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HERTFORDSHIRE BIOLOGICAL RECORDS CENTRE

Environment, County Hall, Hertford, Herts, SG13 8DN

Mr M. Peacock
Planning Officer
Welwyn Hatfield Council
Welwyn Garden City
Hertford

25 OCT 2011

Plask for :- G Goodall
Our Ref :-
Your Ref :- S6/2011/2092/CA
Tel :- 01992 556155
Date :- 25/10/2011

Dear Mr Peacock

**Planning Application: S6/2011/2092/CA; Salisbury Square, Hatfield.
Demolition of existing shopping parade building with 7 maisonettes above
including retaining wall structures.**

1. HBRC database and evaluation:

HBRC do not have any specific biological data for the property. However, we do have records of bat roosts in the general area. The shopping parade has several roof voids and it is located close to the urban edge and Hatfield Park, which has mature trees, woodland, grassland, ponds, a lake and hedgerows; all are favoured feeding habitats for bats.

There are several pieces of recent guidance that provide advice on where bats are most likely to be present. Key documents are:

- Natural England's Standing Advice to Local Planning Authorities in the East of England (including Hertfordshire) published in September 2009; and
- The Bat Conservation's Trust's 'Bat Surveys Good Practice Guidelines' published in 2007.

These organisations have produced a "Trigger list of where bats are likely to be present and where developers can be reasonably expected to submit a bat survey" (BCT 2007).

- Proposals for the modification, conversion, demolition or removal of buildings and structures, all agricultural buildings particularly of traditional brick or stone with exposed wooden beams.
- 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 and those with gable ends or slate roofs, regardless of location.
- All listed buildings.
- Proposals in a rural setting with mature woodland, hedges, trees, grassland, rivers, lakes and ponds; all favoured habitats of bats for feeding, commuting and potentially roosting.

We take the view that bats may be roosting in the roof spaces of the property and that the proposed development could result in bats being harmed or killed and their roost site being destroyed.

This would constitute a criminal offence, and therefore, the LPA has a statutory, legal duty to apply the three derogation tests contained in the European Protected Species provision of the Habitat Regulations 2010.

2. Bats the Law and Planning Process:

Bats are protected under both European and national legislation and are a material consideration in the determination of a planning application, that if implemented would be likely to result in harm to the species. Consequently, **an *initial inspection bat survey* should be undertaken by a suitably experienced bat ecologist to establish whether bats are present and likely to be affected.**

If evidence of bats is found and further surveys are required, the ecologist should provide advice on the procedure which needs to be followed.

The government circular accompanying PPS 9 (paragraphs 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".

Being European Protected Species (EPS), bats are also covered by case-law, as of June 2009 (known as 'the Woolley Judgment')¹. This judgment clarified that **in granting planning permission the LPA has a statutory duty to apply the three tests contained in the species protection provision of the Habitat Regulations.**

In order to discharge this duty the LPA will need to ask the applicant for appropriate information (via an appropriate ecological survey report or other documentation) and apply the three stage test.

The three tests are as follows:

- The proposals must be for imperative reasons of overriding public interest (OPI) or for public health and safety.
- There must be no satisfactory alternative.
- The favourable conservation status of the species in their natural range must be maintained.

The LPA will need to apply these tests prior to making a decision on the planning application. Otherwise there is a risk that any planning permission granted could be legally challenged by a third party and subsequently quashed.

It is also of note that in the Woolley judgment, the court held that **this duty cannot be discharged by the LPA imposing a condition** on the consent that requires the developer to obtain a licence from Natural England².

Consequently we advise that a bat assessment survey should be undertaken and advice provided before the application is determined to ensure that, if required, any necessary mitigation can be incorporated into the proposals submitted for approval.

¹ R (on the application of Simon Woolley) v East Cheshire Borough Council 2009 EWHC1227. Further information on the Woolley judgment is available via <http://www.planningofficers.org.uk/media/www/documents/LPAProtectedSpeciesDuty.pdf>

² Natural England (2009). *European Protected Species and the Planning Process*. Accessible via http://www.naturalengland.org.uk/Images/WoolleyVsCheshireEastBC_tcm6-12832.pdf

Conclusions and Recommendations.

1. An initial bat inspection survey should be undertaken by a licensed bat ecologist to establish whether bats are present and whether they are likely to be affected by the proposed development works.
2. If the building search and bat assessment finds no evidence of bats, then the application will not need to be determined on ecological grounds.
3. If the initial building search and assessment finds evidence of a bat roost, then further emergence surveys will be required to inform the LPA **before** a planning decision can be taken.
4. It should be noted that emergence bat surveys can only be conducted during the period April to September, depending on prevailing weather conditions.
5. **Failure to conduct the bat surveys may result in the planning application not being determined in the required time-frame and it being refused.**

Yours sincerely,

Graham Goodall CEnv. MIEEM
Senior Ecologist

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