



Preliminary Roost Assessment Survey

4 High Street, Overton On Dee, LL13 0DT

Leslie Cairns

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Executive summary

Arbtech Consulting Limited was commissioned by Leslie Cairns to undertake a Preliminary Roost Assessment (PRA) at 4 High Street, Overton On Dee, LL13 0DT. The survey was completed on 25/03/2019. The aim of the assessment was to search for bats/field signs of bats and to consider the value and suitability of the structures for roosting bats. The surveyor also made note of any other ecological constraints observed during the survey, notably the likelihood of presence or signs of breeding birds, and the suitability of the site for barn owls.

The development proposals are for the conversion of the old post office and 3 apartments into 6 apartments. A planning application is being prepared for submission to Wrexham County Borough Council.

Recommendations - This is work you will need to commission (if any) to obtain planning permission and comply with legislation

Ref	Survey assessment conclusions (with justification)	Foreseen impacts	Recommendations	Enhancements The Local Planning Authority has a duty to ask for enhancements under the NPPF (July 2018)
B1 - Bats	The building has a moderate habitat value for supporting roosting bats. There are a number of missing and raised roof tiles on the roof structure that crevice dwelling bats could roost under.	As the proposals include the partial demolition of this building, any bat roosts present would be destroyed. This could result in death/injury of bats.	Two bat emergence/re-entry surveys are required during the active bat season (May – September) to confirm presence/likely-absence of a bat roost in the building. Both of the surveys should be completed during the optimal survey period mid-May to August inclusive. Sub-optimal: early May and September. One of these surveys must be a dawn re-entry survey. Three surveyors are required to provide full coverage of the building. <i>If bat roosts are confirmed in the building one additional survey will be required to inform a European Protected Species Mitigation Licence application to Natural England once planning permission has been granted.</i>	To be confirmed following further surveys.
B1 - Birds	The site provides negligible habitat for barn owls or breeding birds.	No impact foreseen.	None required.	None applicable to site.

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1.0 Introduction and Context

1.1 Background

Arbtech Consulting Limited was commissioned by Leslie Cairns to undertake a Preliminary Roost Assessment (PRA) at 4 High Street, Overton On Dee, LL13 0DT. The survey was completed on 25/03/2019. The assessment is informed by the Bat Conservation Trust publication *Bat Surveys for Professional Ecologists – Good Practice Guidelines* (Collins, J. (Ed) 2016).

No previous reports have been produced for this site by Arbtech.

1.2 Site Context

The site is located at National Grid Reference SJ 37321 41910, and has an area of approximately 0.01ha. There is one building within the site boundary. One building was surveyed as this will be affected by the proposed development.

1.3 Scope of the report

This report provides a description of all features suitable for roosting bats, and evaluates those features in the context of the site and wider environment. It further documents any physical evidence collected or recorded during the site survey that establishes the presence of roosting bats. It provides information on constraints to the proposals as a result of roosting bats, and summarises the requirements for any further surveys, to inform subsequent mitigation proposals, achieve Planning or other statutory consent, and to comply with wildlife legislation.

The aim of the assessment was to determine the presence or evaluate the likelihood of the presence of roosting bats, and to gain an understanding of how they could use the site. To achieve this, the following steps have been taken:

- A desk study has been carried out.
- A field survey has been undertaken, including an external survey and internal inspection where possible.
- An outline of likely impacts on any known roosts has been provided, based on current development proposals.
- Recommendations for further survey and assessment have been made, along with advice on the requirements of a European Protected Species Mitigation Licence (EPSML) application if appropriate.

A survey plan is presented in Appendix 1, proposed plans in Appendix 2, desk study results in Appendix 3 and a summary of relevant legislation is presented in Appendix 4.

1.4 Project Description

The development proposals are for the conversion of the old post office and 3 apartments into 6 apartments. A planning application is being prepared for submission to Wrexham County Borough Council.

2.0 Methodology

2.1 Desk Study methodology

The desk study included a 2km radius review of statutory and non-statutory designated sites, Biodiversity Action Plan (BAP) Priority Habitats and granted EPSML records for bats held on Magic database. An assessment of the surrounding landscape structure was also completed using aerial images from Google Earth and OS maps.

Existing bat records relating to the site and a surrounding 2km radius are required to conform to national guidelines. The data search is confidential information that is not suitable for public release and has been analysed and summarised for presentation in this report.

2.2 Site Survey methodology

The survey was undertaken by Mel Reid (accredited agent Natural England Bat Licence Number: 2016-22119-CLS-CLS from 15/09/2018).

All features that will be impacted by the project proposals were assessed for their bat roosting and/or commuting habitat. The surveyor systematically surveyed all features suitable for-bats and signs of bat activity.

For any surveyed buildings:

A non-intrusive visual appraisal from the ground using binoculars, inspecting the external features of the building(s) for potential access/egress points, and for signs of bat use. An internal inspection of the building was also made, including the living areas of derelict or abandoned buildings and the accessible roof spaces of all buildings, using an endoscope, torch and ladders. The surveyor paid particular attention to the floor and flat surfaces, window shutters and frames, lintels above doors and windows, and carried out a detailed search of numerous features within the roof space.

For any surveyed trees:

A visual inspection from ground level using binoculars and where accessible and safe to do so, an internal inspection of potential roosting features using an endoscope, torch and ladders.

2.3 Breeding birds and other incidental observations

The surveyor also made note of any other ecological constraints observed during the survey, notably the likelihood of presence or signs of breeding birds, and the suitability of the site for barn owls *Tyto alba*.

2.4 Suitability Assessment

All affected survey features on site were categorised according to the likelihood of bats being present, in line with best practice guidelines (Collins, J. (ed) 2016). The features that dictate the likelihood of roosting bats are summarised in Tables 1 and 2 below. Roost suitability is classified as high, moderate, low and negligible and dictates any further surveys required before works can proceed.

Table 1: Features of a building that are correlated with use by bats

Likelihood of bats being present	Feature of building and its context
Higher	Buildings/structures with features of particular significance for roosting bats e.g. mines, caves, tunnels, icehouses and cellars. Habitat on site and surrounding landscape of high quality for foraging bats e.g. broadleaved woodland, tree-lined watercourses and grazed parkland. Site is connected with the wider landscape by strong linear features that would be used by commuting bats e.g. river and or stream valleys and hedgerows. Site is proximate to known or likely roosts (based on historical data).
Lower	A small number of possible roost sites/features, used sporadically by more widespread species. Habitat suitable for foraging in close proximity, but isolated in the landscape. Or an isolated site not connected by prominent linear features. Few features suitable for roosting, minor foraging or commuting.

Table 2: Features of a tree that are correlated with use by bats

Likelihood of bats being present	Feature of tree and its context
Higher	A tree with one or more potential roost sites that are obviously suitable for use by larger numbers of bats on a more regular basis and potentially for longer periods of time due to their size, shelter, protection, conditions and surrounding habitat.
Lower	A tree of sufficient size and age to contain potential roosting features but with none seen from the ground or features seen with only very limited roosting potential.

2.5 Limitations

It should be noted that whilst every effort has been made to describe the features on site in the context of their suitability for roosting bats, this does not provide a complete characterisation of the site. This survey provides a preliminary view of the likelihood of bats being present. This is based on suitability of the habitats on site and in the local area, the ecology and biology of bats as currently understood, and the known distribution of bats as recovered during the desk study.

Specific limitations to the survey were a lack of access to part of the loft space of B1 due to a separating wall within the loft space and no separate loft hatch into the walled-off section of the loft. The external roof at the rear of the property could not be inspected due to the lack of space at the rear.

These limitations have been taken into account during the evaluation of the site and requirement for further surveys.

3.0 Results and Evaluation

3.1 Desk Study Results

A summary of desk study results are provided below, full details are presented in Appendix 3.

3.2 Designated sites

Details of any statutory and non-statutory designated sites within a 2km radius of the survey site, including their reasons for notification, are provided in Table 3 below.

Table 3: Designated sites within 2km radius of the site

Designated Site Name	Distance from Site (approx.)	Reasons for Notification from Natural England and/or BRD or LPA policy maps
Statutory Sites		
Afon Dyfrdwy (River Dee) Site of Special Scientific Interest (SSSI) (Wales)	660m west	The River Dee/ Afon Dyfrdwy is notified as a SSSI for mainly for the unique transitions through a range of river habitat types from eutrophic to mesotrophic. These habitats support designated species features such as <i>Ranunculus</i> communities, floating water plantain <i>Luronium natans</i> , Atlantic salmon <i>Salmo salar</i> , bullhead <i>Cottus gobio</i> , sea lamprey <i>Petromyzon marinus</i> , river lamprey <i>Lampetra fluviatilis</i> , brook lamprey <i>Lampetra planeri</i> , otter <i>Lutra lutra</i> , club tailed dragonfly <i>Gomphus vulgatissimus</i> and fluvial geomorphology at Rhewl, just upstream of Llangollen and in the meandering section of the main Dee between Holt and Worthenbury and Carboniferous stratigraphy at Dee Bridge.
River Dee and Bala Lake / Afon Dyfrdwy a Llyn Tegid Special Areas of Conservation (SAC) (Wales)	700m east	The River Dee/ Afon Dyfrdwy is notified as a SSSI for mainly for the unique transitions through a range of river habitat types from eutrophic to mesotrophic. These habitats support designated species features such as <i>Ranunculus</i> communities, floating water plantain <i>Luronium natans</i> , Atlantic salmon <i>Salmo salar</i> , bullhead <i>Cottus gobio</i> , sea lamprey <i>Petromyzon marinus</i> , river lamprey <i>Lampetra fluviatilis</i> , brook lamprey <i>Lampetra planeri</i> , otter <i>Lutra lutra</i> , club tailed dragonfly <i>Gomphus vulgatissimus</i> and fluvial geomorphology at Rhewl, just upstream of Llangollen and in the meandering section of the main Dee between Holt and Worthenbury and Carboniferous stratigraphy at Dee Bridge.
Cloy Brook Pastures SSSI	1900m west	Beeston Brook Pasture lies at an altitude of around 30m OD, approximately 0.25km north of the village of Coupe Green. The site consists of unimproved, herb-rich pasture with flushes on a north-east facing slope. Boulder clay overlying sandstone gives rise to heavy, neutral to mildly acidic soils. Beeston Brook Pasture is one of the few remaining unimproved herb-rich pastures present in this part of Lancashire. This vulnerable habitat has become increasingly scarce nationally and has been largely destroyed in Lancashire due to agricultural intensification.
Non-statutory Sites		
None known		

3.3 Landscape

A review of the designated sites, aerial photographs (Figure 1), the Magic database and OS maps has been undertaken. Collated together, the site's local bat habitat is described below:

The site is located within the small village of Overton. The landscape is dominated by residential dwellings with small gardens. The wider landscape is dominated by woodland and arable fields.

The River Dee lies approximately 680m west of the site and will provide good foraging opportunities for bats, as well as a good commuting route and therefore provides connectivity to the wider landscape. Helt Wood lies approximately 200m to the west of the site. This woodland is connected to a number of other woodlands including Mill Wood, Neile's Wood, Whooter's Hail Wood and Deebank Plantation. These woodlands will provide excellent foraging areas for bats, and provide good connectivity to the wider landscape.

Priority habitats within 2km of the site are listed in Table 4.

Table 4: Priority Habitat Inventory within 2km (Magic.gov.uk):

Habitat	Closest distance from site
Broadleaved Woodland	~150m west
Mixed Mainly Broadleaved	~330m west
Mixed Mainly Conifer	~1600m west
Conifer Woodland	~680m south-west



Figure 1: Aerial photo of site, showing landscape structure

3.4 Historical records

Bat records have not been requested from Cofnod (North Wales Environmental Information Service) at this stage. The Local Planning Authority (LPA) may request that bat records data are obtained to conform to national guidelines and these can be incorporated into the report at a later date.

Table 5: Historical records of bats within 2km of the site*

Common name	Scientific binomial	Number of records	Number of roost records	Maternity roost records
Not requested at this time				

*Records from the past 10 years

A search of the Magic database for granted European Protected Species Mitigation Licences (EPSMLs) for bats within a 2km radius of the site found no licenced sites, however, this database only includes licences granted by Natural England. There is currently no online database of bat mitigation licences granted by Natural Resources Wales. As the 2km search radius does not cross the Wales-England border, it is not known if there are any nearby sites with bat mitigation licences issued by Natural Resources Wales.

Table 6: Granted EPSMLs (bats) within 2km of the site

Case reference of granted application	Approx. distance from site	Bat Species Effected	Licence Start Date:	Licence End Date:	Impacts allowed by licence
None					

3.5 Field Survey Results

One building on site was surveyed, designated as B1 and illustrated in the map in Appendix 1. The weather conditions recorded at the time of the survey are shown in Table 7.

Table 7: Weather conditions during the survey

Date: 25/03/2019	
Temperature	10°C
Humidity	60%
Cloud Cover	6%
Wind	22 km/h
Rain	None

3.6 Site Feature descriptions and photos

B1 Exterior

B1 – eastern elevation (pictured opposite).

B1 is a terraced brick-built building with a pitched roof, clad in clay roof tiles. The roof tiles are in relatively good condition, however there are a few gaps/missing tiles. B1 consists of a main house (pictured opposite), as well as three extensions to the rear of the property, designated as B1a, B1b and B1c.

There is a gable fronted dormer on this elevation of B1. The windows and doors are wooden framed and are in good condition with no suitable bat roost sites.

There is a brick-built chimney which has lead flashing surrounding its base. This lead flashing is tight fitting with no suitable roosting space for bats.



B1 –western elevation (pictured opposite).

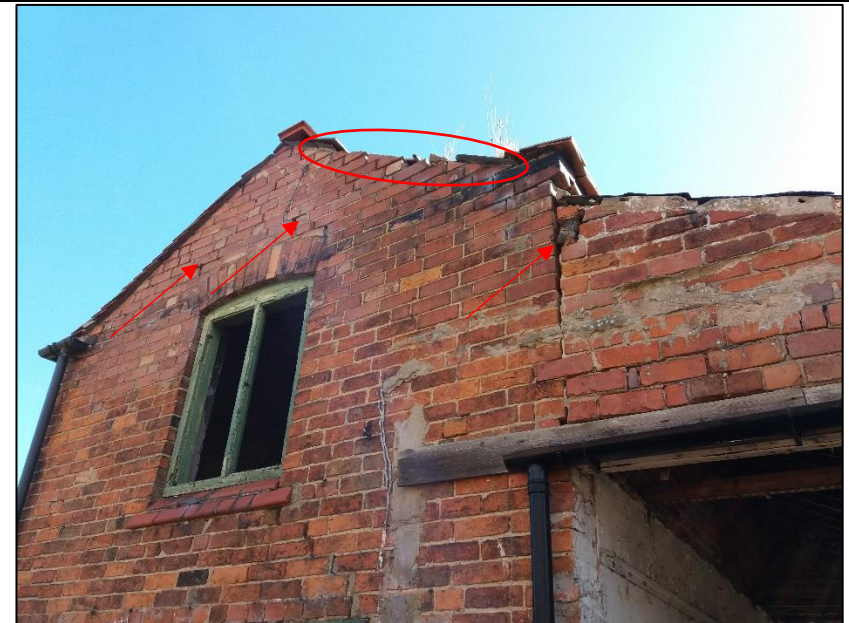
At the rear of the property, there is a large brick-built two-storey extension perpendicular to the main house, designated as B1a for ease of reporting.

There are also two concrete-built single-storey extensions to the northern end of the west elevation of the main house of B1, designated as B1b and B1c. B1b and B1c both have metal corrugated roofs, which do not provide suitable roosting space for bats.



B1a –western elevation (pictured opposite).

The photo opposite shows the gable end of B1a. The brickwork on this section of B1 is in a poor condition with a number of gaps that could provide suitable roosting space for crevice-dwelling bats such as Common Pipistrelle bats. There are a number of missing tiles along the roof verge which could provide access into the loft space for bats.



B1 – western elevation (pictured opposite).

The photo opposite shows part of the western elevation of the main house of B1, and the southern elevation of B1a. The brickwork on these elevations appear to be in good condition with no suitable roosting spaces for bats. The roof eaves are in poor condition, and appear to contain gaps, which correlate with light observed entering the loft space during the internal inspection.



B1a – northern elevation (pictured opposite).

This photo shows the northern elevation of the roof structure of B1a. There are a number of missing and raised roof tiles that provide suitable areas for bats (circled). There is not internal loft space within B1a as it has previously been converted into a habitable area, however these gaps provide good bat roosting features within the roof structure.



B1a – southern elevation (pictured opposite).

This photo shows the roof structure on the southern elevation of B1a.



B1 – north-western corner of B1 (pictured opposite).

This photo shows the roof structure on the southern elevation of B1a. There are a number of missing and raised roof tiles along this section of roof (arrows), that would provide suitable roosting areas of crevice-dwelling bats. There are missing brick along the eaves (circled) which could be used by bats to access the building interior or could be utilised by crevice dwelling bats to access the wall tops.



B1 – western elevation (pictured opposite).

The photo opposite shows the roof structure on the western elevation of the main house of B1. There are a number of missing and raised roof tiles (circled). These gaps correlated with daylight entering the loft space noted during the internal inspection. These gaps provide access for void dwelling bats into the loft space as well as roosting areas for crevice dwelling bats. The lead flashing around the base of the chimney is raised (arrow) and therefore could provide a suitable roosting space for bats.



B1 – eastern elevation (pictured opposite).

The photo opposite shows the roof structure of the main house of B1 on the eastern elevation. There are a number of missing and raised roof tiles (circled). These gaps correlated with daylight entering the loft space noted during the internal inspection. These gaps provide access for void dwelling bats into the loft space as well as roosting areas for crevice dwelling bats.



B1 – eastern elevation (pictured opposite).

The photo opposite shows the roof structure of the main house of B1 on the eastern elevation. There are a number of missing and raised roof tiles (circled). These gaps correlated with daylight entering the loft space noted during the internal inspection. These gaps provide access for void dwelling bats into the loft space as well as roosting areas for crevice dwelling bats.



B1 Interior**B1 – Loft Space 1**

There are two loft space located within B1. There is one loft space in the main house of B1, designated as Loft Space 1 (pictured opposite). There is another loft space in B1a, designated as Loft Space 2.

The photo opposite shows the southern end of Loft Space 1. The roof structure is unlined and there is lathe plaster coating the backs of the roof tiles is failing several areas. Light is entering the loft space along the gable end (circled). These gaps allow access into the loft space for bats.

Approximate internal dimensions: 10m long x 6m wide x 2m high (floor to ridge height).

**B1 – Loft Space 1**

The photo opposite shows the northern end of Loft Space 1. Part of the loft space has been separated with a brick wall and therefore could not be properly inspected as there was no way over the wall and no separate loft hatch into this space.



B1 – Loft Space 1

There is a skylight on the western side of Loft Space 1. There are number of gaps in the roof structure along this section of loft space, highlighted by daylight entering through the roof (circled).



B1 – Loft Space 1

The photo opposite shows the northern end of Loft Space 1 that has been sectioned off with a brick wall and was taken from the accessible area looking over the subdividing wall. There were a number of gaps in the roof structure in this section of the loft space, highlighted by day light entering through the roof (which did not show up in the photo).



B1 – Loft Space 1

The photo opposite shows the part of Loft Space 1 that has been sectioned off with a brick wall. There were a number of gaps in the roof structure in this section of the loft space, highlighted by day light entering through the roof (which did not show up in the photo). There are dense cobwebs in Loft Space 1 indicating a lack of recent bat activity.

**B1b – Loft Space 2**

The photo opposite shows the western end of the loft space in B1b. The loft space has previously been converted into a habitable area. Some of the ceiling had fallen away, revealing the roof structure above.

Approximate internal dimensions: 9m long x 4m wide x 2m high (floor to ridge height).



B1b – Loft Space 2

The photo opposite shows the eastern end of the loft space in B1b.

**B1b – Loft Space 2**

The photo opposite shows the roof structure in Loft Space 2 where the ceiling has fallen away. There is no roof lining, and the roof consists of the timber beams and roof tiles.

B1 Evidence of bats

There was no evidence of bat activity located internally in B1. There was no evidence of bat use (e.g. bat droppings) found on external features. However, this kind of evidence is easily weathered away on the exterior of buildings and is rarely visible.

B1 Breeding birds and other incidental observations

There was no evidence of nesting birds located internally or externally on the survey building.



4.0 Conclusions, Impacts and Recommendations

4.1 Informative guidelines

Bats are protected under the Wildlife and Countryside Act and Conservation Regulations (see Appendix 4 for a summary of legislation protecting bats in the UK). Legislation protects all wild birds whilst they are breeding, and prohibits the killing, injuring or taking of any wild bird or their nests and eggs. Certain species of bird, including the barn owl, are subject to special provisions; it is an offence to disturb any bird or their young during the breeding season.

There are three possible outcomes of this survey, each with specific recommendations. These are outlined below:

Confirmed bat roost

Best practice survey guidelines (Collins, 2016) recommends additional surveys for confirmed roosts. Three further surveys are required to characterise the bat roost present including species, roost type and access points to inform a European Protected Species Mitigation Licence (EPSML) application with Natural England. Surveys must be completed during the active bat season (May – September). At least two of the surveys should be completed during the optimal survey period mid-May to August, and at least one of the surveys should be a dawn re-entry survey (Collins, J. 2016).

Low, moderate or high likelihood of a bat roost present

Best practice survey guidelines (Collins, 2016) recommends additional surveys for features assessed as having low to high suitability for roosting bats. One, two or three further surveys are required to confirm presence/likely-absence of a bat roost, based on a low, medium or high roost likelihood evaluation. Surveys must be completed during the active bat season (May – September). If more than one survey is recommended, at least one of them should be completed during the optimal survey period mid-May to August, and at least one of the surveys should be a dawn re-entry survey (Collins, J. 2016). If two or one further survey is recommended these surveys must be completed during the optimal survey period (mid-May to August). For low and moderate roost likelihood evaluation the survey effort recommended at this stage is iterative and if bats roosts are confirmed in the building, a further survey will be required to provide sufficient information to inform an EPSML application to Natural England.

Negligible likelihood of a bat roost present

Buildings assessed as comprising negligible suitability for roosting bats do not normally require further surveys. However, if bats are found during any stage of the development, work should stop immediately and a suitably qualified ecologist should be contacted for further advice.

4.2 Evaluation

Taking the desk based assessment and site survey results into account, the following value for roosting bats has been placed on each site survey feature.

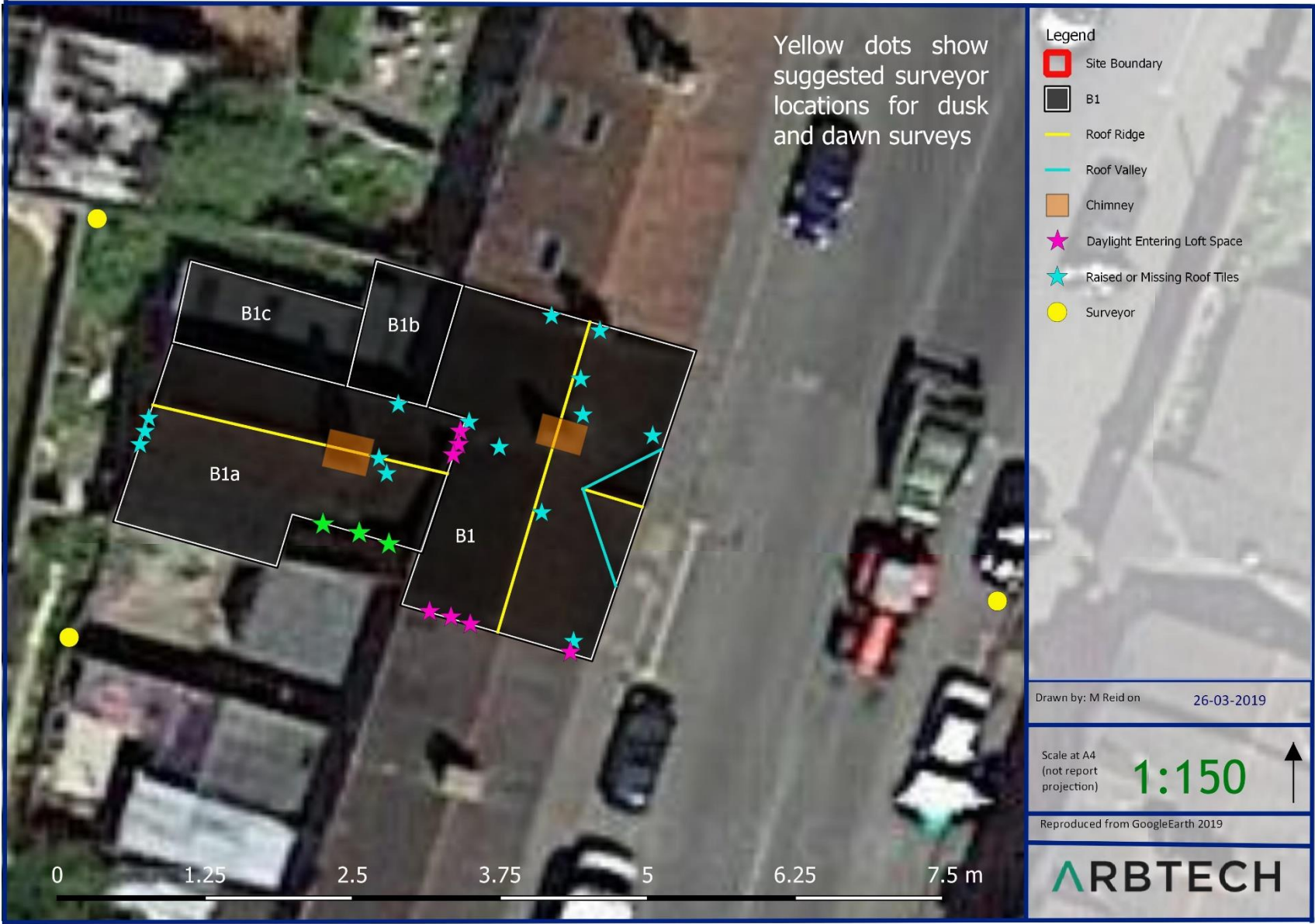
Table 8: Evaluation of the building on site

Ref	Survey assessment conclusions (with justification)	Foreseen impacts	Recommendations	Enhancements The Local Planning Authority has a duty to ask for enhancements under the NPPF (July 2018)
B1 - Bats	The building has a moderate habitat value for supporting roosting bats. There are a number of missing and raised roof tiles on the roof structure that crevice dwelling bats could roost under.	As the proposals include the partial demolition of this building, any bat roosts present would be destroyed. This could result in death/injury of bats.	Two bat emergence/re-entry surveys are required during the active bat season (May – September) to confirm presence/likely-absence of a bat roost in the building. Both of the surveys should be completed during the optimal survey period mid-May to August inclusive. Sub-optimal: early May and September. One of these surveys must be a dawn re-entry survey. Three surveyors are required to provide full coverage of the building. <i>If bat roosts are confirmed in the building one additional survey will be required to inform a European Protected Species Mitigation Licence application to Natural England once planning permission has been granted.</i>	To be confirmed following further surveys.
B1 - Birds	The site provides negligible habitat for barn owls or breeding birds.	No impact foreseen.	None required.	None applicable to site.

5.0 Bibliography

- British Trust for Ornithology (2016) www.bto.org/about-birds/nbw/putting-up-a-nest-box
- Collins, J. (ed.) (2016). Bat Surveys for Professional Ecologists —Good Practice Guidelines, 3rd edition, Bat Conservation Trust, London.
- Garland & Markham (2008) Is important bat foraging and commuting habitat legally protected?
- Google Earth (2019) accessed on 25/03/2019.
- Magic database (2019) <http://www.magic.gov.uk/MagicMap.aspx> accessed on 25/03/2019.
- Mitchell-Jones, A.J. (2004). Bat Mitigation Guidelines. English Nature, Peterborough.

Appendix 1: Survey Plan



Appendix 2: Proposed Site Plan

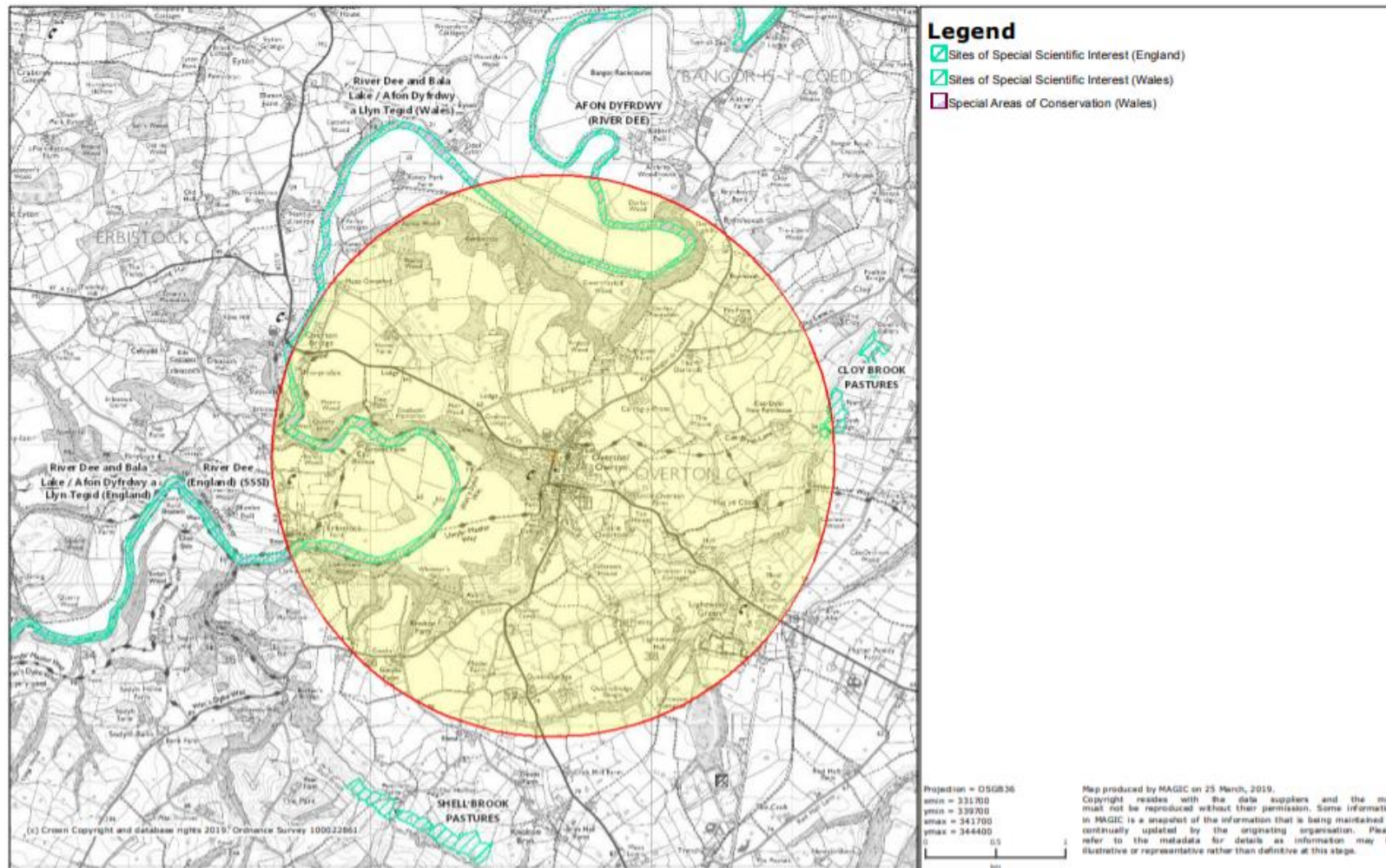
None provided

Appendix 3: Desk Study Information

Full historical records can be provided on request.

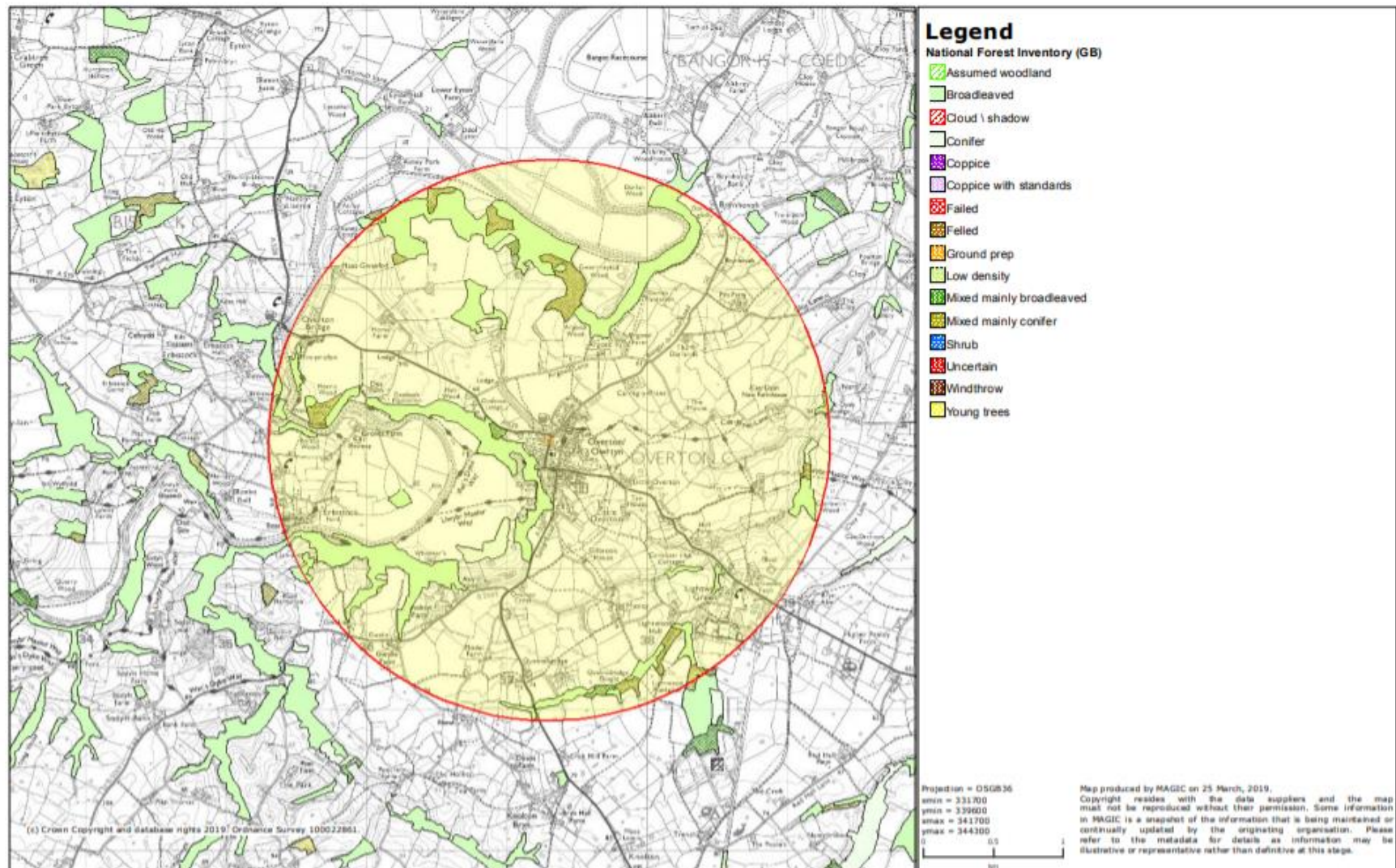
MAGiC

Designated Sites within a 2km Radius



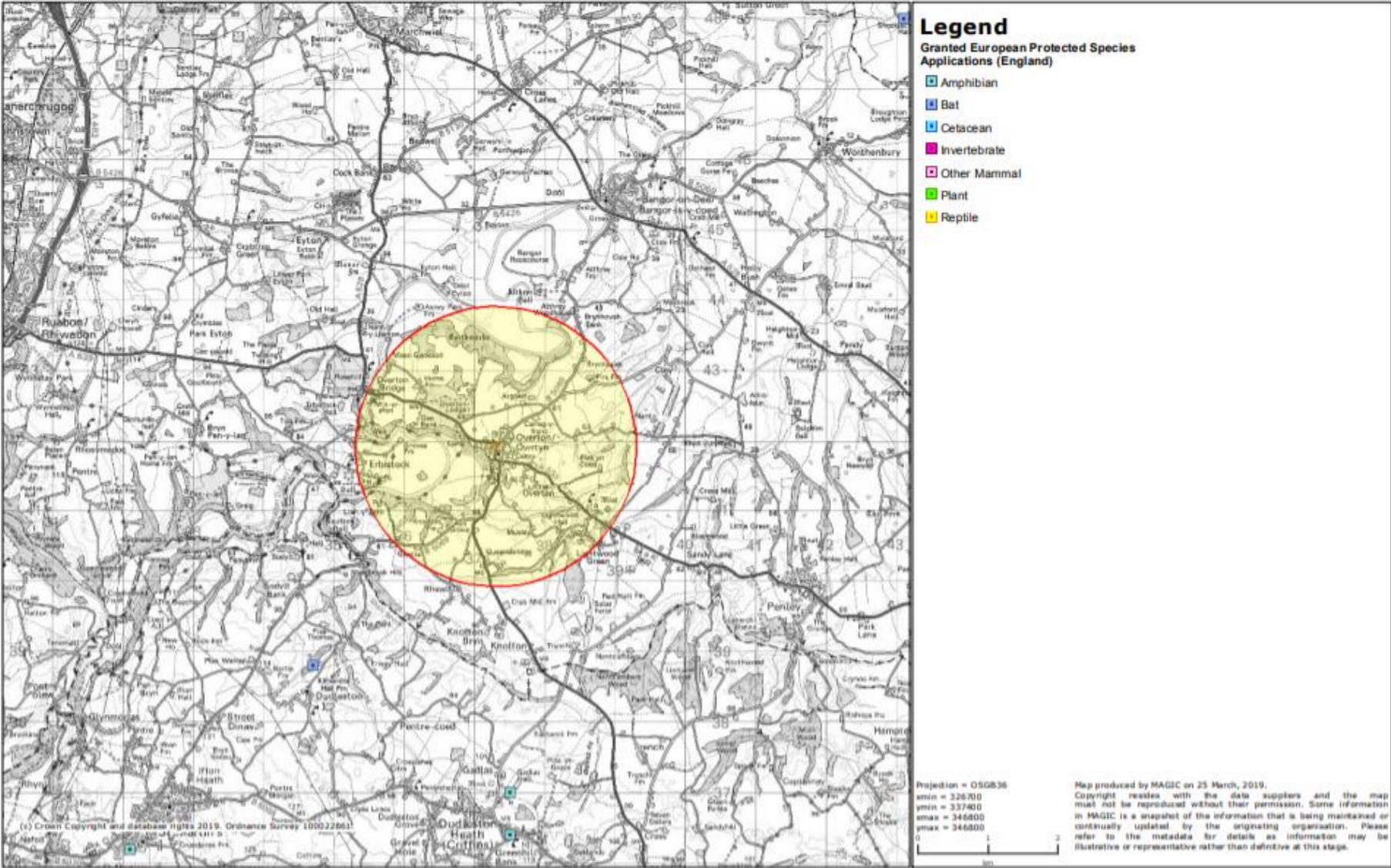
MAGiC

Habitats within a 2km Radius





EPSLs within a 2km Radius



Appendix 4: Legislation and Planning Policy related to bats

LEGAL PROTECTION

All species of bat are fully protected under *The Conservation of Habitats and Species Regulations 2017* through their inclusion on Schedule 2.

Regulation 43: Protection of certain wild animals - offences

(1) A person is guilty of an offence if they:

- (a) Deliberately captures, injures or kills any wild animal of a European protected species,
- (b) Deliberately disturbs wild animals of any such species,
- (c) Deliberately takes or destroys the eggs of such an animal, or
- (d) Damages or destroys a breeding site or resting place of such an animal,

(2) 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.

All species of bats are also protected under the *Wildlife and Countryside Act 1981 (as amended)* through their inclusion on *Schedule 5* (which applies to England and Wales). Under this Act, they are additionally protected from:

- Intentional or reckless disturbance (at any level)
- Intentional or reckless obstruction of access to any place of shelter or protection
- Selling, offering or exposing for sale, possession or transporting for purpose of sale

The Natural Environment and Rural Communities Act 2006 and the Biodiversity Duty

Section 40 of the Natural Environment and Rural Communities (NERC) Act 2006, requires all public bodies to have regard to biodiversity conservation when carrying out their functions. This is commonly referred to as the 'biodiversity duty'.

Section 42 of the Act requires The National Assembly for Wales must, as respects Wales, publish a list of the living organisms and types of habitat which in the Assembly's opinion are of principal importance for the purpose of conserving biodiversity. This list is intended to assist decision makers such as public bodies in implementing their duty under Section 40 of the Act. Under the Act these habitats and species are regarded as a material consideration in determining planning applications. A developer must show that their protection has been adequately addressed within a development proposal.

Environment (Wales) Act 2016 and the Biodiversity Duty

The Environment (Wales) Act introduces a new biodiversity duty, which highlights biodiversity as an essential component of ecosystem resilience. This new duty replaces the biodiversity duty in the Natural Environment and Rural Communities Act 2006 (referred to as the NERC Act). Part 1 of the Act deals with Sustainable management of natural resources including Biodiversity and Resilience of Ecosystems Duty. The Environment Act enhances the current NERC Act duty to require all public authorities, when carrying out their functions in Wales, to seek to “maintain and enhance biodiversity” where it is within the proper exercise of their functions. In doing so, public authorities must also seek to “promote the resilience of ecosystems”. As under the NERC Act the new duty will apply to a range of public authorities such as the Welsh Ministers, local authorities, public bodies and statutory undertakers. This ensures that biodiversity is an integral part of the decisions that public authorities take in relation to Wales. It also links biodiversity with the long term health and functioning of our ecosystems, therefore helping to align the biodiversity duty with the framework for sustainable natural resource management provided in the Act.

PLANNING POLICY WALES (draft 2018)

Paragraph 5.42 of the document refers to Biodiversity and Ecological Networks and states:

The planning system has a key role to play in helping to reverse the decline in biodiversity and increasing the resilience of ecosystems, at various scales, by ensuring appropriate mechanisms are in place to both protect against loss and to secure enhancement. Addressing the consequences of climate change should be a central part of any measures to conserve biodiversity and the resilience of ecosystems. Information contained in The State of Natural Resources Report (SoNaRR) (published by Natural Resources Wales and Area Statements should be taken into account. Development plan strategies, policies and individual development proposals must take into account the need to:

- Promote the conservation of biodiversity, in particular the conservation of wildlife and habitats;
- Ensure action in Wales contributes to meeting international responsibilities and obligations for biodiversity and habitats;
- Ensure statutorily designated sites are properly protected and managed;
- Safeguard protected species; and existing biodiversity assets from impacts which directly affect their nature conservation interests and compromise the resilience of ecological networks and the components which underpin them, such as water and soil; and
- Seek enhancement of and improvements to ecosystem resilience by improving diversity, condition, extent and connectivity of ecological networks.

Biodiversity and Resilience of Ecosystems Duty (Section 6 Duty)

5.44 Planning authorities must seek to maintain and enhance biodiversity in the exercise of their functions. Planning authorities must also take account of and promote the resilience of ecosystems, in particular the following aspects:

- a) Diversity between and within ecosystems;
- b) The connections between and within ecosystems;
- c) The scale of ecosystems;

- d) The condition of ecosystems (including their structure and functioning); and
- e) The adaptability of ecosystems.

5.45 In fulfilling this duty, planning authorities must have regard to:

- a) The list of habitats of principal importance for Wales, published under Section 7 of the Environment (Wales) Act 2016;
- b) The State of Natural Resources Report (SoNaRR), published by NRW; and
- c) Any Area Statement that covers all or part of the area in which the authority exercises its functions.

5.46 A proactive approach towards facilitating the delivery of biodiversity and resilience outcomes should be taken by all those participating in the planning process. In particular, planning authorities should demonstrate that they have sought to fulfil the duties and requirements of Section 6 of the Environment Act by taking all reasonable steps to maintain and enhance biodiversity in the exercise of their functions. The broad framework for implementing the duty and building resilience through the planning system includes addressing:

- Diversity: to ensure mechanisms are in place to minimise further loss and that circumstances allow for species' populations to expand and recolonise their natural range (former range) or adapt to future change. This means development should provide a net benefit for biodiversity, and at the very least, with no significant loss of habitats or populations of species, locally or nationally;
- Extent: to ensure mechanisms allow for the maintenance of existing assets and networks and promote the restoration of damaged, modified or potential habitat and the creation of new habitat. This means that planning choices should incorporate measures which seek the creation and restoration of green networks and linkages between habitats and maintaining and
- enhancing other green infrastructure features and networks;
- Condition: this is more complex to address, not least because of the interactions of various factors which underpin habitats. At the very least planning approaches should not compromise the condition of ecosystems. By taking an integrated approach to development, for example, which considers both direct and wider impacts and benefits it should be possible to make a positive contribution through the planning system; and
- Connectivity: to take opportunities to develop functional habitat and ecological networks across landscapes, building on existing connectivity and quality and encouraging habitat creation and restoration. The opportunities could include enlarging habitat areas, developing buffers around designated sites or other biodiversity assets or corridors (including transport and river corridors) and the creation of 'stepping stones' which will strengthen the ability of habitats and ecological networks to adapt to change, including climate change.

Good Practice Guide GPG 3 (October 2015) NRW Approach to Bats and Planning

As explained in Planning Policy Wales (Chapter 5 - Conserving and Improving Natural Heritage and the Coast), the presence of a European protected species is a material consideration for a development proposal that would be likely to result in disturbance or harm to the species or its breeding sites or resting places. Planning Policy Wales also explains that planning authorities should seek the advice of Natural Resources Wales for all planning applications likely to result in disturbance or harm to bats and should always consult them before granting permission. Local Planning Authorities address this by screening applications to identify when there is a reasonable likelihood that bats may be present and, therefore, when to require a bat survey and report

that will confirm if bats are present and if they likely to be disturbed or harmed by the proposal. The overall requirement on Local Planning Authorities, Natural Resources Wales and developers is to avoid harm or disturbance to bats and their breeding sites and resting places, unless Natural Resources Wales has given a licence to allow the harm or disturbance. Natural Resources Wales may only give a licence if the requirements for derogation are met, including that disturbance or harm to individual bats (or to their breeding sites and resting places) would not be detrimental to the maintenance of the population.

Effect on development works:

A European Protected Species Mitigation (EPSM) Licence issued by Natural Resources Wales will be required for works likely to affect a bat roost or for operations likely to result in a level of disturbance which might impair their ability to undertake those activities mentioned above (e.g. survive, breed, rear young and hibernate). The licence is to allow derogation from the relevant legislation but also to enable appropriate mitigation measures to be put in place and their efficiency/success to be monitored. The legislation may also be interpreted such that, in certain circumstances, important foraging areas and/or commuting routes can be regarded as being afforded *de facto* protection, for example, where it can be proven that the continued usage of such areas is crucial to maintaining the integrity and long-term viability of a bat roost (Garland & Markham, 2008).

There are 12 species of bat breeding in Wales and Natural Resources Wales issues licences under Regulation 55 of the Habitats Regulations to allow you to work within the law.

Licences are issued for specific purposes stated in the Regulations, if the following three tests are met:

- The purpose of the work meets one of those listed in the Habitats Regulations (see below);
- That there is no satisfactory alternative;
- That the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status (FCS) in their natural range

The Habitats Regulations permits licences to be issued for a specific set of purposes including:

1. ***include preserving public health or public safety or other imperative reasons of over-riding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment;***
2. scientific and educational purposes,
3. ringing or marking
4. conserving wild animals

Development works fall under the first purpose and Natural Resources Wales issues bat mitigation licences for developments.