



PLANNING  
DEPARTMENT  
24 JAN 2011  
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**Sent:** 21 January 2011 16:30  
**To:** Planning  
**Subject:** 10/03108/1HH - extension and roof alterations, and European Protected Species and the Natural England checklist  
**Attachments:** bats - development trigger list.bmp *56/2010/2885/FP*

For the attention of Mr Peacock,

This application to erect several extensions and make alterations to the roof is in close proximity to a number of Wildlife Sites (79/003 and 79/004) and the Northaw Great Wood SSSI, diverse woodland areas supporting a range of flora and fauna with a stream and pond nearby. This is ideal bat foraging habitat.

The above proposal may impact on bats, if bats are roosting in the roof-space. No bat assessment could be found on the website for this application – has one been submitted?

This is also a helpful interactive tool to assess whether this application can reasonably be considered to need an assessment: [http://www.buffalodesign.co.uk/clients/bats/bio\\_bats.html](http://www.buffalodesign.co.uk/clients/bats/bio_bats.html)

**NB: this initial desktop assessment should be done by the planner, not the applicant. If an assessment is required, a licensed bat consultant will need to be engaged by the applicant. Note also that finding bats is a skilled operation and should only be undertaken by appropriately licensed specialists to avoid prosecution should bats be disturbed.** Some of the skill involves locating signs of bats which remain even when the bats are absent: droppings, urine spots, food remains or greasy marks on roosting places. Even for experts, bats are often hard to find when roosting and special equipment such as endoscopes and bat detectors with recording and analysing equipment are often used. The applicant is not qualified to make this inspection, or to determine whether bats are present or absent themselves.

Checklist link: [http://www.naturalengland.org.uk/Images/Biodiversity%20Checklist\\_tcm6-10160.pdf](http://www.naturalengland.org.uk/Images/Biodiversity%20Checklist_tcm6-10160.pdf)  
Flowchart link: [http://www.naturalengland.org.uk/Images/Flow%20Chart%20Feb%2009\\_tcm6-10161.pdf](http://www.naturalengland.org.uk/Images/Flow%20Chart%20Feb%2009_tcm6-10161.pdf)  
Also see attached **trigger list** for a more detailed assessment of building types and structures, and proposals which may affect bats in such buildings.

The above measures are necessary as since the Woolley Case clarified this issue (outlined below), Local planning authorities must now apply the same three tests as Natural England when deciding whether to grant planning permission where species protected by European Law may be harmed.  
The three tests are:

- the activity must be for imperative reasons of overriding public interest or for public health and safety;
- there must be no satisfactory alternative;
- favourable conservation status of the species must be maintained.

As the final test cannot be assessed without an assessment and possibly a full survey, if bats are found to be present, we recommend this application be withdrawn until a full survey can allow the LA to assess the 3<sup>rd</sup> test.

This link from NE ([http://www.naturalengland.org.uk/Images/WoolleyVsCheshireEastBC\\_tcm6-12832.pdf](http://www.naturalengland.org.uk/Images/WoolleyVsCheshireEastBC_tcm6-12832.pdf)) states: "Where planning permission is required for a proposed development, Natural England will continue to require evidence from the applicant that the planning authority has considered the three tests and how they were met". It will not be sufficient to add a Condition for a bat survey to any permission, as Natural England will no longer grant licenses under these circumstances.

Yours sincerely

Odette Carter

24/01/2011

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### **The Woolley Case**

The Woolley Case: Oct 2009: This judgment clarifies a legal duty which was already in existence, although many planning authorities were not applying it correctly. Local planning authorities must apply the same three tests as Natural England when deciding whether to grant planning permission where species protected by European Law may be harmed.

The three tests are;

- the activity must be for imperative reasons of overriding public interest or for public health and safety;
- there must be no satisfactory alternative;
- favourable conservation status of the species must be maintained.

His Honour Judge Waksman QC, in the High Court in June 2009, handed down this ruling in the case of R (on the application of Simon Woolley) v Cheshire East Borough Council concerning a development with a bat roost.

The species protection provisions of the Habitats Directive, as implemented by the Conservation Regulations, contain three 'derogation tests' which must be applied by Natural England when deciding whether to grant a license to a person carrying out an activity which would harm a European protected species for example bats, great crested newts dormice or otters. This license is usually obtained after planning permission has been granted. This judgment makes it clear that the local planning authority must also apply these three tests. Planners failing to do so, will be in breach of Regulation 3(4) of the Conservation Regulations.

The case related to an application for a judicial review of a decision to grant planning permission for a development in Wilmslow where an Edwardian Villa was to be demolished a three luxury apartments built. A bat roost had been identified at the original property following a survey. The bats issue was raised but was not given as a reason for refusal. It was common ground that in order to demolish the building a license from Natural England was needed. This was granted and the building demolished. The judicial review was brought by Mr. Woolley claiming that, amongst other things, the planning authority had failed in its duty by failing to give consideration to the three derogation tests. The court agreed.

When dealing with cases where a European Protected Species may be affected, a planning authority...has a statutory duty under Regulation 3(4) to have regard to the requirements of the Habitats Directive in the exercises of its functions.

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Trigger list of where bats are likely to be present and where developers can reasonably be expected to submit a bat survey

- (i) Proposed development which includes the modification, conversion, demolition or removal of buildings and structures (especially roof voids) involving the following:
- all agricultural buildings (eg farmhouses and barns) particularly of traditional brick or stone
  - construction and/or with exposed wooden beams greater than 200mm thick;
  - all buildings with weather boarding and/or hanging tiles that are within 200m of woodland and/or water;
  - pre-1960 detached buildings and structures within 200m of woodland and/or water;
  - pre-1914 buildings within 400m of woodland and/or water;
  - pre-1914 buildings with gable ends or slate roofs, regardless of location;
  - all tunnels, mines, kilns, ice houses, adits, military fortifications, air raid shelters, cellars and similar underground ducts and structures;
  - all bridge structures, aqueducts and viaducts (especially over water and wet ground); and
  - all developments affecting buildings, structures, trees or other features where bats are known to be present
- (ii) Proposals involving lighting of churches and listed buildings or floodlighting of green space within 50m of woodland, water, field hedgerows or lines of trees with obvious connectivity to woodland or water.
- (iii) Proposals affecting quarries with cliff faces with crevices, caves or swallets.
- (iv) Proposals affecting or within 400m of rivers, streams, canals, lakes, or within 200m of ponds and other aquatic habitats.
- (v) Proposals affecting woodland or field hedgerows and/or lines of trees with obvious connectivity to woodland or water bodies.
- (vi) Proposed tree work (felling or lopping) and/or development affecting:
- old and veteran trees that are older than 100 years;
  - trees with obvious holes, cracks or cavities; and
  - trees with a girth greater than 1m at chest height.
- (vii) Proposed development affecting any feature or locations where bats are confirmed as being present, revealed by either a data trawl (for instance of the local biological records centre) or as notified to the developer by any competent authority (eg planning authority, statutory nature conservation organisation or other environmental or conservation organisation).

Source: *Bat Surveys: Good Practice Guidelines* (Parsons et al 2007). Reproduced by kind permission of the Bat Conservation Trust.