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Orchard Lane / East Molesey

Herpetofauna Reasonable Avoidance Method Statement

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ORCHARD LANE, EAST MOLESEY

HERPETOFAUNA REASONABLE AVOIDANCE METHOD STATEMENT

A Report to: CIRC Management LLP

Report No: RT-MME-153851-03

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REPORT VERIFICATION AND DECLARATION OF COMPLIANCE

This study has been undertaken in accordance with British Standard 42020:2013 “Biodiversity, Code of practice for planning and development”.

Report Version	Date	Completed by:	Checked by:	Approved by:
Final	05/10/2022	Beth Stacey MSc (Ecological Project Officer)	Harry Stone MSc ACIEEM (Ecological Consultant)	Tim Hextell MCIEEM (Principal Ecological Consultant)
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The information which we have prepared is true, and has been prepared and provided in accordance with the Chartered Institute of Ecology and Environmental Management’s Code of Professional Conduct. We confirm that the opinions expressed are our true and professional bona fide opinions.

DISCLAIMER

The contents of this report are the responsibility of Middlemarch. It should be noted that, whilst every effort is made to meet the client’s brief, no site investigation can ensure complete assessment or prediction of the natural environment.

Middlemarch accepts no responsibility or liability for any use that is made of this document other than by the client for the purposes for which it was originally commissioned and prepared.

VALIDITY OF DATA

The findings of this study are valid for a period of two years, depending upon the nature of works proposed and the potential for these works to impact upon herpetofauna. If works have not commenced within two years of this study, it may it may be necessary to undertake an updated survey to allow any changes in the status of herpetofauna on site to be assessed, and to inform a review of the conclusions and recommendations made.

CONTENTS

1 INTRODUCTION

1.1 PROJECT BACKGROUND

In July 2022, CIRC Management LLP commissioned Middlemarch to develop a Reasonable Avoidance Method Statement for herpetofauna (amphibians and reptiles) associated with the proposed redevelopment of a site located at Orchard Lane, East Molesey.

Middlemarch has undertaken the following ecological assessments for CIRC Management at this site:

- Preliminary Ecological Appraisal (RT-MME-153535-01 RevB);
- Preliminary Bat Roost Assessment (RT-MME-153535-02 RevA);
- Dusk Emergence and Dawn Re-entry Bat Surveys (RT-MME-153851-02 RevA);
- Invasive Species Method Statement (RT-MME-153851-04 RevA); and,
- Biodiversity Net Gain Assessment (RT-MME-156895 RevA).

The Preliminary Ecological Appraisal, conducted in September 2020 and updated in July 2022, identified the presence of suitable herpetofauna habitat on site. Without appropriate mitigation, the proposed development may destroy/disturb herpetofauna habitats, which may result in the death/injury of native herpetofauna.

1.2 DEVELOPMENT SITE DESCRIPTION AND CONTEXT

The site under consideration comprises an approximately 0.75 ha parcel of land located in Orchard Lane, East Molesey. The site is centred at National Grid Reference TQ 14620 67336.

At the time of the survey, the site was dominated by buildings and associated hardstanding, with patches of amenity grassland and areas of introduced shrub. There were scattered trees throughout the site and ephemeral vegetation growing in places. In the north-east of the site was a large horticultural area which contained poor semi-improved grassland and scattered scrub.

The site was bordered by the gardens of residential houses to the east and by Orchard Lane to the south. The River Ember was adjacent to the site's western boundary and an area of rough grassland and woodland was present to the north of the site that forms part of the River Ember and River Mole green corridor. The wider landscape was dominated by residential development to the east and by the River Ember, River Mole Island Barn Reservoir (a Site of Nature Conservation Importance) and other habitats including woodland, rough grassland and scrub to the west.

1.3 DETAILS OF PROPOSED WORKS

The redevelopment of the site will entail demolition (or partial demolition) of all existing buildings and the erection of 3 buildings comprising 74 residential units (15 x 1 bed, 48 x 2 bed and 11 x 3 bed) and ancillary facilities for residents, underground and surface level car and cycle parking, mechanical plant, soft and hard landscaping and associated diversion of existing Thames Water pipe. Building B3, situated outside the development boundary, is to be retained. Documentation made available by the client is listed in Table 1.1.

Document Name / Drawing Number	Author
Landscape Proposal	Exterior Architecture
Tree Retain + Removal Plan / 2241-EXA-XX-GF-DR-L-00150 Rev P02	Exterior Architecture
General Arrangement Plan Ground Floor / 2241-EXA-GF-DR-L-00101 Rev P01	Exterior Architecture
Roof Plan / A3711-ASA-ZZ-RP-DR-A-0215 Rev P21	Assael Architecture

Table 1.1: Documentation Provided by Client

2 HERPETOFAUNA STATUS AND POTENTIAL IMPACTS

2.1 EXISTING INFORMATION REGARDING HERPETOFAUNA

Desk Study

A desk study was carried out as part of the Preliminary Ecological Assessment (Report RT-MME-153535-01 RevA) undertaken by Middlemarch in September 2020. During the desk study no records of any herpetofauna species were identified within a 1 km radius of the site.

Phase 1 Habitat Survey

The site is dominated by hardstanding, buildings and associated amenity spaces. No ponds or similarly suitable breeding habitats for amphibians are present on or immediately adjacent to the site. Reference to Ordnance Survey data and aerial imagery indicates that one pond is located approximately 330 m north of the survey area, however this habitat is separated from the site by the River Mole and River Ember, which are considered to pose a barrier to dispersal of amphibians from the pond to the site.

The site provides limited suitable terrestrial habitat for amphibians and reptiles, primarily in the form of a 0.083 ha patch of semi-improved grassland. This grassland was thick and tussocky with a sward height over 75 cm and considered suitable for reptiles and amphibians. It was dominated by false oatgrass *Arrhenatherum elatius* and Yorkshire fog *Holcus lanatus*. Cocksfoot *Dactylis glomerata*, common sorrel *Rumex acetosa*, common nettle *Utrica diocia*, foxglove *Digitalis lutea*, meadow buttercup *Ranunculus acris,* large-flowered evening-primrose *Oenothera glazioviana*, timothy grass *Phleum pratense* and common yarrow *Achillea millefolium* also grew in the tall sward area. In shorter sward areas the following additional species were recorded: creeping buttercup *Ranunculus repens,* red deadnettle *Lamium purpureum*, ground ivy *Glechoma hederacea*, wall barley *Hordeum murinum*, common dandelion *Taraxacum officinale*, hawksbeard *Crepis sp.*, bristly oxtongue *Helminthotheca echioides*, ribwort plantain *Plantago lanceolata* and broadleaf plantain *Plantago major*.

Other suitable terrestrial habitats for herpetofauna include dense scrub at the site's western riverside boundary, compost and brash piles associated with the horticultural area immediately south of the semi-improved grassland, and to a lesser extent patches of introduced shrub situated within and around these habitats.

There is an extensive area of potential terrestrial habitat located directly north of the site, comprising a mosaic of grassland, trees and scrub. This area may provide additional habitat for reptiles and amphibians.

Due to the absence of local records of reptiles and amphibians, and the relatively small size of optimal habitat on site, the risk of causing direct harm/injury to reptiles and amphibians is considered low. To reduce this risk to negligible appropriate mitigation is required.

2.2 POTENTIAL IMPACTS

This section provides a brief assessment of the potential impacts of the proposed development on herpetofauna as a result of the proposed development. Types of impact considered and terminology used is consistent with English Nature's Great Crested Newt Mitigation Guidelines (2001), which is considered best practice and provides the framework that underpins great crested newt impact assessments, mitigation strategies and licence applications.

2.2.1 Pre- and Mid-Development Impacts

- Potential Harm to Herpetofauna, including Individual Great Crested Newts.
- Loss of Foraging Habitat and Refugia
- Disruption to Dispersal and Migration

2.2.2 Long-Term Impacts

- Habitat loss
- Fragmentation

2.2.3 Post-Development Interference Impacts

- Continued Disturbance

2.3 SUMMARY OF IMPACTS AT SITE AND WIDER LEVEL

It is considered that if the proposed method statement detailed in Chapter 3 is adhered to, it will be possible to undertake the proposed work in a way which will not breach legislation (outlined in Appendix 1).

3 REASONABLE AVOIDANCE METHOD STATEMENT

3.1 INTRODUCTION

The purpose of the reasonable avoidance method statement detailed in this chapter is to ensure that reptile and amphibians are not harmed by the proposed development, and that if present their favourable conservation status is maintained prior to, during and after the construction period. The risk to herpetofauna is considered to be low, and this chapter presents precautionary measures to allow the predicted level of risk to be reduced to negligible.

3.2 SITE MANAGEMENT PRE-COMMENCEMENT

The main impact of the proposed development will be the loss/disturbance of areas of potential habitats, primarily semi-improved grassland and compost/brash piles, and to a lesser extent dense scrub and introduced scrub.

3.3 SITE CLEARANCE PROTOCOL

It is proposed that the clearance of terrestrial habitats within the site will be undertaken in a sensible manner in order to control any potential risk to reptiles and amphibians. This will comprise:

Stage 1

- Initial management of suitable habitats, under supervision of the Ecological Clerk of Works, consisting of cutting to a height of 0.1 m – 0.2 m, with no impact on the ground or roots.

Stage 1 works should be undertaken prior to the active season for reptiles and amphibians, and prior to the nesting season for birds (March to September inclusive).

Stage 2

- Once the active period for reptiles and amphibians has commenced, the site should be subject to a walkover by a suitably experienced Ecological Clerk of Works to determine any sensitive features and their locations with respect to proposed site activities. The survey will focus on the location of any potential refuges for reptiles and amphibians (e.g. logs, brash piles, compost piles, mammal holes). These will be checked and where possible disassembled by hand and removed from the area.
- Further management of vegetation and topsoil stripping are to be undertaken under direct supervision of the Ecological Clerk of Works.
- Removal of any roots will be undertaken with care by an excavator to allow the careful inspection of the root areas. The cut vegetation should be removed from site so as not to create new refuge features (i.e. brash piles).

During the course of site clearance works, should any great crested newts be identified then works will cease and the need for a Natural England development licence will be reviewed. Further details are provided in Section 3.5.

Consideration of Nesting Birds

The majority of vegetation suitable for nesting birds should be cleared prior to the bird nesting season as part of Stage 1 works. If this is not possible, vegetation should be checked by a suitably qualified and experienced ecologist for nesting birds immediately prior to works commencing. If birds are found to be nesting any works which may affect them would have to be delayed until the young have fledged and the nest has been abandoned naturally.

3.4 CONSTRUCTION PHASE

- Works will be restricted to the designated development area and the impact of works on adjacent habitats avoided by the clear protection of boundary habitat features to be retained.
- If any excavations are to be left open overnight, ramps should be left within them to allow fauna to easily exit.

3.5 WORKER AWARENESS AND SYMPATHETIC WORKING PRACTICES

Staff working on site should be made aware that the site and local area has the potential to support populations of herpetofauna and that although unlikely, there is a low risk of reptiles and amphibians being present.

Sympathetic working practices include:

- Avoid creating potential refuges.
    - Herpetofauna will utilise stacked materials such as wood, stone, boards or metal sheets as refuges. Keep the site tidy and stored materials off the ground – for example on pallets where possible.
    - Should it be necessary to store materials such as topsoil on site then the stockpile should be smoothed to prevent access by herpetofauna into potential cavities.

- Staff Awareness.
    - All contractors should be made aware of the potential presence of herpetofauna and other wildlife on site during the initial site induction and regular toolbox talks.
    - Herpetofauna like to hide under refuges such as those discussed above. Staff should demonstrate awareness when working and moving materials. Should an animal other than a great crested newt be found it should be gently moved, for example in a clean bucket, to a suitable location within habitat well away from the working area.

As a matter of general good ecological practice, an understanding of herpetofauna and the undertaking of sympathetic working practices will reduce the likelihood of an encounter with, and harm to, herpetofauna.

3.6 ACTION IN RESPONSE TO GREAT CRESTED NEWTS

Although an encounter with this species is considered unlikely, all contractors should be made aware of how to identify this species. To aid identification, a poster is provided in Appendix 2 which can be used during toolbox talks and pinned on a site notice board.

Should a great crested newt be recorded during the vegetation clearance or construction period, all works will cease and a licenced ecologist contacted immediately who will advise on further action. The ecologist will liaise as appropriate with the local planning authority ecologist and Natural England.

3.7 TIMING OF WORKS

Supervised clearance works of initial management of vegetation to 0.1 – 0.2m, ensuring no impact to the ground and/or roots, can be undertaken prior to the active period for reptiles and amphibians. This allows vegetation potentially suitable for nesting birds to be removed prior to the bird nesting season (March to September inclusive). The active period for reptiles and amphibians is weather dependent but is generally accepted to extend between March and October inclusive. All remaining supervised site clearance works will be undertaken during the active period for reptiles and amphibians. Undertaking works within this time period will avoid the potential for injuring or killing any torpid reptiles and amphibians.

3.8 HABITAT RESTORATION AND ENHANCEMENT

While there is no explicit obligation to provide compensatory habitat for herpetofauna on site, to achieve a net gain in biodiversity at the site through Biodiversity Metric 3.1, measures such as off-site habitat creation, off-site habitat enhancement and/or other offsetting arrangements with the local planning authority may be required. Further details can be found in the corresponding Biodiversity Net Gain Assessment (RT-MME-156985-02 RevA) produced by Middlemarch for CIRC Management LLP in relation to the proposed redevelopment at this site. Any off-site habitat creation or enhancement should be done in a way that is sympathetic to the ecology of reptiles and amphibians.

Once the site clearance protocol has been undertaken and the proposed development completed, woody material from the areas of removed trees and scrub could be used to create log piles and hibernacula, which would provide suitable shelter for herpetofauna.

3.9 POST-DEVELOPMENT SITE SAFEGUARD

No post-development safe-guarding measures are proposed.

3.10 WORK SCHEDULE

A proposed work schedule is summarised in Table 3.1. These timings are dependent on approval of this document by the local planning authority.

Works	Timing	Reason
Initial management of vegetation to 0.1 – 0.2 m, ensuring no impact to the ground and/or roots.	Can be undertaken prior to the active period for reptiles and amphibians (March to September)	This allows vegetation potentially suitable for nesting birds to be removed prior to the bird nesting season (March to September inclusive).
Management and clearance of suitable habitat, including roots, under ecological supervision.	March to October inclusive (active period for reptiles and amphibians).	Avoids the potential for injuring or killing any torpid reptiles/amphibians.

Table 3.1: Proposed Work Schedule for Orchard Lane, East Molesey

REFERENCES

ARG UK (2010). *ARG UK Advice Note 5: Great Crested Newt Habitat Suitability Index*. Amphibian and Reptile Groups of the United Kingdom.

English Nature. (2001). *Great Crested Newt Mitigation Guidelines*. English Nature, Peterborough.

Gent, A. and Gibson, S. (1998). *Herpetofauna Workers Manual*, Joint Nature Conservation Committee, Peterborough.

Joint Nature Conservation Committee (2012). *UK Post-2010 Biodiversity Framework*. Available: http://jncc.defra.gov.uk/pdf/UK_Post2010_Bio-Fwork.pdf

Langton, T., Beckett, C. and Foster, J. (2001). *Great Crested Newt: Conservation Handbook.* Froglife, Suffolk.

Middlemarch Environmental Ltd (2020). *Orchard Lane, East Molesey: Preliminary Bat Roost Assessment*. Report number RT-MME-153535-02 RevA.

Middlemarch Environmental Ltd (2022). *Orchard Lane, East Molesey: Dusk Emergence and Dawn Re-entry Bat Surveys*. Report number RT-MME-153851-02 RevA.

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Oldham R. S., Keeble, J., Swan, M. J. S. and Jeffcote, M. (2000). *Evaluating the suitability of habitat for the Great Crested Newt (Triturus cristatus).* Herpetological Journal 10 (4), 143-155.

APPENDICES

Appendix 1 Protected Species Legislation

Appendix 2 Middlemarch Great Crested Newt Toolbox Talk Poster

APPENDIX 1

REPTILES

All of the UK's native reptiles are protected by law. The two rarest species – sand lizard (*Lacerta agilis*) and smooth snake (*Coronella austriaca*) – benefit from the greatest protection.

Common lizard (*Zootoca vivipar*a), slow-worm (*Anguis fragilis*), adder (*Vipera berus*) and grass snake (*Natrix natrix*) are protected under the Wildlife and Countryside Act 1981 (as amended) from intentional killing or injuring.

All native reptile species are listed as Species of Principal Importance on the UK Post-2010 Biodiversity Framework (2012), and as such are material considerations in the planning process.

This is a simplified description of the legislation. In particular, the offences mentioned here may be absolute, intentional, deliberate or reckless. Note that where it is predictable that reptiles are likely to be killed or injured by activities such as site clearance, this could legally constitute intentional killing or injuring.

The reader should refer to the original legislation for the definitive interpretation.

COMMON TOAD

Common toad *Bufo bufo* is listed as Species of Principal Importance on the UK Post-2010 Biodiversity Framework (2012), and as such are material considerations in the planning process.

GREAT CRESTED NEWT

Great crested newts (GCN) and the places they use for shelter or protection receive legal protection under the Conservation of Habitats and Species Regulations 2017, (Habitats Regulations 2017) and the Conservation of Habitats and Species Regulations (Amendment) (EU Exit) Regulations 2019 (Habitats Regulations 2019). They receive further legal protection under the Wildlife and Countryside Act (WCA) 1981, as amended. This protection means that GCN, and the places they use for shelter or protection, are capable of being a material consideration in the planning process.

Regulation 41 of the Habitats Regulations 2017, states that a person commits an offence if they:

- deliberately capture, injure or kill a GCN;
- deliberately disturb GCN;
- deliberately take or destroy eggs of a GCN; or
- damage or destroy a GCN breeding site or resting place.

Disturbance of animals includes in particular any disturbance which is likely to impair their ability to survive, to breed or reproduce, or to rear or nurture their young, or in the case of animals of a hibernating or migratory species, to hibernate or migrate; or to affect significantly the local distribution or abundance of the species to which they belong.

It is an offence under the Habitats Regulations 2017 for any person to have in his possession or control, to transport, to sell or exchange or to offer for sale, any live or dead GCN, part of a GCN or anything derived from GCN, which has been unlawfully taken from the wild. This legislation applies to all life stages of GCN.

Changes have been made to parts of the Habitats Regulations 2017 so that they operate effectively from 1st January 2021. The changes are made by the Habitats Regulations 2019, which transfer functions from the European Commission to the appropriate authorities in England and Wales.

All other processes or terms in the 2017 Regulations remain unchanged and existing guidance is still relevant.

The obligations of a competent authority in the 2017 Regulations for the protection of species do not change. A competent authority is a public body, statutory undertaker, minister or department of government, or anyone holding public office.

Whilst broadly similar to the above legislation, the WCA 1981 (as amended) differs in the following ways:

- Section 9(1) of the WCA makes it an offence to *intentionally* kill, injure or take any protected species.

- Section 9(4)(a) of the WCA makes it an offence to *intentionally or recklessly** damage or destroy, *or obstruct access to*, any structure or place which a protected species uses for shelter or protection.
- Section 9(4)(b) of the WCA makes it an offence to *intentionally or recklessly** disturb any protected species *while it is occupying a structure or place which it uses for shelter or protection*.

*Reckless offences were added by the Countryside and Rights of Way (CRoW) Act 2000.

The reader should refer to the original legislation for the definitive interpretation.

GCN are listed a Species of Principal Importance for Nature Conservation in England which means they are a material consideration in the planning process. The list of species is derived from Section 41 list of the Natural Environmental and Rural Communities (NERC) Act 2006.

APPENDIX 2

Middlemarch Great Crested Newt Tool Box Talk Poster

Toolbox Talk – Great Crested Newts

Species Information

- Largest native newt species growing up to 170 mm. Identified from other newts by its size, dark colour, orange belly and rough warty skin.
- Breed in water between March and June. During this time females lay eggs on marginal vegetation.
- Can use both natural and non-natural waterbodies.
- Found on land throughout the year.
- Use a wide variety of habitats including farmland, hedgerows, woodland, scrub and grassland.
- Can be found in brash and log piles, wood chippings, rabbit holes, around tree roots etc.

The Law

- Great crested newts receive European protection under The Conservation of Habitats and Species Regulations 2010. They receive further legal protection under the Wildlife and Countryside Act (WCA) 1981.
- By law, it is illegal for any person to intentionally capture, injure, kill or deliberately disturb a great crested newt.
- Their eggs, breeding sites and resting places are also protected by law.
- The penalty for committing an offence can be an unlimited fine and up to 6 months in jail.

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Precautions

- Great crested newts use a variety of habitat types, including ponds, rough grassland, woodland and scrub. Keep an eye out for any great crested newts if undertaking works in these types of habitat.
- Remove any log piles, piles of chippings and vegetation roots on site by hand and, if necessary, under ecological supervision.
- Do not take machinery into areas of suitable habitat such as long grass, before these have been appropriately cleared (above).

If you find a great crested newt onsite:

- **Stop Works immediately; contact the Site Manager; contact Middlemarch Environmental Ltd (01676 525880)**

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