

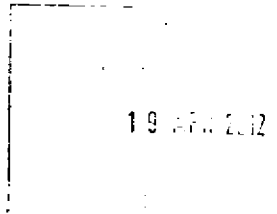
Ack

MP



Sent: 18 April 2012 12:00
To: Planning; Mark Peacock
Subject: comments for application S6/2012/0479/FP (33 Kentish Lane, Brookmans Park AL9 6NG)

FAO M Peacock



Dear Mr Peacock,

Re: Erection of new dwelling following demolition of existing

Address: 33 Kentish Lane, Brookmans Park AL9 6NG

Ref: S6/2012/0479/FP

The dwelling proposed for demolition is located within a fairly wooded area and adjacent to the Local Wildlife Site ref 79/030 (Grasslands S. of Mymmsfield). The site and surroundings provide opportunities for roosting and foraging bats.

Demolition of the existing building may result in the loss of a bat roost and harm to individual bats. This would be against wildlife protection law.

The LPA must determine whether there is a reasonable likelihood of bats being present and the case officer feels a bat assessment is necessary to meet the legal obligation to consider impact on protected species. We suggest that a bat assessment be considered to confirm the presence or absence of a roost before consent for demolition is granted. If bats are found to be present on the site, this application should be withdrawn until a full survey can allow the LA to assess the likely impact on the local bat population.

NB: If a bat 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. The applicant is not qualified to make this inspection, or to determine whether bats are present or absent themselves.

Wildlife Protection Legislation

Under Section 1 of the *Wildlife and Countryside Act 1981 (as amended)*, it is illegal to kill, injure or capture any wild bird, and illegal to damage, destroy or take their nests and eggs. Bird species listed in Schedule 1 are also protected against disturbance whilst nesting and while they have dependent young.

All bats and their roosts are legally protected by the *Wildlife and Countryside Act 1981* and the *Conservation of Habitats and Species Regulations 2010*. If bats are present it is illegal to deliberately kill, injure, capture or disturb them, or to damage, destroy or obstruct their roosts. It is also an offence accidentally damage or destroy a roost. Bat roosts are legally protected whether or not bats are permanently present.

Some bat species have been identified as priority Biodiversity Action Plan species, including soprano and common Pipistrelle (UK BAP) and Natterer's bat (UK and Herts BAP), thereby placing a greater duty of species protection and enhancement on planning authorities, in line with Paragraphs 84 and 85 of ODPM Circular 06/2005 to PPS9, the National Planning Policy Framework and the NERC Biodiversity Duty.

Where development activities affect a European protected species (great crested newts, bats, dormice, otters), or their places used for shelter or protection, work may need to be conducted under a European Protected Species licence issued by Natural England under Regulation 53(2)(e) of the *Conservation of Habitats and Species Regulations 2010*. In order for a licence to be issued the following three tests must be met:

1. The consented operation must be for "preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment";
2. There must be "no satisfactory alternative"; and
3. The action authorised "will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range".

Protected species and the LPA

The government circular to PPS 9 (ODPM circular 06/2005, paragraph 99) states that, where there is a reasonable likelihood of a protected species being present and affected, "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". Paragraph 116 of circular 06/2005 states, "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."

The Woolley case (*R (on the application of Simon Woolley) v Cheshire East Borough Council*) clarified that planning authorities are legally obligated to apply the three tests applied by Natural England in the context of licensing (as per *the Conservation of Habitat and Species Regulations 2010*, listed above) when deciding whether to grant planning permission where species protected by European Law may be harmed. The final test (favourable conservation status) cannot be assessed without an initial assessment and, depending on its outcome, possibly a follow-up emergence or activity survey.

Please note that it will not be sufficient to add a Condition for a bat survey to any permission, as Natural England will no longer grant derogation licenses under these circumstances. According to Natural England (http://www.naturalengland.org.uk/Images/WoolleyVsCheshireEastBC_tcm6-12832.pdf), "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".

Resources for planners

For your reference, Natural England released refreshed Standing Advice on Protected Species in 2011 (<http://www.naturalengland.org.uk/ourwork/planningtransportlocalgov/spatialplanning/standingadvice/advice.aspx>). It includes a number of useful documents to aid planning officers to follow the correct procedures and make informed judgments in the planning process relating to protected species.

Flowchart on dealing with **protected species in the planning process**
http://www.naturalengland.org.uk/Images/FlowchartFINAL_tcm6-21596.pdf

Decision-tree for assessing information/**survey requirements based on habitats and features** associated with protected species

http://www.naturalengland.org.uk/Images/Decision-tree_tcm6-21619.pdf

Table of factors affecting the **likelihood of bats being present** on a site
http://www.naturalengland.org.uk/Images/Batfeatures%20feb11_tcm6-25195.pdf

Individual, detailed **species guidance sheets**, covering survey and mitigation requirements, including one for bats http://www.naturalengland.org.uk/Images/Bat%20feb11_tcm6-21717.pdf. The flowchart on page 10 is a useful guide for planners when deciding on next steps.

Here is a link to a helpful interactive tool to assess whether a given planning application can reasonably be considered to need an assessment: http://www.buffalodesign.co.uk/clients/bats/bio_bats.html

You may also be interested in the English Nature publication *Bat Mitigation Guidelines* (Mitchell-Jones, 2004, available at <http://naturalengland.etraderstores.com/NaturalEnglandShop/IN136>). The paper describes the responsibilities of various parties in the planning process and presents information on bat ecology, surveying techniques and mitigation approaches as a guide for developers, although it is a useful resource for planners. Whilst some of the details on policy in particular are out of date, much of the guidance remains relevant.

Please don't hesitate to contact me should you wish to discuss this matter further.

Yours sincerely,

Odette Carter

Planning and Policy Officer

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