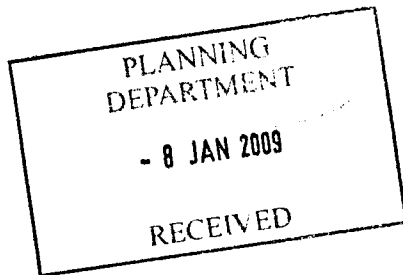


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16th December 2008



Mr M Peacock
Welwyn Hatfield Council
Council Offices
Campus East
Welwyn Garden City
Hertfordshire
AL8 6AE



Herts & Middlesex

Grebe House
St Michael's Street
St Albans
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AL3 4SN

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www.wildlifetrust.org.uk/herts

Dear Mr Peacock

Re: EXTENSIONS AND CONVERSION OF BARN TO CREATE SIX BED DWELLING PLUS STAFF ACCOMMODATION. ERECTION OF FOUR TWO STOREY DWELLINGS COMPRISING OF; 1X THREE BED, 1 X FOUR BED, 2 X FIVE BED DWELLINGS AND ANCILLARY CAR PARKING AND LANDSCAPING FOLLOWING DEMOLITION OF EXISTING BUILDINGS

Address: Colesdale Farm, 26 Northaw Road West, Northaw, Potters Bar

Ref: S6/2008/2224/MA

Bats

Old rural buildings and barns are often used by bats as these old buildings frequently provide gaps and hollow mortice joints where bats can roost. We therefore recommend that an assessment of the building is undertaken by a specialist in order to determine the potential impact upon bats. If the building does support bats, the mitigation required will depend upon the status of the roost(s) present, which may mean that changes to the plans are needed to accommodate them.

All bats and their roosts are legally protected by the Wildlife and Countryside Act 1981 and the Conservation (Natural Habitats & c.) Regulations 1994. If bats are present it is illegal to intentionally kill, injure or catch them, damage, destroy or obstruct their roosts, or to disturb bats. Bat roosts are also legally protected, even when bats are not present all of the time. Due to significant population reductions, some bat species have been identified as priority Biodiversity Action Plan species, including soprano and common pipistrelle (UK BAP) and natterer's bat (Herts BAP).

The government circular accompanying PPS 9 (paras 98-99) states that "It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision". In practice this means that the applicant may need to withdraw their application if the appropriate assessment cannot be made within the required timeframe. Any mitigation measures required can then be included as a Condition with permission.



INVESTOR IN PEOPLE

Hertfordshire & Middlesex Wildlife Trust Limited is registered in England No 816710 at the above address and is registered as a charity under Registration No 239863. VAT No 366 9276 06

President
Sir Simon A Bowes Lyon, KCVO

Next Steps

Where protected species are ***suspected or present*** on a proposed development site, the applicant and/or their agent is responsible for commissioning a consultant to undertake a site assessment to determine the presence or absence of bats.

1. Site assessment:

It is difficult to establish 'reasonable likelihood' of presence without a site assessment or survey being carried out by a professional licensed bat consultant. Therefore, the applicant is advised to commission the services of a professional consultant. The Herts Biological Records Centre (01992 555220) can provide a list of consultants. An assessment can be done at any time of the year.

2. Emergence surveys

If the site assessment confirms the presence of bats, it should be noted that the consultant may advise the applicant that evening emergence surveys to record flying bats will also be required. These surveys can only be carried out from mid-April to the end of September.

3. Obtaining a licence:

Where the presence of bats is confirmed, a Habitat Regulations Licence will need to be obtained from Natural England before any works affecting the roost can start. The licence application will be made by the bat consultant and the application will need to include the ***results of the surveys, a Method Statement, a Mitigation Strategy and Works Schedule*** stating how it is proposed to accommodate each species of bat within the development.

However, should the council grant permission before such an assessment is completed (not recommended) then the following Condition should be attached:

- No works of demolition or conversion of the existing buildings to take place until a bat mitigation scheme has been submitted to the LPA. This is to include the results of a survey, and if bats are present, a Method Statement, a Mitigation Strategy and Works Schedule stating how it is proposed to accommodate each species of bat within the new development.
Reason: all Bats and their roosts are legally protected by the Wildlife and Countryside Act 1981 and the Conservation (Natural Habitats & c.) Regulations 1994. If bats are present it is illegal to intentionally kill, injure or catch them, damage, destroy or obstruct their roosts, or to disturb bats. Bat roosts are also legally protected, even when bats are not present all of the time.
- BIRDS: No works shall be carried out on the existing barn between the 1st March and 31st August inclusive, unless searched immediately beforehand by a suitably qualified ecologist. Should the building(s) be found to support barn owls, no works shall take place until an owl hold and barn owl nesting box and/or loft has been installed, which shall be in accordance with details submitted to, and approved in writing by, the LPA.
Reason: nesting birds are protected from disturbance under the Wildlife & Countryside Act 1981 (as amended). In order not to disturb nesting or roosting Barn Owls and to make adequate provision for the nesting and roosting of Barn Owls, a species protected by the Wildlife and Countryside Act, and in accordance with guidance from PPS9 and the NERC Duty. Breeding birds such as barn owls, swallows and swifts may also use rural out-buildings and barns, and all are also legally protected from disturbance under the Wildlife and Countryside Act (1981) and the Conservation (Natural Habitats & Species.) Regulations 1994. This makes it an offence to intentionally kill or injure such species whilst they are building a nest or whilst in, or near a nest. Barn owl populations in Hertfordshire have declined drastically in recent years. However, those that remain will be dependant on old out-buildings. We recommend the existing barn be assessed by a licensed ecologist for barn owls.

Biodiversity can be incorporated into small-scale developments through wildlife-friendly landscaping, installation of sustainable drainage schemes, and features such as green walls, balconies and roofs. We recommend therefore that consideration be given to attaching the

following Conditions to permission for this development proposal, for the following:

- **BAT BOXES:** Erect bat boxes (Schwegler 1FQ) or bricks (Schwegler N27 or 1FR) onto/into the new buildings. These maintenance free roosts need to be installed at least 3m off the ground and facing in a southerly direction, and shaded from any direct outdoor lighting source.
Reason: to increase roosting opportunities for bats in the area in compliance with guidance in paragraphs 5.32 to 5.36 of PPS9, and the NERC Biodiversity Duty.
- **WATER SAVING MEASURES:** Consider including grey-water recycling, external water butts etc in new building design (<http://www.environment-agency.gov.uk/subjects/waterres/286587/286599/286911/548861/862159/?version=1&lang=e> and <http://www.greenbuildingstore.co.uk/water-reedbeds.php>.
Reason: to aim towards sustainable water usage in new developments, in compliance with sustainability guidance in PPS1.
- **Code for Sustainable Homes:** Maximising energy efficiency and conservation through use of renewable energy sources, solar panels, wind turbines (where efficient), ground-source heat-pump, insulation creating buffer zones, weather-breaking planting, localised temperature controls, and use of condensing boilers.
Reason: to aim towards sustainable energy usage in new developments
- **The Biodiversity Benchmark for Land Management:** The Wildlife Trusts' Biodiversity Benchmark is the first award for business designed to recognize and reward continual biodiversity improvement. It was set up to support businesses and other organizations in their work to enhance biodiversity. The Biodiversity Benchmark is managed by The Wildlife Trusts; its strategic direction is overseen by a steering group comprising commercial and environmental organizations including Natural England and the Environment Agency. It provides a nationally recognized standard for commitment to biodiversity, demonstrating responsible land management.
How to apply: Self-assessment packs and related documents can be downloaded from the Biodiversity Benchmark website (www.biodiversitybenchmark.org) or email bb@wildlifetrusts.org to obtain a copy.
- **SUDS:** Sustainable Urban Drainage Systems: for information; The SUDS manual (C697) (Author(s): Woods Ballard B; Kellagher R et al) is available from <http://www.ciria.org/downloads.htm>.
Reason: to aim towards sustainable drainage systems in new developments.

Further Legislative Context

Please also note that amendments to the Habitats Regulations 1994, which came into force on 21st August 2007, state that those carrying out activities that may affect European Protected Species will have to give even greater consideration to their presence and also their breeding sites and resting places. The majority of the defences in the original Regulations will be removed, including the 'incidental result defence' which applies to acts which could constitute an offence but were the incidental result of an otherwise lawful activity and could not reasonably have been avoided. The offence prohibiting disturbance of European Protected Species will be amended to better reflect the terms of the Directive whereby trivial acts of disturbance will constitute an offence and therefore require a licence. **The amendment means that it is also an offence if you accidentally damage or destroy a breeding site or resting place (which was previously exempt).**

PPS9 - Habitats and species in UK and Local Biodiversity Action Plans: habitats and species of principal importance in England

Paragraph 84. The potential effects of a development, on habitats or species listed as priorities in the UK Biodiversity Action Plan (BAP), and by Local Biodiversity Partnerships, together with policies in the England Biodiversity Strategy, are capable of being a material consideration in the preparation of regional spatial strategies and local development documents and the making of planning decisions.

Paragraph 85. Section 74 of the Countryside and Rights of Way Act 2000 places new duties on Government Ministers and Departments in respect of the conservation of biodiversity. In exercising his duty, the First Secretary of State may include local authorities to promote the taking of steps by others to further the conservation of the habitat types and species of principal importance for biodiversity. In PPS9, the Government has indicated that local authorities should take steps to further the conservation of habitats and species of principal importance through their planning function (see PPS9 paragraphs 11 and 14). The lists of the habitat types and species subject to this duty were published by Defra in 2002 and comprise the list of species and habitats identified as priorities under the UK Biodiversity Action Plan.

Policy ENV3 (*Biodiversity and Earth Heritage*) of the East of England Plan (May 2008)

Planning authorities and other agencies should ensure that the region's wider biodiversity, earth heritage and natural resources are protected and enriched through the conservation, restoration and re-establishment of key resources by:

- ensuring new development minimises damage to biodiversity and earth heritage resources by avoiding harm to local wildlife sites and, wherever possible, achieving net environmental gains in development sites through the retention of existing assets, enhancement measures, and new habitat creation;
- promoting the conservation, enhancement, restoration, re-establishment and good management of habitats and species populations in accordance with Regional and Local BAP targets;
- ensuring the appropriate management and further expansion of wildlife corridors important for the migration and dispersal of wildlife;
- having regard to the need for habitats and species to adapt to climate change; and
- establishing networks of green infrastructure, maximising their biodiversity value, as provided for under Policy ENV1.

PPS1 – Delivering Sustainable Development:

Objective 5 of the above states that "Planning should facilitate and promote sustainable and inclusive patterns of urban and rural development by protecting and enhancing the natural and historic environment, the quality and character of the countryside, and existing communities".

Paragraph 17 states that "the Government is committed to protecting and enhancing the quality of the natural and historic environment, in both rural and urban areas. Planning policies should seek to enhance the quality, character and amenity value of the countryside and urban areas as a whole. A high level of protection should be given to most valued townscapes and landscapes, wildlife habitats and natural resources. Those with national and international designations should receive the highest level of protection."

Paragraph 19 (*Protection and enhancement of the Environment*) states that "planning decisions should be based on recognition of the limits of the environment to accept further development **without irreversible damage.**"

Paragraph 20 (*Protection and enhancement of the Environment*) states that "Development plan policies should take account of environmental issues such as: - mitigation of the effects of, and adaptation, climate change through the reduction of greenhouse gas emissions and the use of

renewable energy; air quality and pollution; land contamination; the protection of groundwater from contamination; and noise and light pollution”.

PPS 1 also states that “The policies set out in this PPS....may also be material to decisions on individual planning applications”.

PPS7 – Sustainable Development in Rural Areas

Paragraph 15 states that “Planning authorities should continue to ensure that the quality and character of the wider countryside is protected and, where possible, enhanced. They should have particular regard to any areas that have been statutorily designated for their landscape, wildlife or historic qualities where greater priority should be given to restraint of potentially damaging development”.

The Natural Environment and Rural Communities Act (2006) Biodiversity Duty

Section 40(1) of the NERC Act places a direct statutory duty to conserve biodiversity on all public authorities:

Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.

Section 41(3); the Secretary of State must take such steps as appear to him to be reasonably practicable to further the conservation of the living organisms and types of habitats included in the list of species of principal importance (the UKBAP list). He is further required to promote the taking by others (such as public bodies) of such steps to further the conservation of the statutory priority species. Section 40(3); conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat. **Local Authorities have a duty therefore to work to increase populations of BAP priority species and create and enhance BAP habitats.**

If you wish to discuss this matter further then please contact me.

Yours sincerely

Alison Hauser
Conservation Officer (Planning)
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