

ECOLOGICAL ADVICE FOR THOSE SUBMITTING PLANNING APPLICATIONS

Why your planning application may require bat and nesting bird surveys

July 2022

This advice note has been prepared to explain to those carrying out development projects which require planning permissions why their proposals may require bat and nesting bird surveys.

The Council has a legal obligation to ensure that the developments for which it grants planning permission do not result in disturbance to bats or bat roosts, nor to nesting birds, their nests, or their eggs. Development Management will scrutinise closely applications that are most likely to have an impact on bats or nesting birds and other habitats and species. They will ensure that, prior to planning permission being granted, this matter has been resolved. If it is not resolved this can be a reason for the refusal of planning permission.

If, having assessed your proposals, Development Management consider there may be an impact on bats or their roost, and/ or on nesting birds, you will be required to carry out a bat and/or nesting bird survey of your site. As part of this survey, you should also set out how any impacts on these protected species will be managed.

To complete this survey, you should employ a qualified and suitably experienced ecologist to assess your proposal and advise you how best to proceed. Many ecologists will offer a daytime bat scoping survey and will assess the suitability of a building or trees to support bats and advise whether dawn and dusk activity surveys are required or not. They can assess issues relating to nesting birds at the same time.

You can consider ways of managing your project in ways which will minimise any impacts on bats and nesting birds:

- complete works to roofs or roof spaces when bats are not present e.g., if bats are not using the roof spaces for winter hibernation, complete works between October and March when bats are absent but maintain bat access so bats can return to the roof the following summer. Make no material alteration to the features in the roof space that the bats are using
- completing works in areas that may affect nesting birds outside of the bird nesting season so roughly mid-August to the end of February.

Please note there is no legal definition of the bird nesting season - if a bird is nesting it is protected by law.

Biodiversity enhancement is also a requirement for many planning applications. It is recommended that you ask your ecologist to advise on appropriate enhancement measures that your project can deliver. Projects can be designed to offer new opportunities for bats and nesting birds, and the Bat Conservation Trust and the RSPB websites among others include details of these measures. A qualified ecologist will also be able to advise you further on these matters. Measures may include:

- ensuring that any existing suitable structure remains accessible to bats and nesting birds
- designing any outdoor lighting to be minimal and focused towards the ground and to where the light is required
- including new integral features such as overhanging eaves that will offer new opportunities for nesting birds rather than using nest boxes, which tend to have a relatively short life span
- maintaining, managing, and enhancing the vegetation within your land holding as wildlife habitat e.g., trees, shrubs, and hedgerows,

If you are intending to incorporate any of the above measure or similar into your project, please tell us and annotate these on plan(s) so we can understand your proposals and can take account of these as we determine your application.

It is worth remembering that bats and birds that feed on midges and mosquitoes are a natural and are often a welcome form of biological control!

Please be aware that bats and birds are very mobile and may start using a building from which they have been presumed to be absent.

ADVICE on the LAW, BATS and NESTING BIRDS

BATS:

- All British bat species are European Protected Species by virtue of their listing under Annex IV of EC Directive 92/43/EEC ('The Habitats Directive'). This Directive has been transposed into British Law under the *The Conservation of Habitats and Species Regulations 2019* (as amended).
- Regulation 9(1) of the 2019 Regulations requires all local planning authorities, in the exercise of all their functions, to have regard to the provisions of the Habitats Directive so far as they might be affected by those functions.

Under Regulation 43 of the 2019 Regulations, it is an offence to:

- (1) deliberately capture, injure or kill any wild animal of a European protected species*
- (2) deliberately disturb animals of any such species. Disturbance of animals includes in particular any disturbance which is likely—*
 - (a) to impair their ability—*
 - (i) to survive, to breed or reproduce, or to rear or nurture their young; or*
 - (ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate; or*
 - (b) to affect significantly the local distribution or abundance of the species to which they belong*
- (3) deliberately take or destroy the eggs of such an animal; or*
- (4) damage or destroy a breeding site or resting place of such an animal (including sites that are currently unoccupied).*

- Furthermore that all British bats are protected under Schedule 5 of the Wildlife and Countryside Act (1981) (as amended). This legislation makes it an offence to intentionally to kill, injure, take from the wild, possess or trade in any species of British Bat, as well as intentionally or recklessly damage, destroy or obstruct access to any structure or place

which bats use for shelter or protection. It is also an offence to disturb a bat/ bats whilst they are using such a place.

- As the landowner or developer, if you suspect there are bats within the building a survey should be undertaken by a qualified ecologist **prior** to planning consent being granted.
- If bats are encountered on site, works should stop immediately and Natural Resources Wales (NRW) should be contacted (Natural Resources Wales, - General Enquiries: enquiries@naturalresourceswales.gov.uk or 0300 065 3000 Mon-Fri, 8am - 6pm) - an EPS development licence may then need to be applied for. Licences are not automatically granted by virtue of a valid planning consent, and it may be possible that the necessary licence application may be refused.

NESTING BIRDS

- Under the Section 1 of the Wildlife and Countryside Act 1981 (as amended) it is an offence to kill or injure any wild bird, take, damage, or destroy the nest of any wild bird while that nest is in use or being built.

Natural Resources Wales (NRW) and the Police enforce the Wildlife and Countryside Act 1981 and NRW enforce the Habitat Regulations.