



# OAKLANDS FARM SOLAR PARK

Applicant: Oaklands Farm Solar Ltd

Environmental Statement

Appendix 6.8 – Otter and Water Vole Survey Report

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# Oaklands Farm Solar Park - Environmental Statement Volume 3

## Appendix 6.8: Otter and Water Vole Survey Report

### **Final report**

Prepared by LUC

January 2024

# Oaklands Farm Solar Limited

## Oaklands Farm Solar Park Technical Appendix 6.8: Otter and Water Vole Survey Report

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# Chapter 1

## Introduction

### Terms of Reference

**1.1** In April 2021, LUC was appointed by Oaklands Solar Farm Limited to provide ecological support to inform an application to construct and operate Oaklands Farm Solar Park, a proposed solar photovoltaic (PV) electricity generating facility, hereafter referred to as 'the Proposed Development'.

**1.2** The Phase 1 Habitat Survey, which is reported separately (**Oaklands Farm Solar Park, Environmental Statement, Volume 3, Technical Appendix 6.5: Phase 1 Habitat Survey Report**) identified suitable habitat within the Site for otter *Lutra lutra* and water vole *Arvicola amphibius*.

**1.3** This report presents the baseline survey findings, in respect of otter and water vole, This report has been prepared to inform proposals, including avoidance of impacts, mitigation requirements, and provision of appropriate enhancements.

**1.4** The report has informed an Ecological Impact Assessment (EclA), which forms part of the Environmental Statement (ES), in support of a planning application for the Proposed Development. Assessment of impacts, mitigation requirements and enhancement measures are provided as part of the ES Chapter and are not detailed within this report.

**1.5** This report has been prepared for the exclusive use of Oaklands Solar Farm Limited. No part of this report should be considered as legal advice.

**This report relates to Oaklands Farm and land within the grid cable route, including Park Farm, Fairfield Farm and Drakelow Power Station, hereafter referred to as 'the Site'.**

### Site Description

**1.6** The Site boundary is located to the east of Walton-on-Trent in South Derbyshire (OS Central Grid Reference: SK 23456 17577). The Site boundary comprised of land within

Oaklands Farm, Park Farm and Fairfield Farm land-holdings, which are currently used for arable cropping and grazing, and Drakelow National Grid Substation in the north.

**1.7** This report specifically considers the unnamed watercourse and tributary of the River Trent, which flows north through the Site Boundary. The unnamed watercourse was 1-2m wide, < 0.5m deep, slow flowing, steep banks and heavily shaded by trees and scrub. The water quality appeared good though it is likely to be high in nitrogen and phosphorus given the surrounding agricultural landscape.

**1.8** The wider area is comprised of a mosaic of agricultural and pastoral land and woodland with Rosliston Forestry Centre located to the east and the River Trent located to the west of the Site boundary.

## Proposed Development Description

**1.9** The Proposed Development comprises a solar farm with an associated battery energy storage facility. The Proposed Development would have a generating capacity of over 50MW and would be situated on 191 hectares of land at Oaklands Farm to the south-east of Walton-on-Trent and to the west of Rosliston in south Derbyshire. The solar farm itself, comprising photovoltaic panel arrays, a central electricity substation and Battery Energy Storage System together with access, landscaping and other works would be located on 135 hectares of agricultural land currently in use for arable production and grazing. A high voltage underground electricity cable would then run through land at Fairfield Farm and Park Farm to the north to connect the solar farm to the national grid via an electricity substation located at the former Drakelow Power Station which sits south of Burton-upon-Trent. As the Proposed Development would be an onshore generating station with a generating capacity of over 50MW an application for a Development Consent Order is being made under the Planning Act 2008 to the Planning Inspectorate, for determination by the Secretary of State for Energy Security and Net Zero.

## Policy and Legal Considerations

**1.10** This baseline report has been prepared in cognisance with relevant legislation and policy. Further detail is provided in **Appendix A**; however, the following primary documents are of relevance:



- The Wildlife and Countryside Act of 1981<sup>1</sup>.
- The Countryside and Rights of Way Act (CRoW Act), 2000<sup>2</sup>.
- The Natural Environment and Rural Communities Act 2006 (NERC Act)<sup>3</sup>.
- The Conservation of Habitats and Species Regulations 2017<sup>4</sup>.
- The National Planning Policy Framework (2023)<sup>5</sup>.
- South Derbyshire District Local Plan Part 1 (Adopted June 2016)<sup>6</sup>.
- Department for Energy and Climate Change. 2011. Overarching National Policy Statement for Energy (EN-1)<sup>7</sup> and Draft NPS EN-1 for designation dated 2023<sup>8</sup>.
- Department for Energy and Climate Change. 2011. National Policy Statement for Renewable Energy Infrastructure (EN-3)<sup>9</sup> and Draft NPS EN-3 for designation dated 2023<sup>10</sup>.

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<sup>1</sup> The Wildlife and Countryside Act 1981. Available at: <https://www.legislation.gov.uk/ukpga/1981/69>. [Accessed 29/09/23]

<sup>2</sup> The Countryside and Rights of Way Act (CRoW Act), 2000. Available at: <https://www.legislation.gov.uk/ukpga/2000/37/contents> [Accessed 29/09/23]

<sup>3</sup> The Natural Environment and Rural Communities Act 2006. Available at: <https://www.legislation.gov.uk/ukpga/2006/16/contents> [Accessed 29/09/23]

<sup>4</sup> The Conservation of Habitats and Species Regulations 2017. Available at: <https://www.legislation.gov.uk/uksi/2017/1012/contents/made> [Accessed 29/09/23]

<sup>5</sup> Department for Levelling Up, Housing and Communities 2023) The National Planning Policy Framework. Available at: <https://www.gov.uk/government/publications/national-planning-policy-framework—2> [Accessed 29/09/23]

<sup>6</sup> South Derbyshire District Council (2016) Local Plan Part 1 (Adopted June 2016). Available at: <https://www.southderbyshire.gov.uk/our-services/planning-and-building-control/planning/planning-policy/local-plan/adopted-local-plan> [Accessed 29/09/23]

<sup>7</sup> Department for Energy and Climate Change (2011) Overarching National Policy Statement for Energy. Available at: <https://assets.publishing.service.gov.uk/media/5a79522de5274a2acd18bd53/1938-overarching-nps-for-energy-en1.pdf> [Accessed 29/09/23]

<sup>8</sup> Department for Energy Security and Net Zero (2023) Draft Overarching National Policy Statement for Energy (EN-1). Available at: <https://assets.publishing.service.gov.uk/media/655dc190d03a8d001207fe33/overarching-nps-for-energy-en1.pdf> [Accessed 16/01/24]

<sup>9</sup> Department for Energy and Climate Change (2011) National Policy Statement for Renewable Energy Infrastructure (EN-3). Available at: <https://assets.publishing.service.gov.uk/media/5a79c422e5274a684690bf53/1940-nps-renewable-energy-en3.pdf> [Accessed 29/09/23]

<sup>10</sup> Department for Energy Security and Net Zero (2023) Draft National Policy Statement for Renewable Energy Infrastructure (EN-3). Available at: <https://assets.publishing.service.gov.uk/media/655dc352d03a8d001207fe37/nps-renewable-energy-infrastructure-en3.pdf> [Accessed 16/01/24]

- Department for Energy and Climate Change. 2011. National Policy Statement for Electricity Networks Infrastructure (EN-5)<sup>11</sup> and Draft NPS EN-5 for designation dated 2023<sup>12</sup>.

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<sup>11</sup> Department for Energy and Climate Change (2011) National Policy Statement for Electricity Networks Infrastructure (EN-5). Available at:  
<https://assets.publishing.service.gov.uk/media/5a74877840f0b61938c7e2d9/1942-national-policy-statement-electricity-networks.pdf> [Accessed 29/09/23]

<sup>12</sup> Department for Energy Security and Net Zero (2023) Draft National Policy Statement for Electricity Networks Infrastructure (EN-5). Available at:  
<https://assets.publishing.service.gov.uk/media/655dc25e046ed400148b9dca/nps-electricity-networks-infrastructure-en5.pdf> [Accessed 16/01/24]



## Chapter 2

### Methods

#### Desk Study

**2.1** A review of biological records within 2km of Park Farm was undertaken as part of the Phase 1 Habitat Survey, which included a review of riparian mammal records. This is reported separately in **Appendix 6.5: Phase 1 Habitat Survey Report** in Volume 3 of the ES.

**2.2** A review of the Preliminary Ecological Appraisal Report for Oaklands Farm<sup>13</sup> was also undertaken. This is report separately in **Appendix 6.3** in Volume 3 of the ES.

#### Field Surveys

#### Habitat Appraisal

**2.3** The Extended Phase 1 Habitat Survey included an assessment, based on the professional judgement of experienced surveyors, of the potential for habitats within the Site and the immediate surroundings to support otter and water vole. This included consideration of all activity, such as foraging, dispersing, sheltering and breeding. Habitat suitability for other species of relevance, such as mink *Neovison vison*, which are a predator of water vole, was also considered.

#### Survey Area

**2.4** Due to the presence of steep banks, areas of dense vegetation and deep water, the survey comprised a mix of terrestrial access using waders and observation from the bank side.

**2.5** The otter and water vole survey covered all aquatic and marginal habitats within the Site which were considered to have suitability for these species. This included the following features:

- Unnamed watercourse along western edge of Park Farm, eastern edge of Fairfield Farm and in the north of Oaklands Farm.

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<sup>13</sup> Arcus, (2020). *Preliminary Ecological Appraisal: Oaklands Solar Farm and Grid Connection Route prepared on behalf of BayWa r.e. UK Limited*

- A pond in the centre of a field to the east of the cable route in Park Farm, outside of the Site boundary.
- A pond adjacent to the unnamed watercourse at Fairfield Farm.
- A single ditch at Drakelow Power Station and further pond and ditch adjacent but outside of the Site boundary.

**2.6** The sections which were surveyed are shown in **Figure 6.8.1, Appendix B.**

### Otter Survey

**2.7** The survey involved a search for direct evidence of otter in accordance with good practice guidance<sup>14</sup>. Particular attention was paid to features in the landscape, such as large rocks, bridges, fallen trees, dense scrub and crevices, where otter may spraint as territory marking and which may provide shelter. The survey searched for:

- Resting places (see below);
- Tracks, slides and runs;
- Spraint (fresh, recent or old); and
- Feeding remains.

**2.8** Where required, resting places were categorised according to the following definitions:

- Holt – An underground or fully enclosed structure used by otters for shelter for longer duration, e.g. enlarged holes, rock piles or manmade crevices in engineered structures.
- Hover – An area partially enclosed, e.g. undercut bank under exposed tree roots, not offering the full protection of a holt, but with some form of overhead cover.
- Couch – An above-ground but concealed area, usually open to the sky, used by otter for grooming or brief periods of rest, often found in dense vegetation such as bramble or reed bed.
- Natal Holt – a shelter where otter young are born and remain until mobile found typically in undisturbed locations with low flood risk.

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<sup>14</sup> Chanin, P (2003). *Monitoring the Otter Lutra lutra. Conserving Natura 2000 Rivers Monitoring Series No. 10.* Peterborough: English Nature.

**2.9** The assessment of resting site status is determined by the quality of the feature and the ability to provide key requirements for otters. This can be cover and seclusion for an individual to sleep or rest; the provision of nursery or breeding habitat (including potential for a natal holt); and the supply of critical factors such as feeding resources (ponds, marshy grassland), freshwater for cleaning and drinking, and the provision of suitable seclusion away from disturbance. The assessment is subjective and corroborated by the abundance of field evidence located in, or around, the feature. Diagnostic evidence such as spraints (including number and age class), urination “green” spots, spraint mounds, sign heaps, grooming hollows, paw prints, paths and slides (and their degree of use) is interpreted to determine the status of the feature.

**Table 2.1** below describes the approach used to define resting site status.

**Table 2.1: Resting Site Status Definitions**

Resting site status	Definition
Low	A structure or feature with limited evidence of otter activity, indicated by low number of spraints present and all age classes may not be present (i.e. one fresh spraint, or a couple of old spraints). The structure will not be suitable as a breeding/natal site and is unlikely to afford sufficient seclusion to be an important resting site. It is unlikely to have important links to the key otter requirements (food and freshwater). This type of site is more likely to provide a temporary “stop off” for otters when moving throughout their territory. Loss/disturbance of such a feature is unlikely to be significant in terms of the individual or population.
Moderate	A structure or habitat feature containing otter spraint with a range of age classes, but not in significant quantities. Paths may be present leading to the feature but are not likely to be overly pronounced. The cover afforded by the structure may be limited or the site may only be suitable at certain times of year. Alternatively, it may not be available at periods of high tide/flow. The structure is unlikely to be suitable as a breeding/natal site but will afford suitable seclusion as a resting site and may be linked to other important features within the territory (feeding/grooming breeding areas). The impact arising from a loss or

Resting site status	Definition
	disturbance of such a feature will be determined by the availability of more suitable or well used sites within an otter's territory. In the absence of other suitable resting sites within a survey reach may elevate the status of the resting site.
High	The structure or habitat feature has a high level of otter activity, indicated by an abundance of otter spraint of all age classes and may include large spraint mounds or well used grooming hollows. On occasion the spraints are all old but of such abundance to indicate a high-status feature but that it hasn't been used recently.

## Water Vole Survey

**2.10** The survey involved search for direct evidence of water vole in accordance with best practice guidance<sup>15</sup>. This included:

- Sightings of water vole;
- Latrines;
- Feeding stations;
- Feeding marks on vegetation;
- Tunnel entrances above and below waterlines;
- Paths and runs at the water's edge or within bank vegetation; and
- Footprints.

## Survey Timings

**2.11** The otter and water vole surveys were undertaken on 7<sup>th</sup> September 2021 for Park Farm, 20<sup>th</sup> September 2021 for Oaklands Farm, and 27<sup>th</sup> April 2022 for Fairfield Farm and Oaklands Farm. All surveys were undertaken during suitable weather conditions and in line with the timings set out in good practice guidance. The surveys were led by Tom Hicks BSc (Hons), a

<sup>15</sup> Stracham, R. and Moorhouse, T. (2006) *The Water Vole Conservation Handbook*. 2<sup>nd</sup> ed. Tubney: The Wildlife Conservation Research Unit.

Qualifying Member of CIEEM, with support from Rosalind Warwick-Haller BSc (Hons) MSc, a Qualifying Member of CIEEM and Jasmine Bernard BSc (Hons), a Qualifying Member of CIEEM.

**2.12** Evidence of otter and water vole was also surveyed for during a River Condition Assessment on 13<sup>th</sup> June 2022 by George Siskos BSc (Hons) ACIEEM and Sam Rees BSc (Hons), a Qualifying Member of CIEEM and during a River Condition Assessment on 31<sup>st</sup> March 2023 by Rosalind Warwick-Haller BSc (Hons) MSc, a Qualifying Member of CIEEM.

## Limitations

### Drakelow National Grid Substation

**2.13** No access to Drakelow National Grid Substation was permitted to the northern section of power station within the operational substation compound. This area was appraised from land within the non-operational area of the power station and from aerial imagery. This was not considered a constraint to the survey findings given the nature of the habitats present, which predominantly comprised of hard standing and associated infrastructure, no suitable habitat was considered present in this area of the Site for either species.

### Water Vole Surveys

**2.14** Good practice guidance<sup>15</sup> recommends surveying for water vole twice, including during the spring. However, the unnamed watercourse and pond were only considered suitable for dispersing water vole (see **Habitat Appraisal** in **Chapter 3**). Therefore, the survey was highly precautionary, and it was deemed unnecessary to undertake an additional spring survey.

### General Limitations

**2.15** It is important to note that ecological surveys provide information regarding the ecological baseline of a site for only a 'snapshot' of time. Therefore, if significant time lapses between the surveys and the further development or implementation of proposals, updated ecological surveys may be required to identify any change in the baseline, such as natural succession of habitats, or local extinction or colonisation of species. Therefore, if a year lapses between the progressions of development proposals, it is recommended that ecological advice is sought

regarding the applicability of the survey findings, in cognisance with advice given by CIEEM on the lifespan of ecological reports and surveys<sup>16</sup>.

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<sup>16</sup> CIEEM (2019). *Advice Note: On the Lifespan of Ecological Reports and Surveys*. Winchester: Chartered Institute for Ecology and Environmental Management.

## Chapter 3 Results

### Desk Study

**3.1** Full details of the review of biological records are provided in **Appendix 6.5: Phase 1 Habitat Survey Report** in Volume 3 of the ES. A summary of the desk study records is provided within **Table 3.1**.

**Table 3.1: Summary of Biological Records**

Species	Nearest Record and Date
Otter <i>Lutra lutra</i>	c. 0.5km north of Park Farm in 2000.
Water vole <i>Arvicola amphibius</i>	c. 0.3km east of Park Farm in 1999.
Mink <i>Neovison vison</i>	c. 2.0km north of Park Farm in 2019.

### Field Surveys

#### Otter

#### Habitat Appraisal

**3.2** The unnamed watercourse and offsite ponds were considered suitable habitat for transient otters. All habitats supported dense vegetation with scrub, trees or woodland which provided cover and resting opportunities. These habitats were also well connected to good quality habitat for otter in the wider landscape, including the River Trent, River Tame, River Mease, Trent and Mersey Canal and a large number of lakes to the west.

**3.3** The Site did support foraging opportunities, albeit likely limited to small fish, amphibians and invertebrates due to the depth of the water in the unnamed watercourse and offsite ponds at Park Farm and Drakelow Power Station. The pond at Fairfield Farm was deep enough to support large fish such as carp *Cyprinus* sp., though none were noted during the survey. Given the limited foraging resources at the Site and the abundance of foraging opportunities off-Site,



these habitats are likely to be used by transient otters only and unlikely to represent a key foraging resource for this species.

### Otter Survey

**3.4** No evidence of otter was identified during the dedicated field surveys. However, otter prints and feeding remains (freshwater mussels) were recorded on the unnamed watercourse during a River Condition Assessment on 13<sup>th</sup> June 2022 and a potential otter holt with an associated slide was recorded along the unnamed watercourse during a River Condition Assessment on 31st March 2023. The location of the prints and feeding remains and potential otter holt are shown within **Figure 6.8.1, Appendix B.**

### Water vole

#### Habitat Appraisal

**3.5** The unnamed watercourse and ponds were considered unsuitable for supporting populations of water vole but provided suitability as movement corridors for dispersing water vole only. The watercourses present were well connected to suitable habitat for water vole in the wider landscape, including ditches, ponds and rivers.

**3.6** The unnamed watercourse was over-shaded by dense scrub, trees or woodland. As result of the over-shading, foraging opportunities were limited with no floating, tall grass or emergent species recorded. Foraging opportunities were limited to common nettle *Urtica dioica*, bramble *Rubus fruticosus* agg., willow *Salix* sp. roots and short grass. The unnamed watercourse bank profile was mostly steep and undisturbed which provided good opportunities for burrow creation.

**3.7** The pond at Park Farm supported a 2 metre margin of broadleaved scattered trees with tall ruderal and frequent rush *Juncus* sp. around the pond edge. This provided some suitable foraging opportunities for water vole. However, beyond the 2m margin was intensively grazed improved grassland which water vole are unlikely to traverse and provided negligible foraging opportunities. The pond had a shallow profile which provided sub-optimal burrowing opportunities.

**3.8** The pond at Fairfield Farm supported alder *Alnus glutinosa* treelines with scattered scrub and tall ruderal, and poor semi-improved grassland. No macrophytes were noted. The surrounding habitat supported a mosaic of poor semi-improved grassland with dense and

scattered scrub. Overall, the pond and surrounding habitats were considered to provide low to moderate foraging opportunities for water vole. The pond had a shallow profile which provided sub-optimal burrowing opportunities.

**3.9** Due to the limited foraging opportunities, the unnamed watercourse and offsite ponds were not considered suitable to support a permanent water vole population.

### **Water Vole Survey**

**3.10** No evidence of water voles was identified during the field surveys.

## Chapter 4

### Discussion

**4.1** Relevant legislation relating to otter and water vole is summarised in **Appendix A**. In summary, otter and water vole are afforded the highest level of legal protection as a European Protected Species. They are also fully protected under the Wildlife and Countryside Act, 1981.

#### Otter

**4.2** The unnamed watercourse and ponds provided suitable habitat for transient otters with dense vegetation providing suitable opportunities for resting places, such as holts and couches, and fish, amphibians and invertebrates providing foraging opportunities. The waterbodies were also well connected to suitable habitat in the wider landscape, in particular the unnamed watercourse which was a tributary to the River Trent, which provides optimal habitat for otter.

**4.3** Incidental evidence (prints, feeding remains and a holt) of otter was recorded within the unnamed watercourse in the west of Park Farm and north of Oaklands Farm. It is likely that this species utilises the unnamed watercourse and ponds for foraging and shelter.

#### Mitigation

**4.4** Mitigation has been embedded into the design of the Proposed Development, including a sensitive scheme design to ensure that works with close proximity to the waterbodies is limited and provision of attenuation measures will be increased to reduce surface run-off, improving water quality of minor watercourses and ditches in the locality. Best practice construction measures will be followed, as detailed within a Construction Environmental Management Plan (**Appendix 4.3** in Volume 3 of the ES) to ensure no changes in water quantity and quality and prevent adverse impacts to potential otter using the Site.

**4.5** Additional mitigation measures include:

- Pre-inspection checks for otter signs in the vicinity of works and appropriate working practices to avoid disturbance including no night-time working, sensitive construction lighting and appropriate working buffers;
- All otter holts will be demarcated prior to works;

- No construction works will be undertaken within 30m of an otter holt;
- Capping of any exposed pipe systems when contractors are off site, and providing exit ramps from any exposed trenches or holes;
- Any vehicle traffic within close proximity of a otter holt will be subject to a 5mph speed limit.

## Enhancement

### 4.6 Enhancement opportunities for otter could include:

- Widening the unnamed watercourse corridor by moving the stock fencing further from the unnamed watercourse. Scrub and trees could be planted or left to regenerate naturally. Planted species could include alder *Alnus glutinosa* or blackthorn *Prunus spinosa*.
- Scrub planting between the unnamed watercourse and pond to create a sheltered corridor for otter movement between these two waterbodies.
- Provision of an otter holt which would increase the suitability of the Site for otter by increasing sheltering opportunities.
- Ponds across the Site could be restored through desilting, selective thinning of trees and planting of macrophyte species. Planted species could include branched bur-reed *Sparganium erectum*, reed sweet-grass *Glyceria maxima*, amphibious bistort *Persicaria amphibia*, water mint *Mentha aquatica* and water forget-me-not *Myosotis scorpioides*. This will benefit amphibian populations which will increase foraging opportunities for otter.
- Creation of a series of ponds and swales adjacent to the unnamed watercourse corridor to increase foraging opportunities. Planted macrophytes could be as above. This will benefit amphibian populations which will increase foraging opportunities for otter.
- Given the cessation of intensive grazing across the Site, water quality within the unnamed watercourse and pond is expected to increase as a result of the Proposed Development which will benefit otter.
- Enhancement of ditches including provision of aquatic planting and management.

## Water Vole

**4.7** The ponds and unnamed watercourse were considered unsuitable to support a permanent water vole population due to a lack of suitable habitat, with watercourses lacking the necessary aquatic vegetation and water depth required.

**4.8** Evidence of a local mink *Neovison vison* population was identified during the desk study. Mink is an invasive non-native species which predated on water vole and is linked to the decline in water vole numbers in many areas in the UK. The presence of this species within the Site and the surroundings is therefore highly likely to have had an impact on the water vole population in this area.

**4.9** No evidence of water vole was identified during the surveys. The presence of this species within the Site boundary is considered unlikely. Nonetheless, it is possible that this species utilises watercourses within and close to the Site on a transient basis given the presence of optimal habitat in the wider area and connectivity to the Site. However, the evidence does suggest that the Site is not a key foraging or commuting resource for this species.

## Mitigation

**4.10** Mitigation has been embedded into the design of the Proposed Development, including a sensitive scheme design to ensure that works with close proximity to the waterbodies is limited. Best practice construction measures will be followed to ensure no changes in water quantity and quality to ensure that adverse impacts to potential water vole using the Site.

## Enhancement

**4.11** Enhancement opportunities as above for otter would also provide enhancement for water vole. Additional enhancement opportunities to encourage colonisation by water vole could include:

- Selective coppicing of willow along the unnamed watercourse corridor. This will open up the unnamed watercourse corridor encouraging aquatic and marginal species to establish. This will provide more varied foraging opportunities for water vole
- Relaxation of grassland management across the Site to allow a longer sward to develop. This will increase foraging and sheltering opportunities, encouraging colonisation.

- Mink monitoring and control. This would decrease predation pressure on water vole within the wider areas and provide better opportunities for this species to colonise the Site.

## Appendix A

### Policy and Legislation

**A.1** Statutory nature conservation sites and protected species are a ‘material consideration’ in the UK planning process (DCLG 2019). Where planning permission is not required, for example on proposals for external repair to structures, consideration of protected species remains necessary given their protection under UK and EU law.

**A.2** Natural England Standing Advice aims to support Local Planning Authorities decision making in respect of protected species (Natural England 2017). Standing advice is a material consideration in determining the outcome of applications, in the same way as any individual response received from Natural England following consultation.

**A.3 The Conservation of Habitats and Species Regulations 2017 (SI 2017/1012), as amended by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (SI 2019/579)** transpose the requirements of the European Habitats Directive (Council Directive 92/43/EEC) and Birds Directive (Council Directive 2009/147/EC) into UK law, enabling the designation of protected sites and species at a European level.

**A.4 The Wildlife and Countryside Act 1981** (as amended) forms the key piece of UK legislation relating to the protection of habitats and species.

**A.5 The Countryside Rights of Way Act 2000** provides additional support to the Wildlife and Countryside Act 1981; for example, increasing the level of protection for certain species of reptiles.

**A.6 The Wild Mammals (Protection) Act 1996** sets out the welfare framework in respect to wild mammals, prohibiting a range of activities that may cause unnecessary suffering.

**A.7 The Natural Environment and Rural Communities Act (NERC Act) 2006** created Natural England and the Commission for Rural Communities and extended the biodiversity duty set out in the Countryside and Rights of Way Act (CROW Act) to public bodies and statutory undertakers to ensure due regard to the conservation of biodiversity.

**A.8 The Protections of Badgers Act 1992** sets out the legislation relating to badgers.



**A.9 The Hedgerows Regulations 1997** makes provision for the protection of important hedgerows in England and Wales.

**A.10 Species and Habitats of Principal Importance for Conservation in England and Wales** and priority habitats and species listed on the Lowland Derbyshire Biodiversity Action Plans (LBAP) are species which are targeted for conservation. The government has a duty to ensure that involved parties take reasonable practice steps to further the conservation of such species under Section 41 of the Natural Environment and Rural Communities Bill 2006. In addition, the Act places a biodiversity duty on public authorities who ‘must, in exercising their functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity’ (Section 40 [1]). Criteria for selection of national priority habitats and species in the UK include international threat and marked national decline.

**A.11 The National Planning Policy Framework (2023)** states (Section 15) that the planning system should identify, map and safeguard components of local wildlife-rich habitats and wider ecological networks; promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity.

**A.12** It also states that local planning authorities should refuse planning on the following principles:

- If significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for.
- If development is on land within or outside a site of Special Scientific Interest (SSSI), and is likely to have an adverse effect on it (the exception being where the benefits of the development in the location proposed clearly outweigh its likely impact).
- If development results in the loss or deterioration of irreplaceable habitats, such as ancient woodland and ancient or veteran trees (unless there are wholly exceptional reasons and a suitable compensation strategy exists).

**A.13** Additionally, the NPPF states that development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.

## Otter

**A.14** Otter is listed on the Wildlife and Countryside Act 1981 (as amended) Schedule 5. It is an offence to deliberately kill, damage, take (Section 9(1)) an otter; to intentionally or recklessly disturb an otter whilst it occupies a place of shelter or protection (Section 9(4)(b)); or to deliberately or recklessly damage, destroy or obstruct access to a n otter shelter (Section 9(4)(c)). Given the strict nature of these offences, there is an obligation on the developer and owner of a site to consider the presence of otter.

**A.15** Otter is listed on the Conservation of Habitats and Species Regulations 2017 (as amended), Schedule 2. Regulation 41 strengthens the protection of otter under the 1981 Act against deliberate capture or killing (Regulation 41(1) (a)), deliberate disturbance (Regulation 41(1) (b))<sup>[1]</sup> and damage or destruction of a resting place (Regulation 41(1) (d)).

**A.16** An otter shelter is defined as any structure or place which is used for shelter or protection, irrespective of whether or not otters are resident. The classification of otters shelters is described in Chapter 3 above. A shelter used during one season is protected throughout the year and any proposed works that may result in disturbance to otters, and loss, obstruction of or damage to a shelter are licensable.

### Application for a Natural England EPS Licence

**A.17** Development works that may cause killing or injury of otter or that would result in the damage, loss or disturbance of an otter shelter would require a Natural England (NE) Mitigation Licence.

**A.18** For a Mitigation licence to be granted three tests must be met. Evidence is needed to determine these three tests: whether there is a need for the development which justifies the impact on the European Protected Species (EPS); whether there is an alternative which would avoid the impact and need for an EPS licence; and whether mitigation proposed is sufficient to maintain the conservation status of the EPS in question.

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<sup>[1]</sup> Relates specifically to deliberate disturbance in such a way as to be likely to significantly affect i) the ability of any significant group of animals of that species to survive, breed or rear or nurture their young or ii) the local distribution of that species.

**A.19** A Mitigation Licence application will generally only be considered by NE on receipt of planning consent, and once any pre-commencement conditions of relevance to ecology have been discharged.

**A.20** Otter are also listed as species of principal importance under the NERC Act (2006). Section 41 of the Act is used to guide decision-makers such as public bodies, including local and regional authorities, in implementing their duty under section 40 of the Natural Environment and Rural Communities Act 2006, to have regard to the conservation of biodiversity in England, when carrying out their normal functions.

### **Water vole**

**A.21** Water vole and their places of shelter are protected by the Wildlife and Countryside Act 1981 (as amended). This Act gives protection to water vole with regard to killing, injury and taking, and to their places of shelter with regard to obstructing, damaging and destruction.

# Appendix B







## Figures





Figure 6.8.1: Otter and Water Vole Survey Area



-  Site boundary
-  Brook (flow direction)
-  Pond
-  Otter and water vole search area
- Otter**
-  Footprint and feeding remains
-  Potential resting site

PINS reference: EN010122



Map scale 1:10,000 @ A3