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**Construction Environmental Management Plan
(CEMP)
Condition 33 Planning Consent 21/00744/FUL**

**Land at Kirkby Valley Golf Club, Ingoe Lane,
Liverpool, L32 4SS
Grid Reference 339582, 397944.**

Client:	L32 Trading Ltd.
Issue Date:	09/06/25
Surveys Conducted:	2025

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1. INTRODUCTION

- 1.1 Environmental Business Solutions (EBS) has been appointed by L32 Trading Ltd. to prepare the working method statement for ecological mitigation for land at Kirkby Valley Golf Club, Ingoe Lane, Liverpool, L32 4SS (National Grid Reference (NGR) 339582, 397944), hereafter referred to as the 'site'. This has been set out in the form of a Construction Environmental Management Plan (CEMP) which sets out the protection of features of ecological interest and management of those due to be retained and created within the development site.
- 1.2 This CEMP has been written in accordance with Planning Consent 21/00744/FUL.
- 1.3 EBS or another appropriately qualified ecologist should be appointed at commencement of development to advise and ensure that ecological mitigation works are carried out as detailed within the CEMP.
- 1.4 This CEMP provides a template for safeguarding wildlife during construction and has been written with reference to published guidance from the Chartered Institute of Ecology and Environmental Management (CIEEM) and with regard to Natural England guidelines for protected species.
- 1.5 The document is set out as follows:
 - Ecological baseline and evaluation of important features within the development site; and
 - Aims and objectives of the CEMP in order to safeguard retained habitats and wildlife during construction.
- 1.6 A copy of this report should be provided to all interested parties as necessary to ensure compliance with its prescriptions and the protection and enhancement of the biodiversity interest.

2. ECOLOGICAL BASELINE AND EVALUATION

- 2.1 Habitat surveys were based upon an Ecological Appraisal Report compiled by Ecology Services Ltd on behalf of L32 Trading Ltd. in February 2020 (updated August 2021). The habitats and dominant plant species were recorded, together with conspicuous faunal activity and evidence of the presence, or potential presence, of protected species.
- 2.2 During the surveys undertaken, all obvious faunal activity such as birds or mammals observed visually or by call, was also recorded. Specific attention was paid to any potential use of the site by protected species, Priority Species, or other notable species.
- 2.3 In addition, specific surveys were carried out for the presence of bats, Water voles, Breeding Birds, Amphibians, and Otters.

Designated Sites

Statutory designated sites

- 2.4 There are no statutory designated sites within 2km of the proposed development, but 11 Local Wildlife Sites (including the River Alt running between the two development parcels) are present.

Non-statutory designated sites

- 2.5 The ecological desktop study identified the following records of non-statutory protected sites within 2km of the proposed development:
- River Alt, Kirkby Local Wildlife Site (LWS), which is located within the site.
 - Land east of canal, north of Wango Lane, Waddicar/ Wango Lane Wetland LWS, which is located just to the north of the railway corridor c.30-50m north of the site.
 - Fazakerley Sidings, Aintree LWS, which is located within 30m from the north-western corner of the site.
 - River Alt & adjacent sites through Gilmooss including Fazakerley WWTW LWS, which is located c.250m south of the site.
 - Knowsley Brook LWS, which is located c.250m south of the site.
 - Fazakerley Signal Works LWS, which is located c.500m west of the site.
 - Kirkby Brook LWS, which is located c.900m east of the site.
 - Meadow, Kirkby (Mill) Brook, south of Old Hall Lane LWS, which is located c.975m north-east of the site.
 - Croxteth Brook LWS, which is located c.1km south-east of the site.
 - Fazakerley Woods and Fields LWS, which is located c.1.1km south-west

of the site.

- Croxteth Park, River Alt and adjacent sites through Croxteth LWS, which is located c.1.4km south of the site at its nearest point.
- Kirkby Brook, including Mill Brook LWS, which is located c.1.5km north-east of the site.
- Simonswood Brook LWS, which is located c. 1.5km north-west of the site at its nearest point.
- Mill Brook, Westvale LWS which is located c. 1.5km north-west of the site at its nearest point.

River Alt, Kirkby (LWS)

- 2.6 River Alt, Kirkby LWS runs through the centre of the site and is bordered each side by the development area. According to the LWS citation, the River Alt is designated for water voles, which have been recorded breeding along this watercourse.

Liverpool City Region (LCR) Ecological Network

- 2.7 The LCR Ecological Network Map shows Kirkby Valley Golf Course as falling within the River Alt and M57 corridor Nature Improvement Area (NIA). The NIA is not an allocation or a designation. It is a multi-use area, developed to support Local Planning and inform land management in the City Region. The NIA Focus Area profiles provide guidance where opportunities for ecological mitigation and compensation, habitat management and enhancement may be directed to help meet development needs of the LCR and provide benefits for biodiversity and resource efficiency.
- 2.9 The LCR Ecological Network Map also identifies areas of woodland and grassland within the golf course as Core Biodiversity Areas including lowland meadow and lowland mixed deciduous woodland Habitats of Principal Importance.

Ecological Features

- 2.10 The following main habitat / vegetation types were identified within the site:

- broadleaved plantation woodland ;
- scattered trees;
- scrub;
- species-poor semi-improved grassland (unmanaged); and
- hedgerows.

- 2.11 The majority of the waterbodies within the site were dry at the time of survey with more permanent waterbodies present in the wider golf course. The invasive plant species Japanese knotweed, Himalayan balsam, cotoneaster and Japanese rose are present within the development area. The development area contains habitat suitable to support bats, otter, badger, water vole, breeding birds and amphibians.

Wildlife Use of the Site

- 2.10 General observations were made during the surveys of any faunal use of the site, with specific attention paid to the potential presence of any protected or notable species. Specific surveys were undertaken with regard to bats, Water voles, Breeding Birds, Amphibians, and Otters.
- 2.11 A summary of the findings are set out below, and full details of the results can be seen within previous species survey reports conducted by Ecology Services Ltd.

Bats

- 2.12 Overall, habitats within the immediate and wider surrounds of the site are considered of **moderate** to **high** value for foraging and commuting bats.
- 2.13 The majority of trees within the survey area, with the exception of tree 5 and tree Groups 10 and 11 had no suitable potential roosting features and therefore **negligible** potential to support roosting bats.
- 2.14 During the 2019 and 2020 PRA and PRF surveys, no evidence of past or present use of any of the trees by bats was found.

Badgers

- 2.15 During the surveys undertaken, no evidence of Badgers was recorded within the site, although it is considered the habitats present offer some suitable opportunities for foraging Badgers.

Breeding Birds

- 2.16 The site offers a broad range of habitats that are suitable for breeding and foraging birds and is of ample size to support birds that require large territories. However, during the breeding bird surveys, surprisingly low numbers of birds were recorded that would have otherwise be expected for a site of this size.

Amphibians

- 2.17 Given the survey findings, it is considered that it likely that great crested newts are absent and all works can proceed with the below recommendation.
- 2.18 Additionally, there are no records of great crested newts, which are

fundamentally linked to the site. The only record for great crested newt is located approximately 900m to the east and is isolated from the site by the M57 motorway which acts as a barrier to dispersal.

Water Voles

- 2.19 The survey identified habitats that are considered suitable to support water vole, but they are subject to significant water level changes. Presence was confirmed in 2019, considered to be from a transient water vole passing through the watercourse. No evidence of water vole was found during the September 2020 and June 2021 update surveys, and the 2025 surveys.
- 2.20 The water level in the river can fluctuate considerably (over 1m) and this may be adversely affecting water vole establish territories and construct burrows at the water line, as they would be subject to frequent flooding.
- 2.21 Rat footprints and droppings were found during all of the survey visits and therefore it is considered that if water vole were residing within the survey area, then evidence would likely have been found. No evidence was noted during the 2025 surveys.

Otters

- 2.22 Evidence of use of the River Alt and surrounding area by otter was identified during the 2020 and 2021 surveys, but not the 2025 survey. Therefore, there are potential implications in relation to otter and the proposed development including the new footbridge and outfalls.
- 2.23 There are no suitable below ground resting places for otter and it is considered unlikely that the proposed works will result in the loss of a significant area of suitable above ground resting habitat. Should an otter be utilising an above ground resting place at the time of development, however, disturbance is possible.

3. AIMS AND OBJECTIVES

- 3.1 The aims and objectives of the CEMP are to maintain and avoid any harm / damage to features of ecological interest during construction, in addition to safeguarding populations of protected species on site.
- 3.2 The aims and objectives of the CEMP are also to maintain and protect features of ecological interest retained within the development, in addition to maintaining populations of protected species on site.

4. CONSTRUCTION MEASURES

- 4.1 Pilling works are not required on site and therefore no precautions or practical measures are required, in relation to pilling.

Risk Assessment and Biodiversity Protection Zones

- 4.2 The trees within the site are of greatest ecological value in the context of the site. As detailed below, all retained trees will be fenced and these are the biodiversity protection zones within the site. With the fencing protecting the trees, it is considered that a risk assessment is not required, given the risk has been mitigated to the biodiversity within the site.
- 4.3 River Alt, Kirkby LWS runs through the centre of the site and is bordered each side by the development area. According to the LWS citation, the River Alt is designated for water voles, which have been recorded breeding along this watercourse. A general buffer zone of approximately 20m will be put in place during the construction works to protect the River Alt, being the biodiversity protection zone for the river. A risk assessment is not considered necessary as the risk to the biodiversity in relation to the River Alt has been mitigated.
- 4.4 The site manager will be responsible for ensuring that all works are in line with the CEMP and ensuring where necessary works are undertaken or overseen by Ecology Solutions or another appropriately qualified ecologist. Ecology Solutions/the ecologist will be responsible for ensuring that an ecological clerk of works (ECoW) is present for those activities where an ecologist is necessary, as detailed below.

Protective Measures for Habitats including the River Alt

Practical Measures

- 4.5 Construction measures for activities undertaken during site preparation, earthworks and construction phase are described below.
- 4.6 Retained trees will be protected from the development prior to the commencement of works. Appropriate measures will be undertaken to prevent any harm to these trees from construction activities. These measures include identifying root protection zones and implementing fencing and signage around these zones to avoid tracking of heavy machinery compacting the soils.
- 4.7 Any potentially detrimental effects on the retained trees through dust contamination will be mitigated through standard industry best practice measures. In any event, the residual effect of the construction of the proposed development will be short term, with construction dust only infrequently affecting sensitive receptors

- 4.8 Standard engineering practice in respect of pollution control, as part of the development proposals will negate any potential effects and any potentially detrimental effects through dust contamination during construction will be mitigated through standard industry best practice measures. Where mitigation measures rely on water, it is expected that only sufficient water will be applied to damp down the material. There should not be any excess to potentially contaminate local watercourses.
- 4.9 Avoidance of potentially dust-generating activities during periods when wind direction may carry dust into sensitive areas will be undertaken. The storage of any loose materials that may be susceptible to wind will also be covered or screened and located away from the sensitive habitats if possible.
- 4.10 Works will be carried out in accordance with British Standard BS5837:2012 which relates to the protection of retained trees during development.
- 4.11 In the event that any arboriculture tree works (including felling) are required prior to or during construction, these will be undertaken by an appropriately qualified tree surgeon and with regard to roosting bats and nesting birds. In addition, any clearance works should utilise cuttings as log piles, to be created along the retained boundary hedgerows.
- 4.12 The removal of scrub will be searched immediately prior to their removal by a suitably qualified ecologist to check for Hedgehogs. Should it be considered by the ecologist that Hedgehogs could be present, the physical removal of the scrub will be overseen and the scrub will be cut down with hand tool and the root ball will be removed slowly with an excavator.
- 4.13 Prior to the removal of any refugia or habitat piles, these will be hand- searched by a suitably qualified ecologist for the presence of Hedgehogs. Any dense and thick refugia or habitat piles will also be slowly dismantled by hand to ensure no Hedgehogs or other wildlife is present.
- 4.14 A general buffer zone of approximately 20m will be put in place during the majority of the construction works to protect the River Alt. Any necessary work within this buffer zone, such as construction of bridges, general maintenance, and vegetation management, will require the supervision of a suitably qualified ecologist at all times.
- 4.15 In order to minimise potential effects of artificial lighting on wildlife using the River Alt and the site, both during construction and the operational phase upon completion of the proposed development, a sensitive lighting scheme should be designed and implemented. Lighting levels should be at the minimum required for health and safety, and avoided wherever possible. The lighting strategy should be reviewed at an appropriate stage of design by a suitably experienced ecologist.

Protective Measures for Species

Bats

4.16 **Legislation.** All bats are protected under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) and included on Schedule 2 of the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”). These include provisions making it an offence to:

- Deliberately kill, injure or take (capture) bats;
- Deliberately disturb bats in such a way as to be likely to significantly affect: -
 - (i) the ability of any significant group of bats to survive, breed or rear or nurture their young; or to hibernate; or
 - (ii) to affect significantly the local distribution or abundance of the species concerned;
- Damage or destroy any breeding or resting place used by bats;
- Intentionally or recklessly obstruct access to any place used by bats for shelter or protection (even if bats are not in residence).

4.17 While the legislation is deemed to apply even when bats are not in residence, Natural England guidance suggests that certain activities such as re-roofing can be completed outside sensitive periods when bats are not in residence provided these do not damage or destroy the roost.

4.18 The words deliberately and intentionally include actions where a court can infer that the defendant knew that the action taken would almost inevitably result in an offence, even if that was not the primary purpose of the act.

4.19 The offence of damaging (making it worse for the bat) or destroying a breeding site or resting place is an absolute offence. Such actions do not have to be deliberate for an offence to be committed.

4.20 Licences can be granted for development purposes by an ‘appropriate authority’ under Regulation 55 (e) of the Habitats Regulations. In England, the ‘appropriate authority’ is Natural England (the government’s statutory advisors on nature conservation). European Protected Species licences permit activities that would otherwise be considered an offence.

4.21 In accordance with the Habitats Regulations the licensing authority (Natural England) must apply the three derogation tests as part of the process of considering a licence application. These tests are that:

1. the activity to be licensed must be for imperative reasons of overriding public interest or for public health and safety;
2. there must be no satisfactory alternative; and
3. the favourable conservation status of the species concerned must be maintained.

- 4.22 Licences can usually only be granted if the development is in receipt of full planning permission (and relevant conditions, if any, discharged).
- 4.23 Seven species of bat are Priority Species, these are Barbastelle, Bechstein's *Myotis bechsteinii*, Noctule, Soprano Pipistrelle, Brown Long-eared, Greater Horseshoe *Rhinolophus ferrumequinum*, and Lesser Horseshoe.
- 4.24 **Protective Measures/Reasonable Avoidance Measures.** Normal construction activities during the months of April and October will be limited to daytime hours to reduce light pollution generated by construction activities on bats foraging within the area during the night. This is not applicable during winter months (November to March inclusive) when days are shorter, and bats are in hibernation.
- 4.25 As mentioned above, construction activities will generally be limited to the daytime, and as such lighting will not likely be required. However, if lighting is necessary during construction, any potential light spillage will be reduced by directing light below the horizontal plane, preferably at an angle less than 70 degrees away from features that offer suitable foraging opportunities for bats, e.g. hedgerows and trees.
- 4.26 Checks for bats will be undertaken by an appropriately qualified ecologist should any trees that have been identified as having potential features to support roosting bats are to be removed.
- 4.27 In the event any roost was identified prior to felling then an appropriate mitigation strategy and licence from Natural England would be required.
- 4.28 Precautionary measures should be adopted during felling or pruning works for Trees 3, 7, 8 and 9. This should take the form of either a pre-development aerial inspection or felling of potential roosting features using soft-felling section techniques under the supervision of a suitably qualified ecologist.
- 4.29 A further PRF inspection is to be undertaken on Tree 5 immediately prior to felling. If no evidence of roosting bats is found, felling of potential roosting features using soft-felling section techniques under the supervision of a suitably qualified ecologist is recommended. Where possible, sections of the limb(s) with PRFs should be strapped to an adjacent tree.
- 4.30 Tree Group 10 contains a high number of dead trees that have delaminating bark which provide negligible - low potential for occasional roosting bats during the active season. If tree removal in this group is required during the active season for bats, then the areas of delaminating bark will be checked by a licenced bat consultant prior to removal. If works can be delayed until bats are in hibernation (November to February), then works to remove the trees would be permissible without an ecologist being present.
- 4.31 Tree Group 11 will be subject to a further PRF inspection immediately prior to felling. If no evidence of roosting bats is found, felling of potential roosting features using soft-felling section techniques under the supervision of a suitably qualified ecologist is recommended. Where possible, sections of the limb(s) with

PRFs should be strapped to an adjacent tree.

- 4.32 If at any time a bat or evidence of bats is found or suspected, all works must cease immediately and advice should be sought from either Natural England or the acting Consultant. If a bat roost is found then the works would be delayed until such a time adequate survey data is obtained that is sufficient to support a Natural England licence that will derogate from legal protection afforded to roosting bats.
- 4.33 As bats are mobile creatures and can form new roosts at any time, if works are not started within one year of this report then it may be necessary to repeat certain surveys.
- 4.34 As best practice, opportunities for bat species by way of bat boxes should be incorporated within the proposed development and on retained trees to ensure that the long-term status of bat species in the local area is maintained.
- 4.35 If any additional trees to be affected in the wider golf course must first be subject to a Preliminary Roost Assessment for bats and any necessary further surveys undertaken to determine the presence or absence of bats. If a bat roost/s is/are located during the survey work, work at the site could be delayed until such time that a Natural England Licence is applied for and granted to legally permit work to commence which would affect bats or their roost.

Badgers

- 4.36 **Legislation.** The Protection of Badgers Act 1992 consolidates the previous Badgers Acts of 1973 and 1991. The legislation aims to protect the species from persecution, rather than being a response to an unfavourable conservation status, as the species is in fact common over most of Britain, with particularly high populations in the southwest.
- 4.37 As well as protecting the animal itself, the 1992 Act also makes the intentional or reckless destruction, damage or obstruction of a Badger sett an offence. A sett is defined as “any structure or place which displays signs indicating current use by a Badger”. ‘Current use’ of a Badger sett is defined by Natural England as “how long it takes the signs to disappear, or more precisely, to appear so old as to not indicate “current use”.¹
- 4.38 In addition, the intentional elimination of sufficient foraging area to support a known social group of Badgers may, in certain circumstances, be construed as an offence by constituting ‘cruel ill treatment’ of a Badger.
- 4.39 Work that disturbs Badgers is illegal without a licence. Natural England has developed guidelines on the types of the activity it considers should be licensed within certain distances of sett entrances. For example, using heavy machinery within 30m of any entrance to an active sett, and lighter machinery within 20m, or

light work such as hand digging within 10m, all may require a licence.

- 4.40 'Interim guidance' issued by Natural England in September 2007 specifically states "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."
- 4.41 However, more recent guidance produced by Natural England in 2009 states that Badgers are relatively tolerant of moderate levels of disturbance and that low levels of disturbance at or near to Badger setts do not necessarily disturb the Badgers occupying those setts. However, Natural England's guidance continues by stating that any activity that will, or is, likely to cause one of the interferences defined in Section 3 (such as damaging a sett tunnel or chamber or obstructing access to a sett entrance) will continue to be licensed.
- 4.42 In addition, this guidance no longer makes reference to any 30m/20m/10m radius as a threshold for whether a licence would be required. Nonetheless, it is stated that tunnels may extend for 20m so care needs to be taken when implementing excavating operations within the vicinity of a sett and to take appropriate precautions with vibrations and noise, etc. Fires / chemicals within 20m of a sett should specifically be avoided.
- 4.43 This interim guidance allows greater professional judgement as to whether an offence is likely to be committed by a particular development activity and therefore whether a licence is required or not. For example, if a sett clearly orientates southwards into an embankment it may be somewhat redundant to have a 30m-exclusion zone to the north.
- 4.44 It should be noted that a licence cannot be issued until the site is in receipt of a full and valid planning permission and that generally licences are not granted between December and June inclusive to avoid disruption to the Badger breeding cycle.
- 4.45 Local authorities are therefore obliged to consult Natural England over any work which is considered likely to adversely affect Badgers.
- 4.46 **Protective Measures/Reasonable Avoidance Measures.** As a precaution, a pre-commencement check for any evidence of Badgers will be conducted within the site, that will also pay attention to the adjacent off-site habitats. This will include an assessment of any previously identified mammal holes to determine whether there has been any change in size, depth or appearance since the previous badger surveys were undertaken. If changes are noted then further monitoring to determine their usage will be required.
- 4.47 Should any active setts be discovered within the site that would be impacted by the development, then an appropriate strategy for mitigation will be devised and a licence secured from Natural England (disturbance/sett closure) if necessary, and if the sett to be lost comprises a main sett, a new artificial sett will be created within an area of open space in the site.
- 4.48 Should any Badger setts need to be removed, this will be carried out under a

licence from Natural England between the 1st July and the 30th November.

- 4.49 To ensure that no impacts occur to Badgers during any construction activities all contractors working on the site will be briefed regarding the potential presence of Badgers.
- 4.50 Any trenches or deep pits within the site that are to be left open overnight will be covered or provided with a means of escape should a Badger enter. This could simply be in the form of a roughened plank of wood placed in the trench as a ramp to the surface.
- 4.51 Any trenches or pits will be inspected each morning to ensure no Badgers have become trapped overnight. Should a Badger become trapped in a trench it will likely attempt to dig itself into the side of the trench, forming a temporary sett. Should a trapped Badger be encountered EBS will be contacted immediately for further advice.
- 4.52 The storage of topsoil or other 'soft' building materials on site should be given careful consideration. Badgers could adopt such mounds as setts,

which would then be afforded the same protection as established setts. Such mounds should be regularly inspected to check for use by Badgers.

Birds

- 4.53 **Legislation.** Section 1 of the Wildlife and Countryside Act 1981 (as amended) is concerned with the protection of wild birds, whilst Schedule 1 lists species that are protected by special penalties. All species of birds receive general protection whilst nesting.
- 4.54 **Protective Measures/Reasonable Avoidance Measures.** Any vegetation clearance will be undertaken with due consideration for potential use by birds. Cutting of vegetation, particularly those features that provide important nesting habitats (including hedgerows and trees) will be undertaken outside of the bird breeding season (March to August inclusive).
- 4.55 Should the above timing constraints conflict with any timetabled works, works will commence only after a suitably qualified ecologist has undertaken checks to ensure no nesting birds are present as part of the clerk of works. If nesting birds are found to be present during checks then clearance will be delayed until young have fledged.

Amphibians

- 4.56 **Policy and Planning.** The National Planning Policy Framework (NPPF, 2021) places a clear responsibility on Local Planning Authorities (LPA) to contribute to conserving and enhancing the natural and local environment. LPAs should promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species (e.g. Species of Principal importance, Local Biodiversity Action Plan species); and identify and pursue opportunities for securing measurable net gains for biodiversity. The Office of the Deputy Prime Minister (ODPM) Circular 06/2005 provides administrative guidance on the application of the law in relation to planning and nature conservation.
- 4.57 A Local Planning Authority (LPA) has a duty to ensure that protected species and habitats within the UK are a 'material consideration' in the determination of a planning application. Therefore, an LPA is unlikely to determine an application until all relevant information relating to protected species or habitats is submitted to fully inform the application. Relevant information includes adequate surveys and, where required, mitigation strategies, which will need to be submitted to inform a planning application.
- 4.58 When dealing with planning applications where a European Protected Species (EPS) (great crested newt) may be affected, a Local Authority is a 'competent authority' within the meaning of Regulation 7 of the Conservation of Habitats & Species Regulations 2017 (as amended). The Local Authority must therefore exercise their functions under the provisions made within the 2017 Regulations (as amended), and planning decisions should only be made when European Protected Species and their habitats are fully taken into account.
- 4.59 **Legislation.** The great crested newt is protected under The Conservation of Habitats and Species Regulations 2017 (as amended)¹. Regulation 43 (1) makes it an

offence to:

- Deliberately capture or kill a great crested newt
- Deliberately disturb a great crested newt
- Deliberately take or destroy the eggs of a great crested newt
- Damage or destroy a breeding site or resting place of a great crested newt

4.60 The species is also protected under The Wildlife and Countryside Act 1981 (as amended), which makes it an offence to:

- Intentionally kill, injure or take a great crested newt
- Possess or control any live or dead specimen or anything derived from a great crested newt
- Intentionally or recklessly damage, destroy or obstruct access to any structure or place used for shelter or protection by a great crested newt
- Intentionally or recklessly disturb a great crested newt while it is occupying a structure or place which it uses for that purpose

4.61 The legislation applies to all life stages of great crested newts.

4.62 Section 40 of the Natural Environmental and Rural Communities (NERC) Act 2006 places a statutory duty on public authorities, in exercising their functions, to conserve biodiversity in England. Species of Principal Importance for the conservation of biodiversity in England, identified by the Secretary of State in consultation with Natural England, are listed Section 41 of the NERC Act. The Local Planning Authority and government bodies (e.g. Natural England) will expect the overall design of the development to have regard for the conservation of these species. Section 41 of the NERC Act lists great crested newt and common toad (*Bufo bufo*) as Species of Principal Importance.

4.63 **Protective Measures/Reasonable Avoidance Measures.** Given the survey findings, it is considered likely that great crested newts are absent and all works can proceed with the following Reasonable Avoidance Measures in place:-

- Existing vegetation on site will be gradually cut and removed under ecological supervision to encourage any amphibians present to move away from the affected areas;
- The working area, together with any storage areas, will be kept clear of debris, and any stored materials will be kept off the ground on pallets so as to prevent amphibians from seeking shelter or protection within them; and
- Any open excavations (e.g. foundations / footings / service trenches etc.) will be covered with plywood sheeting (or similar) at the end of each working day. The edges of these sheets will be covered by a thick layer of topsoil (or similar) to prevent amphibians from seeking shelter beneath them. Any excavation must be infilled and made good to ground level with compacted stone or similar at the earliest opportunity so as to remove any hazard to amphibians.

4.64 As a precautionary measure all construction contractors will be made aware of the potential presence of amphibians on site and the potential risks to them. Should any common amphibians be encountered, they will be moved to suitable cover away from development works.

- 4.65 In the unlikely event that a great crested newt is discovered on site, at any time during the development works, all works must cease immediately and either Natural England or the acting ecologist contacted for advice.

Otters

- 4.66 **Planning Policy.** The National Planning Policy Framework (NPPF, 2021) places a clear responsibility on Local Planning Authorities (LPA) to contribute to conserving and enhancing the natural and local environment. LPAs should promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species (e.g. Species of Principal importance, Local Biodiversity Action Plan species); and identify and pursue opportunities for securing measurable net gains for biodiversity. Therefore, where developments requiring planning permission may affect protected or notable species such as otters, it is preferable that an appropriate mitigation strategy is produced to ensure they are protected from the adverse effects of development and options to negate the impact should be considered, together with opportunities for enhancement.
- 4.67 The Office of the Deputy Prime Minister (ODPM) Circular 06/2005 provides administrative guidance on the application of the law in relation to planning and nature conservation. This guidance requires local planning authorities to take account of the conservation of protected species when determining planning applications and makes the presence of a protected species a material consideration when assessing a development proposal that, if carried out, would be likely to result in harm to the species or its habitat.
- 4.68 Where developments requiring planning permission are likely to impact upon protected species such as otter it is necessary that protected species surveys are undertaken and submitted to meet the requirements of paragraph 98 of ODPM Circular 06/2005 which states that:
- *'The presence of a protected species is a material consideration when a planning authority's considering a development proposal that, if carried out, would be likely to result in harm to the species or its habitat'.*
- 4.69 Although the UKBAP has been superseded by the UK Post-2010 Biodiversity Framework and, in England, Biodiversity 2020: A strategy for England's wildlife and ecosystem services (2011), many Local Authorities have prepared and operate Local Biodiversity Action Plans (LBAPs). LBAPs not only highlight habitats and species that are of Principal Importance but also habitats and species that are of local importance. LBAPs will be prepared for these habitats and species. Listing of habitat or species in a LBAP does not confer any new statutory or planning policy protection, however, impacts upon species prioritised in LBAPs may be a material consideration in a planning application. Otters are a North Merseyside Biodiversity Action Plan (LBAP) species.
- 4.70 **Legislation.** The European otter is protected under the Conservation of Habitats and Species Regulations 2017 (as amended)¹ (The Habitat Regulations) and the Wildlife and Countryside Act (W&CA) 1981.

4.71 In England and Wales it is illegal (under the Habitat Regulations) to:

- Deliberately capture, injure or kill an otter.
- Damage or destroy a breeding site or resting place.
- Deliberately disturb an otter, particularly in a way which is likely to:
 - (i) To impair their ability to survive, breed or reproduce, rear or nurture young
 - (ii) To affect significantly the local distribution or abundance of the species.
- There are also offences in relation to possession, control, sale, transport etc.
- There is no incidental result defence for the above offences.

4.72 It is also an offence in England and Wales (under the W&CA) to:

- Intentionally or recklessly obstruct access to a place of shelter or protection or disturb an animal occupying such a place.
- The incidental defence may apply.

4.73 Otters are a Species of Principal Importance for the conservation of Biodiversity in England under the Natural Environment and Rural Communities (NERC) Act 2006, and as such are capable of being a material consideration in planning. Section 40 of the NERC Act (2006), places a duty to conserve biodiversity on every public body. The Section 41 (S41) list of Habitats and Species of Principal Importance is used to guide decision-makers, such as public bodies including local and regional authorities, in implementing their duty under Section 40 of the NERC Act 2006, to have regard to the conservation of biodiversity in England, when carrying out their normal (e.g. planning) functions.

4.74 In England and Wales an otter survey licence is required to undertake prolonged or internal inspections of structures considered likely to be in use as an otter resting site and if there is a reasonable chance of disturbance occurring.

4.75 Where otters are affected by the proposals a derogation licence is required to damage or destroy an otter resting site and/or to disturb an otter in a significant manner.

4.76 **Protective Measures/Reasonable Avoidance Measures.** All works on site will be informed by precautionary working methods designed to reduce any potential impact on otter populations. These methods will include the following measures:

- Any works within 8m of the River Alt will require consent from the Environment Agency.
- All proposed works should be limited to daylight hours; otters are primarily a nocturnal species and therefore disturbance is more likely during the night time.
- All works close to the River Alt should adopt standard pollution prevention guidance, also ensuring no silt pollution gets into the River Alt or land drains, in order to prevent environmental damage caused by the siltation of otter habitat and the potential direct impact of siltation on otter prey species.
- During groundwater discharge operations, the banks of the River Alt should not be damaged or impacted.
- All works (except for the groundwater discharge operations) should remain

within the proposed site boundaries; if further works are required off site, the advice of an ecologist should be sought.

- All excavations on site should be covered overnight to prevent otters from falling in and being injured or trapped. Excavations should then be checked prior to works commencing each morning by an assigned member of staff on site.
- If any excavations must remain open overnight, access ramps must be installed each night to allow any animals that accidentally fall in to the excavation a means of climbing out. These can be roughened planks of wood or even a ramp of earth.
- Daily checks of any excavation will be made by construction staff prior to commencing work to ensure that no otters or other animals have become trapped in the excavations. Should a trapped otter be found within the works, all works in that area must cease immediately, the area vacated and EBS should be immediately contacted for advice.
- Consideration should be given to the placement of any topsoil storage or piles of materials that may create mounds suitable for temporary holt creation. Any such piles must be checked on a daily basis by construction staff to ensure that no evidence of an animal's presence is present, especially evidence of burrowing. If activity is suspected, works in that area should cease and the advice of an ecologist sought.

4.77 In order to minimise potential effects of artificial lighting on otters using the River Alt, both during construction and the operational phase upon completion of the proposed development, a sensitive lighting scheme should be designed and implemented. Lighting levels should be at the minimum required for health and safety, and avoided wherever possible. The lighting strategy should be reviewed at an appropriate stage of design by a suitably experienced ecologist.

Water Voles

4.78 **Planning Policy.** The National Planning Policy Framework (NPPF, 2021) places a clear responsibility on Local Planning Authorities (LPA) to contribute to conserving and enhancing the natural and local environment. LPAs should promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species (e.g. Species of Principal importance, Local Biodiversity Action Plan species); and identify and pursue opportunities for securing measurable net gains for biodiversity. The Office of the Deputy Prime Minister (ODPM) Circular 06/2005 provides administrative guidance on the application of the law in relation to planning and nature conservation.

4.79 The Office of the Deputy Prime Minister (ODPM) Circular 06/2005 provides administrative guidance on the application of the law in relation to planning and nature conservation. Although intended as guidance on Planning Policy Statement 9, Circular 06/2005 has been retained as part of the guidance literature of the NPPF. Circular 06/2005 states that the presence of a protected species is a 'material consideration' in the determination of a planning application. The Government Circular on Biodiversity

and Geodiversity (06/2005) provides clarification on the essential need to determine presence or likely absence of a protected species, together with the likely impacts of proposed development on that species, before planning permission is granted.

Therefore, an LPA is unlikely to determine an application until all relevant information relating to protected species or habitats is submitted to fully inform the application.

Relevant information includes adequate surveys and, where required, mitigation strategies, which will need to be submitted to inform a planning application.

4.80 Planning conditions can be implemented to protect, and where possible, improve water vole habitat when a proposed development is granted in such areas. Unless material considerations indicate otherwise, planning law requires that planning applications must be determined in accordance with the provisions of the relevant development plan.

4.81 **Legislation.** In England and Wales water voles are listed on Schedule 5 of the Wildlife and Countryside Act 1981, receiving full protection since 2008. The Wildlife and Countryside Act 1981, together with amending legislation, lists the following as offences:

- Intentionally killing, taking or injuring a water vole (Section 9(1));
- Possessing or controlling any live or dead water vole, or any part or derivative (Section 9(2));
- Intentionally or recklessly:
 - damaging or destroying a water vole’s place of shelter or protection (Section 9(4)(a));
 - disturbing a water vole whilst it is occupying a structure or place which it uses for shelter or protection (Section 9 (4)(b));
 - obstructing access to a water vole’s place of shelter or protection (Section 9(4)(c)).

4.82 It is generally agreed that a place of shelter or protection used by water voles includes a network of burrows and/or any nests that have been constructed within the burrow system or above ground amongst dense vegetation.

4.83 Due attention, therefore, must be paid to the presence of water vole and appropriate actions taken to avoid committing offences.

4.84 Licences cannot be issued for the specific purpose of development or any activities associated with the improvement or maintenance operations of waterways. In some circumstances Natural England will consider issuing a licence in relation to a development proposal if the licensed action is going to provide a conservation benefit for water voles. The proposed project will therefore need to deliver a conservation benefit for water vole.

4.85 **The Natural Environment and Rural Communities (NERC) Act 2006** imposes a duty on all public bodies, including the Local Planning Authority (LPA) and statutory bodies in exercising their functions “to have due regard, so far as is consistent with proper exercise of those functions, to the purpose of conserving biodiversity” which includes

‘restoring or enhancing a population or habitat’. The NERC Act lists Species of Principal Importance that are capable of being a material consideration in the making of planning decisions. Water vole is a Species of Principal Importance.

- 4.86 **Protective Measures/Reasonable Avoidance Measures.** Water voles can be a transient and can travel up to 1km to form new colonies if the habitat is found to be suitable. Habitats are present within the wider survey area that are connected to the site and are considered suitable to support water vole. Although suitable habitats within the site are subject to varying water levels, there have been historic records of water vole on the River Alt, therefore a pre-development water vole survey will be carried out prior to development works.

Other Species

- 4.87 As detailed within the protective measures for habitat section above, additional precaution will be undertaken for the presence of Hedgehogs, amphibians, and other wildlife. In addition the following reasonable avoidance measures will be put in place to ensure there are no adverse effects:

- A pre-commencement check for hedgehog;
- All trenches and excavations to have a means of escape (eg. a ramp);
- Capping of any exposed open pipe systems to prevent hedgehog and other wildlife species gaining access; and
- Appropriate storage of materials to ensure hedgehogs and other wildlife do not use them.

