislation and policy

## 2 Methodology

Table 2.1: Survey schedule

Survey details	Weather conditions	Surveyors
23 <sup>rd</sup> May 2012	22°C, warm, sunny no wind.	Richard Pearce BSc (Hons) SES Ecologist  Charlotte Eva BSc (Hons) SES Assistant Ecologist

### 2.1 Scope

The 'site', as defined in red on Figure 2.1, consists of approximately 0.2ha of species poor/ruderal grassland bordered by standard trees and scrub.

The site is immediately surrounded by residential development.

The following criteria were used to determine the type and extent of the surveys carried out:

- Habitats present both on and immediately around the site
- The proximity and nature of protected / notable species records
- Proximity of designated sites.
- Available access

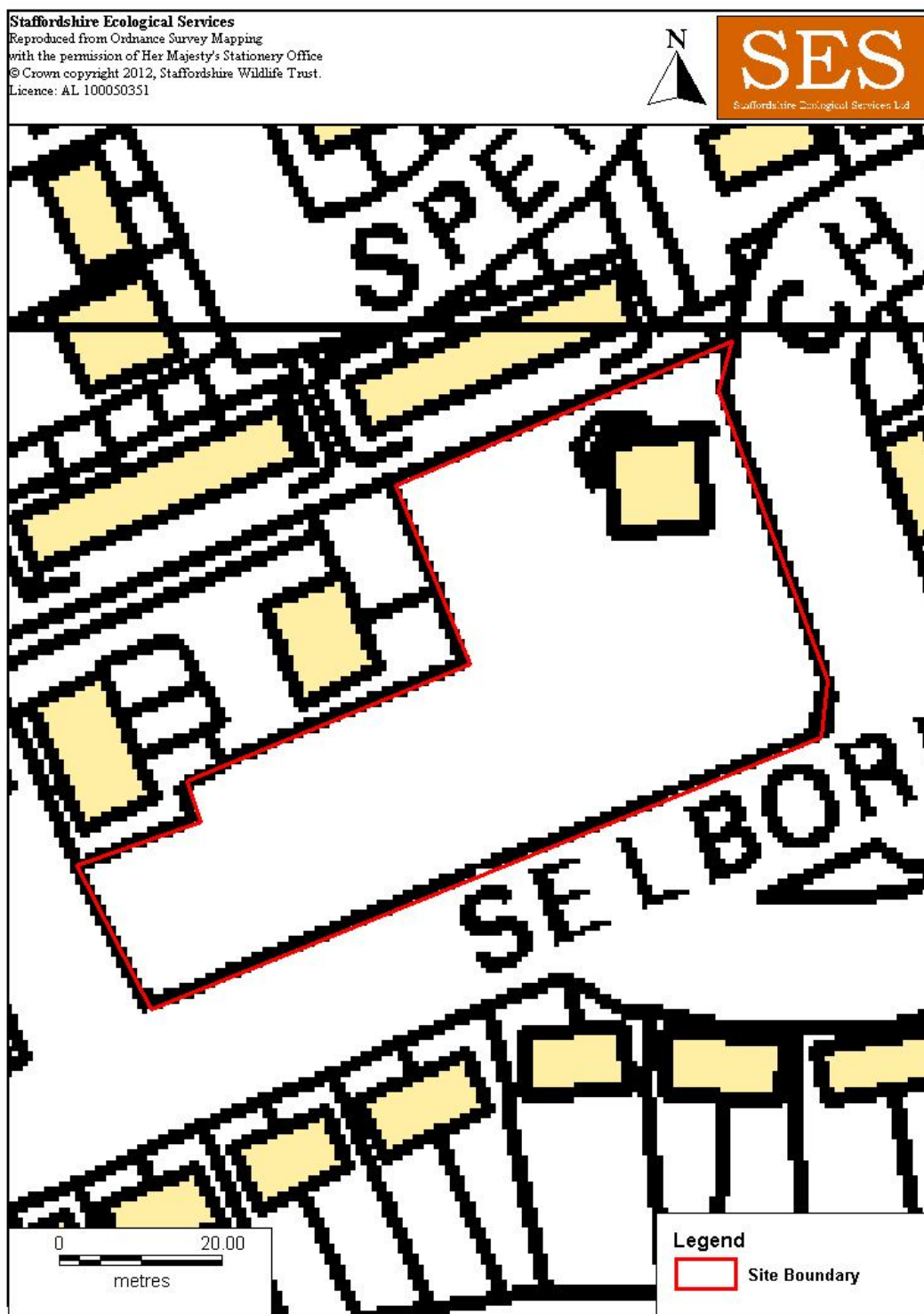
Using the above criteria, the surveys as presented in Table 2.2 were deemed sufficient to allow an effective appraisal of the ecological value of the site and the potential ecological impacts that may occur from any proposed development. Criteria for the ecological valuation of habitats and species on site are based on IEEM *Guidelines for Ecological Impact Assessment in the United Kingdom*.

Table 2.2: Scope

Survey	Geographical extent / Threshold distance
Protected Species data search	1km of site boundary
Designated Sites data search	1km of site boundary
Phase 1 Habitat Survey	All habitats within site boundary
Bat risk assessment	All trees within site boundary
Amphibians -Terrestrial habitat assessment	All habitat within site boundary
Badger	All areas within the site boundary and accessible areas within 30m
Nesting birds – Field signs and assessment of habitat suitability	All habitat within site boundary



Figure 2.1: Site boundary



## 2.2 Pre-survey Data Search

The Staffordshire Ecological Record database was searched to provide records of Designated Sites, Protected Species and Invasive Species

within 1km of the site boundary. Google maps and Ordnance Survey maps were reviewed.

### **2.3 Extended Phase 1 Habitat Survey Methodology**

The site survey was carried out in accordance with the Joint Nature Conservation Committee (JNCC) Phase 1 Habitat Survey Methodology (JNCC, 1990) – extended to include targeted searches for field signs of, and habitat suitability for, protected and / or notable species.

Each distinct habitat type on the site was mapped and described, with the descriptions including dominant and notable species and a record of habitat condition where appropriate.

Invasive botanical species were also recorded where present.

### **2.4 Bat risk assessment**

The daytime assessment for bats was carried out in accordance with the methodologies outlined in the Bat Worker's Manual (Mitchell-Jones & McLeish, 2004), the Bat Mitigation Guidelines (Mitchell-Jones, 2004) and the Bat Surveys Good Practice Guidelines (BCT, 2007).

A thorough daytime inspection of the trees on site was carried out in order to identify potential for bat presence. Where present, the following features were noted:

- Rot holes and hollow broken limbs
- Splits and cavities
- Loose or deeply fissured bark
- Local landscape and habitat features that could be used by bats and the site's positioning in relation to flight corridors and potential foraging areas.

Where possible, potential roosting areas were inspected from the ground using binoculars or from a ladder visually or with an endoscope. Evidence of bat occupation such as droppings, insect remains, staining from bat fur oil and urine, a distinctive 'bat smell', live bats and bat corpses.

### **2.5 Badger – Survey Methodology**

The site was checked for evidence of badger activity including setts, latrine sites, pathways, push ups / damage to fences, snuffle holes, guard hairs etc.

Access to immediately surrounding areas was limited due to them being in private ownership. Where accessible, habitats within 30m of the site were inspected for the presence of setts.



## **2.6 Nesting birds – Survey Methodology**

Along with an inspection for current bird nesting activity, a general assessment of the habitat on the site was carried out and evidence of previous nesting activity was noted.

The survey was carried out well into the main bird nesting season, which generally runs from March through August.

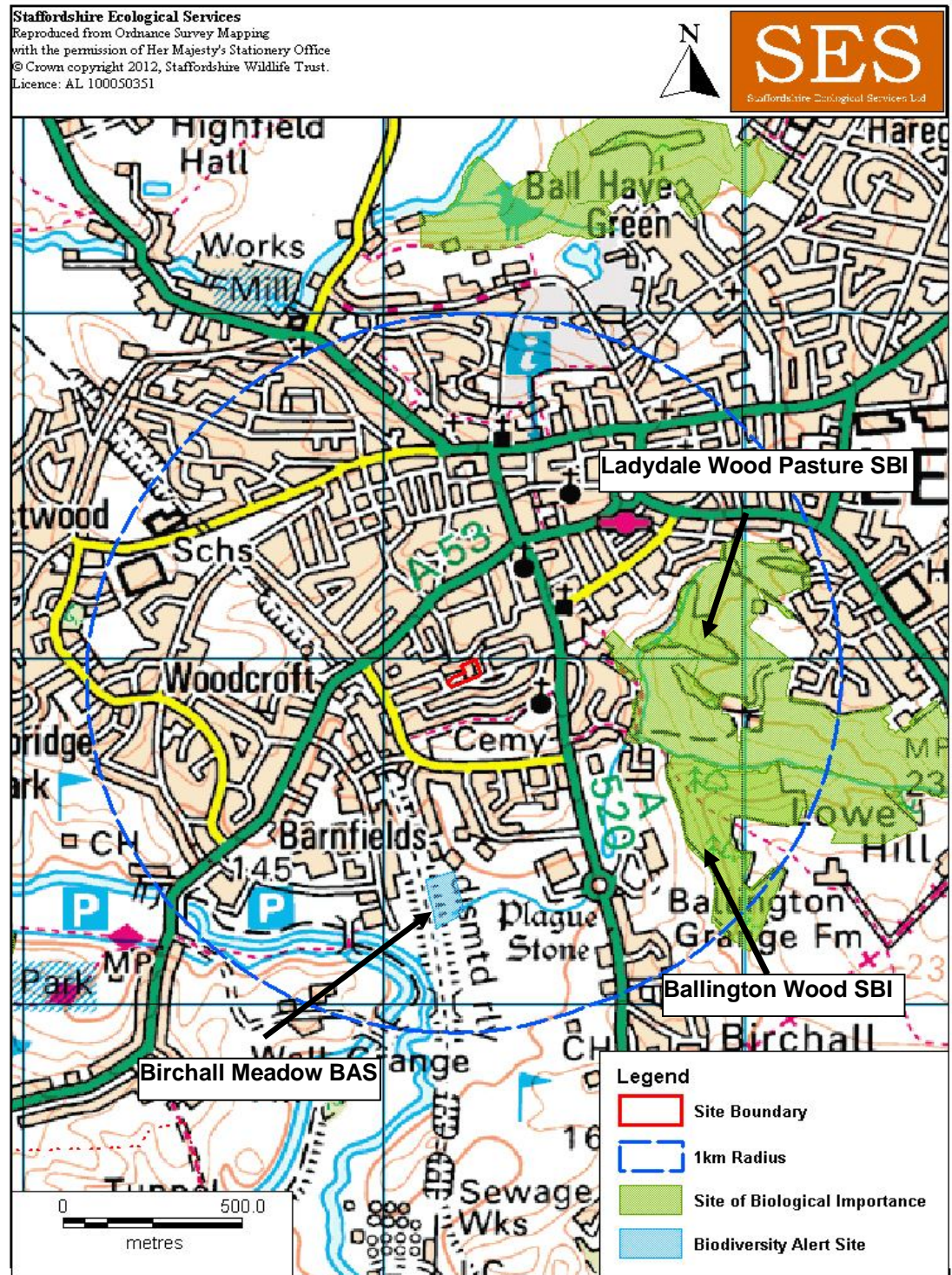
## **2.7 Constraints**

There are no constraints for this survey.

# 3 Results

## 3.1 Designated sites and surrounding habit

Figure 3.1: Designated sites within 1km





### **Statutory designated sites**

There are no statutory designated sites within 1km.

### **Locally designated sites**

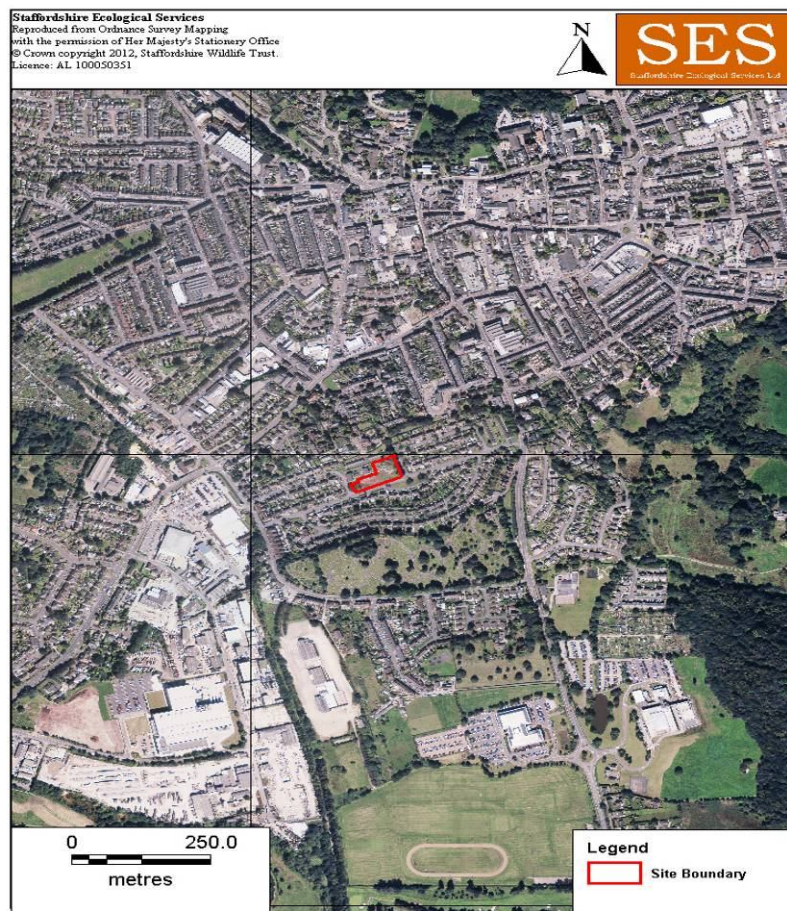
There are three locally designated sites that fall within a 1km of the site:

- Ladydale Wood Pasture Site of Biological Importance (SBI) 570m to the East, designated for its veteran trees, mix of semi-improved neutral and damp grassland and swamp habitats.
- Ballington Wood Site of Biological Importance (SBI) 780m to the South-East, designated for ancient semi-natural woodland.
- Birchall Meadow Biodiversity Alert Site (BAS) 640m to the South is designated for its semi-improved neutral lowland semi-improved grassland.

### **Surrounding habitat**

The site lies within a residential estate and is surrounded by gardens, dwellings and roads. To the south and east of the site there is open land of scattered trees, amenity grassland, cemetery, semi-improved grassland and woodland. There are no direct habitat links to the open land.

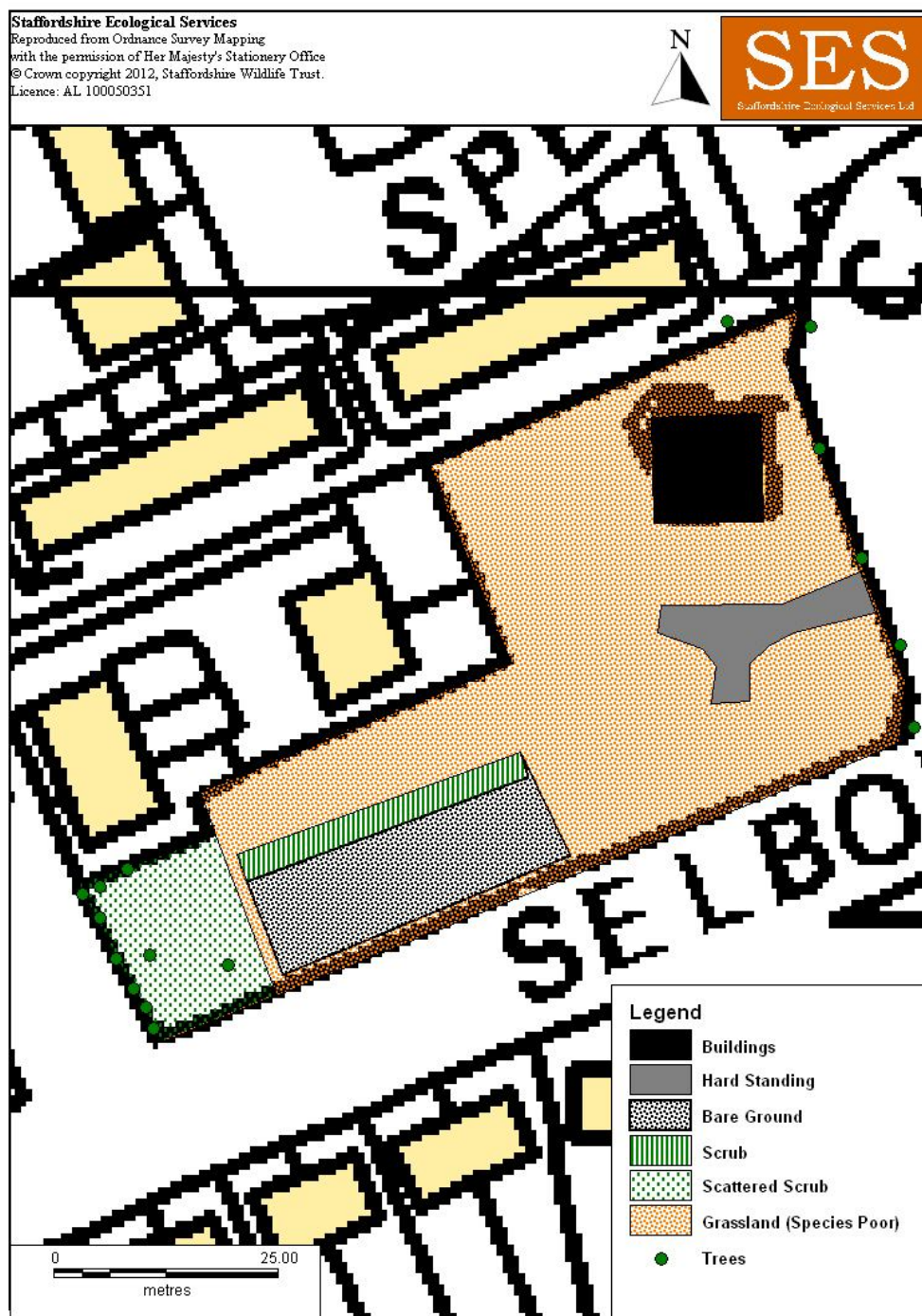
Figure 3.2: Aerial photography



## 3.2 On-site Habitats

A Phase 1 Habitat Map is presented in Figure 3.3 below along with relevant target notes and habitat descriptions including information on existing management and condition, if applicable.

Figure 3.3: Phase 1 Habitat Map



***Grassland (species poor)***



The majority of the site is species poor grassland with ruderal species. Dominant species include red fescue (*Festuca rubra*), meadow foxtail (*Alopecurus pratensis*), and smooth meadow grass (*Poa pratensis*) with dandelion (*Taraxacum officinale*), rosebay willowherb (*Chamerion angustifolium*), broad-leaved dock (*Rumex obtusifolius*), cleavers (*Galium aparine*), ribwort plantain (*Plantago lanceolata*), bramble (*Rubus fruticosus*) and creeping buttercup (*Ranunculus repens*) amongst others.

Plate 3.1 Species poor grassland.



### **Scattered trees and scrub**

The south western and eastern boundaries of the site contain scrub and standard trees. These are a mixture of species including sycamore (*Acer pseudoplatanus*), rowan (*Sorbus aucuparia*), yew (*Taxus baccata*), wych elm (*Ulmus glabra*), holly (*Ilex aquifolium*), silver birch (*Betula pendula*) and introduced species of corsican pine (*Pinus nigra* ssp. *laricio*), buddleja (*Buddleja davidii*), horse chestnut (*Aesculus hippocastanum*) and berberis species.

### **Invasive species**

No invasive plant species were noted during the site visit.

## **3.3 Bats**



### **Recorded status within 1km**

Table 3.1: Bat records within 1km

Common Name	Scientific Name	Date	Distance from site (m)
Pipistrelle	Pipistrellus pipistrellus sens. lat.	1992	808
Pipistrelle	Pipistrellus pipistrellus sens. lat.	1986	641
Natterer's Bat	M y o t i s n a t t e r e r i	1988	808
Brown Long-eared Bat	P l e c o t u s a u r i t u s	1990	808
Whiskered Bat	M y o t i s m y s t a c i n u s	1994	637
			493
a bat	Chiroptera	1993	
			904
Pipistrelle	Pipistrellus pipistrellus sens. lat.	2001	

The majority of the records are for bats recorded in flight with the most recent record (2001) being recorded from nearly 1 Km from the site..

#### **Surrounding Habitat**

The immediate surrounding habitat of residential land is not optimum habitat for bats. The designated sites and open land to the south and east of the site are more suitable for bats.

### **3.4 Badger**

#### **Recorded status within 1km**

There are 6 records for badger (*Meles meles*) within a 1km radius of the site. All of the records relate to the designated sites and are over 800m away from the site.

#### **Surrounding Habitat**

The surrounding habitat is sub-optimal for badgers and no signs of badger activity were recorded for the site or surrounding land.

### **3.5 Nesting Birds**

The scrub and trees on the site have some potential to support nesting birds.

The structure of the grassland on the site appears suitable for ground nesting birds such as skylark. However, the presence of trees / tall hedgerow around three of the site boundaries combined with the relatively small size of the site and its urban setting, which increases likely predation by cats, suggest that it is sub-optimal for ground nesting birds.

No nesting habitat particularly associated with Wildlife and Countryside Act (1980) Schedule 1 bird species was identified.

### **3.6 Great Crested Newt**

#### ***Recorded status within 1km***

There are no records of great crested newt (*Triturus cristatus*) within 1km of the site.

#### ***On site breeding habitat***

The site contains no potential great crested newt breeding habitat.

#### ***On site terrestrial habitat***

The site does contain habitat suitable for terrestrial amphibians in the form of the defunct hedgerow along its northern boundary, areas of tall ruderal vegetation and tall grass.

#### ***Off site breeding habitat***

Great crested newts are usually found within 250m of their breeding ponds (Langton *et al.*, 2001). Inspection of the OS 10,000 map and aerial photograph shows there to be no ponds within 250m of the site.

## **4 Evaluation and Impacts**

The following section provides an indication of the ecological value of features present. The valuation is based on the Guidelines for Ecological Impact Assessment (IEEM, 2006).

### **4.1 Designated sites and surrounding habitats**

#### ***Evaluation***

The distance between the site boundary and the nearest designated wildlife site, a Site of Biological Importance (SBI) is approximately 600m to the east. The land between the development site and SBI is urban with no semi-natural habitat connections.

#### ***Impacts***

The site lies within an area already dominated by urban development, with no naturalised areas present. As such, with precautionary measures in place to avoid pollution incidents, the development should result in no impact on habitats in the surrounding area, including designated sites.

No additional survey of the site with respect to impact on designated nature conservation sites is considered necessary.

## **4.2 On-site Habitats**

### ***Evaluation***

The site is small and contains habitats of disturbance with remnants of former landscaping (trees and shrubs) of non-native species. There is a large amount of disturbed/bare ground with buildings and hard standings that provides minimal ecological value.

### ***Impacts***

Under the current proposals, there will be low impact on the habitats and the ecological value of the area as a whole.

## **4.3 Bats**

### ***Evaluation***

Roosting opportunities on the site are limited to the mature trees along the eastern boundary. Due to bats being recorded at a considerable distance from the site and the lack of suitable foraging habitat within the residential area, this site is sub-optimal to support roosting bats.

### ***Impacts***

There will be no impact on bats from the proposed works.

## **4.4 Badger**

### ***Evaluation***

The site appears not to be used by badger. There are no setts present or evidence of badger use.

### ***Impacts***

There will be no impact on the local population of badgers from the proposed works.

## **4.5 Nesting Birds**

### ***Evaluation***

The site is considered to have moderate value for nesting birds of common species as its trees and scrub offer a number of nesting opportunities.

### ***Impacts***

Under the current proposal, the scattered scrub in the south west corner of the site is to be removed. As a result, the overall impact on nesting birds that may be using the scrub is considered as moderate.

However, the removal of the scrub does pose a risk of negative impact to small numbers of nesting birds. As all birds are offered statutory legal protection whilst nesting, removal of the scrub during the nesting season also carries a risk of committing an offence with respect to nesting birds.

#### **4.6 Great Crested Newt**

##### ***Evaluation***

The site does not have any potential as a breeding site for Great Crested Newt, and there are no records for Great Crested Newt within 1km.

##### ***Impacts***

The proposed scheme does not affect Great Crested Newts. Therefore, the potential impact on Great Crested Newt is considered to be low.

## 5 Recommendations & Mitigation

**It should be noted that all recommendations are provided as information only and specialist legal advice may be required.**

### Habitats

- 5.1 There are no mitigation requirements for the loss of habitats on site due to their poor ecological value.

### Protected Species

#### Bats

- 5.2 There are no mitigation requirements for the loss of bat habitats on site due to the absence of bat species on site and the surrounding land is sub-optimal for bat foraging and roosting (urban development with street lighting and small gardens).

#### Badger

- 5.3 There are no mitigation requirements for badger due to the lack of on site evidence and records of badgers within the development area.

#### Birds

- 5.4 As breeding birds are protected by law, ideally, removal of the scattered scrub and any mature trees should be timed to avoid impact on nesting birds. The nesting season generally runs from March to August, but is species-dependent. If removal during this period is not possible, re-inspection for the presence of active bird nests should be carried out by a suitably experienced person.

#### Amphibians

- There are no mitigation requirements for amphibians due to the lack of ponds and suitable terrestrial habitat within and surrounding the site.



### **Standard Precautions - Development Phase**

- 5.5 All staff and workers on site, including sub-contractors, should be made aware of species and habitat protection issues at site induction talks. Work must stop immediately and Natural England contacted if any protected species are found onsite. (Tel: 0300 060 0676 – West Midlands Office). Staffordshire Ecological Services (SES) can also be contacted at 01889 880125.
- 5.6 It is recommended that any trenches or other excavations left open overnight should be provided with an escape ramp (simply a plank of wood with no step at the base, reaching up to ground level or slightly above) for any wildlife to be able to escape.
- 5.7 All proposed work must strictly be in accordance with all relevant Pollution Prevention Guidelines (PPG) published by the Environment Agency including, but not limited to, PPG1 (general) and PPG6 (work at construction & demolition sites). Contingency plans should be drawn up to address chemical spillage etc.
- 5.8 A watch should be kept for new growth of invasive plant species listed on Schedule 9 of the WCA. A list of these and other harmful species is available on the following link: [http://www.plantlife.org.uk/uploads/documents/Invasives\\_and\\_the\\_law.pdf](http://www.plantlife.org.uk/uploads/documents/Invasives_and_the_law.pdf)

## 6 Legislative and planning context

### *Legalities*

- 6.1 If a protected species is discovered onsite and the precautions relating to protected species are not followed, offences may be committed. Information on the legislation relating to different protected species is provided in Appendix A.
- 6.2 Penalties for offences relating to badgers can be severe with fines of up to £5,000 plus up to six months imprisonment, for each illegal sett interference, or badger death or injury. The legislation does, however, recognise the need for a range of legitimate activities to be carried out and allows licences to be granted for certain purposes permitting work that would otherwise be illegal.
- 6.3 Penalties on conviction of a bat-related crime - the maximum fine is £5,000 per incident or per bat, up to six months in prison, and forfeiture of items used to commit the offence, e.g. vehicles, plant, machinery.
- 6.4 The maximum fine that can be imposed in respect of a single bird, nest or egg receiving ordinary protection is £1,000. For offences involving a Schedule species or an illegal method of killing (e.g. poisoning) the maximum is £5,000.
- 6.5 It is an offence to plant or otherwise cause to grow in the wild invasive non-native plants listed on Schedule 9 of the Wildlife and Countryside Act. Some of these plants, such as Japanese Knotweed are also covered by the Environmental Protection Act 1990 and are classed and must be treated as 'controlled waste'.
- 6.6 An offence under the Wildlife and Countryside Act Schedule 9 can result in a criminal prosecution. An infringement under the Environmental Protection Act can result in enforcement action being taken by the Environment Agency which can result in an unlimited fine. You can also be held liable for costs incurred from the spread of Knotweed into adjacent properties and for the disposal of infested soil off site during development which later leads to the spread of Knotweed onto another site.

## ***Planning***

- 6.7 Under the Habitats Regulations, all public bodies have a duty in exercising their functions to have regard to European Protected Species and Sites. This means that planning authorities must determine whether the proposed development meets the requirements of Article 16 of the EC Habitats Directive before planning permission is granted (where there is a reasonable likelihood of European Protected Species being present). Therefore in the course of its consideration of a planning application, where the presence of a European protected species is a material consideration, the planning authority must satisfy itself that the proposed development meets three tests as set out in the Directive – ‘over-riding public interest’, ‘no satisfactory alternative’ and ‘favourable conservation status’.
- 6.8 The National Planning Policy Framework (NPPF, March 2012) has replaced the previous Planning Policy Guidance in relation to protected species, sites and habitats. Circular 06/05 remains an active document, but is now in relation to the NPPF.
- 6.9 Government Circular 06/2005 (from DCLG) accessible for this link -- [Circular 06/2005](#) -- provides guidance on statutory obligations and their impact within the planning system. Paragraphs 98 & 99 make it clear that the presence of a protected species is a material consideration.
- 6.10 Paragraph 84 of the Circular states that the potential effects of a development, on habitats or species listed as priorities in the UK Biodiversity Action Plan (BAP) are capable of being a material consideration in the making of planning decisions.
- 6.11 Section 40 of the Natural Environment and Rural Communities Act 2006 (NERC) requires decision-makers to have regard to the conservation of biodiversity when carrying out their normal functions. The lists of habitats and species covered by NERC which are of principal importance for the conservation of biodiversity in England and Wales comprise the priority habitats and species identified under UKBAP, the potential effects on which can be an important material consideration.
- 6.12 Local planning authorities (and other public bodies) have a duty to have regard for the purpose of conserving biodiversity under the Natural Environment and Rural Communities Act 2006. Government guidance is that they should make reference to the Section 41 list when implementing the duty, which reinforces the policy that planning authorities should consider and protect

Biodiversity Action Plan priority species and habitats when making planning decisions.

6.13 In taking these factors into account, the local authority should expect you to demonstrate that you have taken into consideration the impact your development will have on local wildlife and taken appropriate measures to avoid or minimise damage to those species and habitats that appear on the UKBAP and LBAPs as well as those that are specifically protected by law.

6.14 IEEM Guidance (March 2012) states that:

‘Material considerations in planning and similar types of decisions can be influenced by factors such as local designations, UK or County BAP Priority habitats or species, and species listed in the UK Red Data Book or RSPB Birds of Conservation Concern. Collectively these may also constitute ‘notable’ species. There is likely to be some degree of overlap between these and legally protected species, although a large number of rare habitats or species do not receive direct legal protection.’

## 7 Bibliography

Bat Conservation Trust (2012) *Bat Surveys: Good Practice Guidelines*. Bat Conservation Trust, London.

Department for Communities and Local Government (2005) *Circular 06/2005: Biodiversity and Geographical Conservation - Statutory Obligations and their impact within the planning system*. HMSO, UK.

Department for Communities and Local Government (2012) *National Planning Policy Framework*. HMSO, UK.

Harris S, Cresswell P and Jefferies D (1989) *Surveying Badgers*. Mammal Society.

H.M.S.O. (1981) *The Wildlife and Countryside Act 1981* (as amended). London.

H.M.S.O. (2010) *The Conservation of Habitats and Species Regulations 2010*. London.

Institute of Environmental Assessment (1995). *Guidelines for Baseline Ecological Assessment*. E & FN Spon, London.

Institute of Environmental Assessment (2006). *Guidelines for Ecological Impact Assessment in the United Kingdom*. London.

Institute of Environmental Assessment (2012). *Guidelines for Preliminary Ecological Appraisal*, London.

Joint Nature Conservation Committee (2010). *Handbook for Phase 1 Habitat Survey - a Technique for Environmental Audit*. Reprinted by JNCC, Peterborough.

Joint Nature Conservation Committee *Phase 1. Habitat Classification*. <http://jncc.defra.gov.uk/page-4258>

Mitchell-Jones AJ and McLeish AP (2004). *The Bat Workers' Manual*. 3rd Edition. JNCC, Peterborough.

Mitchell-Jones AJ (2004). *Bat Mitigation Guidelines*. English Nature.

Natural England (2011). *Badgers and Development*. Natural England

Natural England(2009) *Guidance on 'Current Use' in the definition of a Badger Sett*. Natural England

Rose, Francis (1981). *The Wild Flower Key*, London.



# Appendix A – Legal information

## a) Badger

As a result of continued persecution, badgers are protected by primary legislation (the Protection of Badgers Act 1992) and as such planning authorities are required to take them into account when assessing planning applications. The legislation makes it illegal (without licence) to:

- Wilfully kill, injure or take, or attempt to kill, injure or take, a badger.
- Cruelly ill-treat a badger, dig for badger, use badger tongs, use a firearm other than the type specified under the exceptions within the Act.
- Interfere with a badger sett by damaging, destroying, obstructing, causing a dog to enter a sett, disturbing an occupied sett - either by intent or by negligence.
- Sell or offer for sale a live badger, having possession or control of a live badger.
- Mark a badger or attach any ring, tag, or other marking device to a badger.

The Protection of Badgers Act defines a sett as ‘any structure or place which displays signs indicating current use by Badger’

It should be noted that current use and current occupation are not synonymous, and due to the way in which badgers move between setts and use setts differently in different seasons, a set that is not currently occupied may still be ‘in current use’.

Natural England guidance note WML-G17 ‘Guidance on Current Use in the definition of a Badger Sett’ (2009) gives the following guidance on the interpretation of current use with respect to the Protection of Badgers Act:

- Displaying signs indicating current use is NOT synonymous with current occupation.
- A badger sett is protected by the legislation if it “displays signs indicating current use by a badger”. A sett is therefore protected as long as such signs remain present. In practice, this could potentially be for a period of several weeks after the last actual occupation of the sett by a badger or badgers.

- It follows that demonstration of the fact that a sett is not occupied by Badgers does NOT necessarily exempt it from the protection afforded by the Act if it still displays signs otherwise indicative of current use.
- A sett is likely to fall outside the definition of a sett in the Act if the evidence available indicates that it is NOT in use by badgers; e.g. absence of badger field signs, debris in sett entrances etc. In practice, such a sett may have been unused for several weeks.
- Regardless of the presence of signs, the badgers themselves are protected, so a precautionary approach must be taken to interpreting evidence of use at a sett.

## **b) Bats**

All British bat species are listed on Schedule 5 of the Wildlife and Countryside Act 1981 (as amended). The most recent amendments introduced by the Conservation (Natural Habitats & c.) (Amendment) Regulations 2007 and 2009, removed some of the protection bats enjoyed under this Act where it was duplicated under the Habitats Regulations. Therefore they are subject to the provisions of Section 9:4 (b) and (c), and 5, which, in summary, makes it an offence to:

- Intentionally or recklessly disturb a bat while it is occupying a structure or place which it uses for shelter or protection
- Intentionally or recklessly obstruct access to any structure or place which it uses for shelter or protection
- Sell, offer for sale or possess for the purpose of sale any bat or part of a bat or advertise sales or purchases of bats

The Countryside and Rights of Way [CRoW] Act 2000 makes most WCA offences into arrestable criminal offences, and includes offences committed 'recklessly' as well as deliberately.

All bat species are also included in Schedule 2 of the Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations 2010), which consolidates the Conservation (Natural Habitats & c.) Regulations 1995 and amendments in 2007, 2008 and 2009.

Regulation 41 makes it an offence to:

(a) deliberately capture or kill a bat [Regulation 41(1)(a)]

(b) deliberately disturb a bat [Regulation 41(1)(b)]

(c) damage or destroy a breeding site or resting place of a bat [R. 41(1)(d)]

(d) Keep, transport, sell or exchange, or offer for sale or exchange a live or dead bat or any part of a bat [R. 41(3)]

For the purposes of paragraph (1) (b), disturbance of animals includes in particular any disturbance which is likely—

(a) to impair their ability—

(i) to survive, to breed or reproduce, or to rear or nurture their young, or

(ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate; or

(b) to affect significantly the local distribution or abundance of the species to which they belong.

### **c) Nesting Birds**

(Taken from the RSPB website, 2012)

Under the Wildlife and Countryside Act, a wild bird is defined as any bird of a species that is resident in or is a visitor to the European Territory of any member state in a wild state. Game birds however are not included in this definition (except for limited parts of the Act). They are covered by the Game Acts, which fully protect them during the close season.

All birds, their nests and eggs are protected by law and it is thus an offence, with certain exceptions (see *Exceptions*), to:

- intentionally kill, injure or take any wild bird
- intentionally take, damage or destroy the nest of any wild bird whilst it is in use or being built
- intentionally take or destroy the egg of any wild bird
- have in one's possession or control any wild bird, dead or alive, or any part of a wild bird, which has been taken in contravention of the Act or the Protection of Birds Act 1954
- have in one's possession or control any egg or part of an egg which has been taken in contravention of the Act or the Protection of Birds Act 1954
- use traps or similar items to kill, injure or take wild birds
- have in one's possession or control any bird of a species occurring on Schedule 4 of the Act unless registered, and in most cases ringed, in accordance with the Secretary of State's regulations (see *Schedules*)
- intentionally or recklessly disturb any wild bird listed on Schedule 1 while it is nest building, or at a nest containing eggs or young, or disturb the dependent young of such a bird.

#### **Exceptions**

There are some exceptions to the offences created by the Wildlife and Countryside Act, the most notable of which are:

- an authorised person (eg a landowner or occupier) may kill or take, in certain situations and by certain methods, so called 'pest species' and destroy or take the nest or eggs of such a bird. This is permissible under the terms of General Licences issued by government departments (see *Licences*).
- it is not illegal to destroy a nest, egg or bird if it can be shown that the act was the incidental result of a lawful operation which could not reasonably have been avoided.
- a person may kill or injure a wild bird, other than one included on Schedule 1, if they can show, subject to a number of specific conditions, that their action was necessary to preserve public health or air safety, prevent spread of disease, or prevent serious damage to livestock, crops, vegetables, fruit, growing timber, or fisheries (contact Defra for more information).
- a person may take or kill (or injure in attempting to kill) a bird listed on Schedule 2, Part I, outside the close season (see *Schedules*).
- a person may take a wild bird if the bird has been injured other than by their own hand and their sole purpose is to tend it and then release it when no longer disabled. These provisions enable people to care for sick, injured or orphaned birds. Additionally, a wild bird may be killed if it is so seriously disabled as to be beyond recovery. Sick and injured birds listed on Schedule 4 should be registered with Defra.

# Appendix B: Wildlife friendly planting list

List of species taken from the Bat Conservation Trust Leaflet: “*Encouraging Bats. A Guide for Bat Friendly Gardening and Living*” (BCT, Unknown). However, as the planting list is designed to encourage invertebrates, it is also of benefit to a wide range of species other than bats.

*Plants marked \* are hybrids or exotics that may be useful in the garden*

## Flowers For Borders

*Aubretia (spring to early summer)	*Michaelmas daisy (summer to autumn)
Bluebell (spring)	*Night-scented stock (summer)
*Candytuft (summer to autumn)	Ox-eye daisy (summer)
*Cherry pie (summer to autumn)	*Phacelia (summer to autumn)
Corncockle	*Poached egg plant (summer)
Cornflower	Primrose (spring)
Corn marigold	Red campion (spring)
Corn poppy	*Red valerian (summer to autumn)
*Echinacea	Scabious (summer)
*Evening primrose (summer to autumn)	St John's wort (spring)
Field poppies (summer)	*Sweet William (summer)
*Honesty (spring)	*Tobacco plant
*Ice plant 'Pink lady' (early autumn)	*Verbena (summer to autumn)
Knapweed (summer to autumn)	*Wallflowers (spring to early summer)
Mallow (summer to autumn)	Wood forget-me-not (spring)
*Mexican aster (summer to autumn)	Yarrow (early summer)

## Herbs

Angelica	Hyssop (summer to early autumn)
Bergamot (summer to early autumn)	Lavenders
Borage (spring to early autumn)	Lemon balm
Coriander (summer)	Marjoram (summer)
Fennel (summer to early autumn)	Rosemary (spring)
Feverfew (summer to autumn)	Sweet Cicely (spring to early summer)
English marigolds	Thyme (summer)

## Trees, shrubs and climbers

*Bramble (climber)	Hazel (suitable for coppicing)
Buddleia (shrub)	Honeysuckle (native honeysuckle)
Common alder (suitable for coppicing)	Hornbeam
Dog rose (climber)	Ivy (climber)
Elder (small)	*Jasmine (night-scented)
English oak (large gardens)	



only)	Pussy willow (suitable for coppicing)
Gorse (shrub)	Rowan
Guelder rose (shrub)	Silver birch
Hawthorn (suitable for coppicing)	

### Wild flowers for pond edges and marshy areas

Bog bean	Marsh marigold (spring)
Bugle	Marsh woundwort
Creeping Jenny (spring to summer)	Meadowsweet (summer to early autumn)
Flag iris	Purple loosestrife (summer)
Hemp agrimony (summer)	Water avens
Lady's smock (spring to summer)	Water forget-me-not (summer to autumn)
Marsh mallow	Water mint (summer to autumn)