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**Sent:** 18 May 2012 15:55  
**To:** Planning; Lisa Hughes  
**Subject:** comments for application S6/2012/0719/MA (17-23 Church Street, Hatfield, AL9 5AS)

**FAO Mrs L Hughes**

21 MAY 2012

Dear Mrs Hughes,

**Re:** Demolition of 17-23 Church Street and erection of 12 dwellings

**Address:** 17-23 Church Street, Hatfield, AL9 5AS

**Ref:** S6/2012/0719/MA

The Bat Survey report (Maydencroft Land Advisory, October 2011) indicates that the roof void above number 23 Church Lane is used as a roost by brown long-eared bats. The consultants conclude that this would classify as a roost of low conservation status by Natural England. The works would result in the loss of the roost, however, and will therefore require a European protected species licence. The consultant makes recommendations within the report for mitigation.

The proposed works will result in the loss of a bat roost, and potential killing or injuring of bats, which would be in contravention of wildlife legislation (see below). To make the proposed development lawful, a European Protected Species mitigation licence must be obtained from Natural England. The Planning Authority also needs to be satisfied that the development is necessary and that there is no satisfactory alternative to the proposal.

For the EPS licence application, Natural England will require a Method Statement, with the results of appropriate bat surveys, a mitigation strategy, and a detailed timetable of the proposed works. Natural England will also require a copy of the planning consent and a reasoned statement providing justification as to why the proposed activity meets the requirements of the Conservation of Habitats and Species Regulations 2010. Full adherence to the approved method statement will be a condition to the Natural England licence. The licence will not be granted unless appropriate and sufficient bat activity surveys have been undertaken, during the correct season (May to September).

Herts & Middlesex Wildlife Trust encourages the LPA to deliver gains for biodiversity through the planning system, as promoted in the NPPF. This can be achieved in small scale developments, for instance, through

retention and protection of existing trees and hedges, wildlife sensitive lighting, the installation of bird and bat boxes, and through wildlife-friendly landscaping and new planting of native species.

The consider including the following **Conditions** with any permission granted:

**EPS LICENCE:** No works of demolition or construction shall commence until a European protected species licence from Natural England has been granted, which will make the proposed development and this permission legally compliant. The licence application will need to include a *Method Statement* with the *results of sufficient bat surveys*, a *Mitigation Strategy and Works Schedule* stating how it is proposed to accommodate each species of bat within the development. The development shall proceed in strict accordance with the terms of the licence, including adherence to the approved Method Statement.

*Reason: 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 intentionally kill, injure, capture or disturb individuals, or 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.*

**LIGHTING:** No external lighting shall be installed or affixed to any buildings on the site unless the LPA has first approved in writing details of position, height, design and intensity. Any that needs to be installed should be downward facing and directed away from any sensitive areas, including bat flight paths, potential or known bat access points and any installed artificial roosts.

*Reason: To consider the impacts of development on bats (Biodiversity Action Plan priority species) and contribute towards the protection and recovery of priority species populations, in accordance with paragraphs 84 and 85 of ODPM circular 06/2005, paragraph 117 of the National Planning Policy Framework and sections 40(1) and 40(3) of the NERC Act 2006. The NPPF states that by encouraging good design, planning policies and decisions should limit the impact of light pollution from artificial light on nature conservation. The design of the lighting scheme should follow the recommendations given in the Bat Conservation Trust's advice note on bats and lighting in the UK (BCT, 2008).*

**LANDSCAPING:** No works of site clearance or demolition to begin until a detailed landscaping plan has been submitted to the LPA for approval in writing. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the local planning authority. This is to include a structurally diverse habitat plan, details of native species (of local provenance where practicable) to be planted/sown and a sample programme of management. Plant species of known benefit to insects and birds should be included in the scheme.

*Reason: In the interest of minimising impacts on biodiversity and to pursue opportunities to incorporate biodiversity in new development and achieve net gains in biodiversity where possible, including through: the creation, protection, enhancement and management of ecological networks; the preservation, restoration and re-creation of BAP habitats, and; aiding the protection and recovery of priority species populations. In conformity with guidance in the National Planning Policy Framework (paragraphs 109, 116, 117 and 118), paragraphs 84 and 85 of ODPM circular 06/2005, and sections 40(1) and 40(3) of the NERC Act 2006.*

**RETAIN TREES AND HEDGEROW.** Features of ecological value, including trees and hedgerows, should be retained as far as is practicable, to preserve and enhance biodiversity on the site. All trees and hedges within the site to be retained shall be protected by 1m high fences for the duration of the building works at a distance equivalent to not less than the crown spread from the trunk, or such other distance/means as may be agreed in writing by the Local Planning Authority. No materials or plant shall be stored, rubbish dumped, fires lit or buildings erected within this fence and no changes in ground level may be made within the spread of the tree or hedge without the prior agreement in writing of the Local Planning Authority

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### **Informative:**

**BIODIVERSITY ENHANCEMENT.** Design and build in biodiversity enhancement into the site development. Plant new native trees, hedgerows and shrubs (of local provenance where practicable) on the development site to mitigate for any potential negative impacts on biodiversity and enhance its ecological potential. The species, positioning and connectivity of new planting should be designed to maximise its ecological value and biodiversity potential. Including fruit, seed and nut bearing species and nectar source plants will help attract insects and birds. Creation of ponds, dead wood habitats and loggeries provides further habitat diversity, enhancing the potential to support amphibians, invertebrates and small mammals. Installation of bat and bird boxes on mature trees or onto new buildings provides opportunities for roosting and nesting.

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### **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. The 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”.

## **The National Planning Policy Framework**

The National Planning Policy Framework (NPPF) sets out that planning should function to achieve sustainable development, which includes contributing to “moving from a net loss of biodiversity to achieving net gains for nature”, in line with the objectives of the Natural Environment White Paper 2011.

The NPPF paragraph 109 sets out that the planning system should “**contribute to and enhance** the natural and local environment by... **minimising impacts on biodiversity** and providing **net gains** in biodiversity where possible... including by establishing coherent ecological networks that are more resilient to current and future pressures.” Paragraph 116 establishes that the LPA should ‘plan positively’ for the “**creation, protection, enhancement and management** of networks of biodiversity and green infrastructure”.

As described in paragraph 117, planning policies should promote the preservation, restoration and re-creation of priority habitats, ecological networks and the protection and recovery of priority species

populations, linked to national and local targets. As stated in paragraph 117, the ‘local ecological network’ may include international, national and **locally designated sites** of importance for biodiversity, **wildlife corridors and stepping stones** that connect them and **areas identified by local partnerships for habitat restoration and creation**.

Paragraph 118 also instructs that **opportunities** to incorporate biodiversity in and around developments should be encouraged.

### **ODPM circular 06/2005 to PPS9**

The National Planning Policy Framework, published in March 2012, replaced the preceding suite of Planning Policy Statements and guidance notes, including PPS9 – *Biodiversity and Geological Conservation*. The **government circular 06/2005 Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System**, has been retained and **remains as valid guidance** for local planning authorities on decisions affecting protected species and designated nature conservation sites, among others.

**Paragraph 84** of ODPM Circular 06/2005 to PPS9 states, “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** highlights the duties to conserve biodiversity conferred by Section 74 of the Countryside and Rights of Way Act 2000 and PPS9, for local authorities “to promote the taking of steps by others to further the conservation of the habitat types and species of principle importance for biodiversity” (ie. BAP habitats and species), including through their planning function.

**Paragraph 98** states, “The presence of a protected species is a material consideration when a planning authority is considering a development proposal that, if carried out, would be likely to result in harm to the species or its habitat.”

**Paragraph 99** continues, “It is essential that the presence or otherwise of protected species [where there is a reasonable likelihood of them being present and affected], 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.”

### **The NERC Act (2006) Biodiversity Duty**

Section 40(1) of the Natural Environment and Rural Communities Act (*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 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.**

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 UK BAP 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.

### **Biodiversity Action Plan priority habitats and species**

Local and national Biodiversity Action Plan (BAP) habitats species require due consideration as outlined in Paragraphs 84 and 85 of ODPM Circular 06/2005 to PPS9, the CROW Act (2000) (section 74), paragraph 117 of the NPPF and the NERC Biodiversity Duty.

Local and/or national BAP species include great crested newts, various bat species, song thrush, bull finch, hedgehogs, water vole, grizzled skipper and stag beetles. Rivers, hedgerows, lowland meadows, wet woodland and lowland mixed deciduous woodland are BAP priority habitats.

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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