

**Ecology Approaches  
to meet the  
Biodiversity Objective  
on Small Sites**

**A Review for  
Objective Ecology**

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## ***Introduction***

### **Who this Report is for**

- 1.1 Specifically, this report is aimed at the Planning Authority, to ask the question of whether a planning application would need to be accompanied by bat surveys, or whether if sufficient information was provided as to
- The council's engagement with the Habitats Directive;
  - The applicant's engagement with the council's policy springing from that;
  - The provision within the application of all preparation necessary for a bat licence prior to work commencing;
  - The onsite provision of habitat enhancements suitable for all protected and priority species that could occupy the site, whether or not they do occupy the site; and
  - Clear mechanisms to ensure that the biodiversity measures cannot be reversed;

Bat surveys could be conditioned.

### **Who this Report is by**

- 1.2 Cornelius Kavanagh is an architect who also holds a postgraduate certificate in Green Building from the Centre for Alternative Technology. The course included a module on Ecosystem Services, as well as modules of development policy and biodiversity more generally. He has 25 years of experience of the failure of the planning system to reverse the decline in biodiversity.
- 1.3 The author is not a practising ecologist, and is not qualified to perform ecological surveys or specific advice. The nature of this report is strategic, and considers the way that such surveys and advice should be commissioned in the context of the overriding objective of biodiversity gain.

### **Purpose of this Report**

- 1.4 It has become standard practice for the Local Authority to require all applications where bats might be present to be accompanied by bat surveys.
- 1.5 This document explains why the undertaking of such surveys in advance of an application (as is usually done) is inappropriate and ineffective.
- 1.6 It also explains why a different approach offers such opportunities to benefit protected species, and biodiversity more generally, in line with Council policy.

### ***Context***

## **2 Scope of this Report**

- 2.1 The author's experience relates specifically to South Oxfordshire District Council area. Other local authority areas within the UK may also be affected.
- 2.2 The report is written at a time before the passing of the Planning and Infrastructure Bill. This will take years to pass into law. But its key recommendations can and should be implemented as soon as possible.

## Context, Continued

### 3 Legal Context

- 3.1 Before 2006, it was standard practice for the Local Authority to consult English Nature as part of applications where bats might be present. The Natural Environment and Rural Communities Act 2006 set up Natural England, passing the responsibility for policy to further the “biodiversity objective” onto Local Authorities.
- 3.2 Natural England had different responsibilities to English Nature. In the case of *Simon Woolley v Cheshire East Borough Council* (2009) the Planning Authority added a condition to a grant of planning permission which required a licence from Natural England to be obtained. The Judge held that this was not sufficient to fulfil its responsibility to the biodiversity objective.
- 3.3 The *Wooley* judgment placed a duty on the Planning Authority to ‘take a view’ before granting even a conditioned permission as to whether the bat mitigation was adequate. This (see 3.7 below) no longer applies.
- 3.4 However, if the Local Authority grants permission for a development that, due to bat protection, cannot be implemented, then they may be exposed to liability. For this reason Local Authorities to insist that ecological reports are submitted before planning applications are considered, with sufficient detail that the Local Authority can be sure that mitigation measures are practicable.
- 3.5 This however, is always assessed by the Ecologist as a standard part of the PEA/PRA. Modern bat boxes are not specific to one species so practicability can be proved by plans with suitable locations of bat boxes.
- 3.6 There is no logic for Planning Authorities to go further, but many insist on emergence surveys to identify the exact species and location of bats, in case Natural England might ask for them later.

*NERC 40 (1) "A public authority which has any functions exercisable in relation to England must from time to time consider what action the authority can properly take, consistently with the proper exercise of its functions, to further the general biodiversity objective."*

## Context, Continued

- 3.7 *Woolley* is no longer good law. A more recent case, *Morge v Hampshire County Council* overturned *Woolley*. *Morge* went all the way up to the Supreme Court, and as Lord Brown stated, it was found that “Natural England have the primary responsibility for ensuring compliance with the Directive” after stating (see right) that a planning condition would indeed be lawful.

Despite being a Supreme Court judgment, *Morge* has not had the publicity of *Woolley*, and it is not well known that it has overturned this important aspect of the *Woolley* decision.

- 3.8 The *Morge* case also clarified the extent of the liability of the Local Authority. Specifically, it was not to be held responsible if the law was broken, as their Lordships make very clear (see right).

Local Authorities can safely leave the exact details of the licence, and any surveys beyond the PEA to Natural England.

- 3.9 In an even more recent case *R (on the application of Devon Wildlife Trust) v Teignbridge District Council [2015]* the Wildlife Trust cited *Woolley* and again it was struck down.

- 3.10 Nevertheless, the *Woolley* case is still cited by the Bat Protection Trust as if it is still good law (see 4.1 below) and these later cases are not mentioned. This has led to procedures (set by industry guidelines) lagging behind or contradicting policy, which should be set by legal requirements.

- 3.11 In particular, registrars are asked to refuse to register applications where the PEA calls for further bat surveys, but these have not yet taken place. At registration stage, the Ecology Officer has had no chance to examine the proposal, which may be in full alignment with Council Policy with regard to biodiversity gain. In this way, a procedural rule can actually thwart the ‘biodiversity objective’ of the Habitat Regulations.

*“I cannot see why a planning permission (and, indeed, a full planning permission save only as to conditions necessary to secure any required mitigating measures) should not ordinarily be granted save only in cases where the Planning Committee conclude that the proposed development would both (a) be likely to offend article 12(1) and (b) be unlikely to be licensed pursuant to the derogation powers.”*

*“the United Kingdom has chosen to implement article 12 of the Directive by creating criminal offences. It is not the function of a planning authority to police those offences. Matters would, as Lord Brown points out, have been different if the grant of planning permission were an automatic defence. But it is so no longer.”*

## Context, Continued

### 4 Planning Procedural Context

- 4.1 The belief of Local Authorities that a site-specific survey to find which species of bat are visible emerging at dawn or dusk originates from the pamphlet “Bat Surveys for Professional Ecologists” (see extract, right)

As its website states, “The Bat Conservation Trust's Biodiversity Team works closely with a number of statutory nature conservation organisations (SNCOs) and government agencies, including: Natural England...”

The BCT is not an SNCO or a government agency itself. It is not a statutory body, and these guidelines are not statutory.

These guidelines quote BS42020 2013, but the statements following this standard's very generalised wording are the subjective interpretation of the document's author, stated without justification.

- 4.2 The BCT guidelines provide detailed instructions to bat surveyors working under licence from Natural England, and as such they are excellent. They should not be taken for advice to Planning Authorities. In fact, the advice issued by Natural England (see right) envisages many situations where bats are present on site, but a pre-application bat survey is not appropriate.

Natural England is a statutory body, and its advice carries more weight than The Bat Conservation Trust's guidelines.

Professional Ecologists, however, are in practice not willing to follow this approach rather than the BCT's (directly contradictory) interpretation of BS42020 2013, a document that costs £330 to buy so that you can interpret it yourself.

1.4.12 Further details on the standard of information required to assess a planning application is detailed in Clauses 6 and 8 of the BS42020 (BSI, 2013). In particular, *'The final report submitted with the application should provide as much certainty as possible and be prepared specifically with the aim of enabling the decision-maker to reach a sound and lawful determination of the application'* (Clause 6.3.1).

1.4.13 In addition:

- Clause 7.3 of BS42020 (BSI, 2013) states that 'where an applicant has been advised during pre-application discussions, or have themselves identified that they need to provide information on biodiversity with their planning application, they should ensure that what is submitted is sufficient to enable the decision-maker to validate and register the application'. Preliminary ecological appraisal (PEA) reports (see Chapter 4) are inadequate to inform the planning process unless no further surveys or mitigation/compensation are required.
- The 'Note' with Clause 7.3 of BS42020 (BSI, 2013) states that 'failure to provide all the information required might mean an application is not 'valid' and is not considered or determined'. Therefore, good practice would be for an LPA to include biodiversity in its list of local validation requirements and not to validate an application if bat surveys are required (i.e. if there is a reasonable likelihood that bats could be impacted) but none have been carried out.

Collins, J. (ed.) (2023) Bat Surveys for Professional Ecologists: Good Practice Guidelines (4<sup>th</sup> Edition).

*"You may not need to provide a detailed survey if you can show that the protected species are not affected by your proposal, because of:*

- *your proposed working methods*
- *the layout of the development to retain supporting habitats or special features*
- *the timing of the development to avoid sensitive times, such as hibernation and breeding seasons"*

Protected species and development: advice for local planning authorities: How to assess a planning application when there are protected species on or near a proposed development site. Natural England 2014

## Context, Continued

- 4.3 I have personally dealt with a client who wanted to improve biodiversity on the site rather than merely mitigate harm, but I could not find any ecologist willing to take this approach and design measures to ‘show that protected species were not affected by [the] proposal’.

All ecologists insisted on the BCT’s approach and the cheapest was £6,630 including VAT. Of which only £1428 was for the report itself.

For the purposes of comparison, the cost of the building work involved in this application will be around £50,000. Bat boxes cost £65.

- 4.4 It is not just the disproportionate cost (compared to measures that actually benefit bats) of the surveys. Nor the potential one year delay to an urgent project due to the short survey season. This would be the case with any bat licence.

In this case, where the implementation of planning permission may be delayed, the investment of over £6,000 in survey work is likely to be wasted. By the time a licence is required from Natural England, fresh surveys will be needed.

- 4.5 The main title of the BCT’s book is ‘Bat Surveys’. When the book describes a model report, it means writing up the findings of the surveys. Biodiversity is mentioned as an objective, but there is no mention of strategic ecology, constructed refugia, or planting to support the moths that bats eat, or any biodiversity gains to recommend. Recommendations are mentioned, but only mitigation recommendations.





## ***Context, Continued***

- 4.6 Biodiversity enhancements (rather than mere mitigation) are a priority not just to me and my client (and Natural England, and CIEEM and JNCC) but also to South Oxfordshire District Council (see right).

This application enhances the nesting and roosting opportunities for all protected species of vertebrates, except those such as ground nesting birds that are threatened by the presence of dogs and cats. This includes (as part of the application) all species of British bats, so the Local Authority can be sure that a challenge like Woolley would not be possible.

Appendix 2 of The Biodiversity Annual Monitoring Report 2024 lists 174 UK Priority species known to exist in South Oxfordshire. In line with Council Policy, and the underlying biodiversity objective, this proposal aims to provide enhancements for as many of these species as possible.

- 4.7 It is regrettable that no professional ecologist could be found willing to follow the Council's own policy. But the Planning Portal, partnering with Joe's Blooms, has produced a tool that is aimed at designers rather than professional ecologists. This Biodiversity Calculator is meant for sites that require Biodiversity Net Gain by law, and that do not have bats. But it can also be used, as here, to show how the biodiversity objective has been followed in the design.

*"Species Enhancements: The Council is committed to ensuring that development goes beyond mitigating its impacts on biodiversity and provides enhancements, including new nesting and roosting opportunities for protected and priority species. There is usually scope for development to provide at least some enhancement for species, so all major and most minor developments are expected to include features such as bat and bird boxes on buildings and retained trees, plus hibernacula (mixed earth/wood/stone piles) and log piles within any areas of retained or created habitats."*

## Context, Continued

### 5 Legislative Context

- 5.1 The Natural Environment and Rural Communities Act 2006 remains in force, as modified by The Environment Act 2021.

But the new Planning and Infrastructure Bill is presently in the final stages of its passage through the Lords and will affect both these acts, as well as the Planning Act 2008.

In a briefing paper to the Lords (see right) the Government identified the problems with the ‘current system’. It notes the absurdity that “even small projects require bespoke environmental assessments, leading to inefficient use of specialist resources such as ecologists”. It would prolong the absurdity to insist on exactly this in the case of this “small project”.

- 5.2 The forthcoming Planning and Infrastructure Bill introduces a new protocol. It explicitly reimposes the duty to ‘further the biodiversity objective’ on to Natural England, who must provide the Local Authority with Environmental Delivery Plans.

The quotation on the right is from the blog published by the Ministry of Housing, Communities & Local Government (MHCLG) run by the Press Office.

- 5.3 It is notable that this emphasis on “improvement” runs with SODC policy, with BS42020 2013, with the “biodiversity objective” and with advice issued by Natural England, the CIEEM and the JNCC.

The only outlier that runs against it is the advice issued to ecologists by The Bat Protection Trust. This is not statutory guidance and heavily reliant on the Judgement in *Woolley* which has now been overturned by *Morge*.

"The government argues the current system delivers poor outcomes for both housebuilding and nature. It cites the following....In a working paper published in December 2024, the government put forward proposals for a new system. It said this would deliver a “win-win” for development and nature, as funding from development would deliver environmental improvements on a larger scale. To achieve this, it proposed:

- changing the current system of multiple project-specific assessments in an area to a single strategic assessment and delivery plan for that area
- making the state rather than the developer responsible for planning and implementing strategic actions for nature protection and recovery
- requiring developers to pay the state to deal with environmental impacts"

“So in the case of a protected species, an Environmental Delivery Plan would include conservation measures that ensured an improvement in the overall conservation status of the species, recognising that in some places where development occurred there might be impacts on specific specimens. This principle is already applied in practice with respect to District Level Licensing for Great Crested Newts.”

## Analysis of Proposals

### 6 Compliance with Natural England Guidance

*You may not need to provide a detailed survey if you can show that the protected species are not affected by your proposal, because of: ...”*

- 6.1 In my experience there are bats on most small sites, all of which are protected by law. Although Natural England’s advice (right) applies to a Planning Application, it fits within the context of this legal protection. What is implied here is that a method statement sufficient to obtain a bat licence would be sufficient for Planning.
- 6.2 By its nature, a change of use like this does not change the built layout of the development. The non-built habitats on the site should be retained, and a walk-over by an ecologist and the preparation of a Preliminary Ecological Assessment and advice on compliance with the biodiversity objective can be conditioned, since the Ecologist will confirm that the measures are practicable.
- 6.3 This is easy to condition, the Ecologist can include a calendar in the PEA which will be part of a condition.
- 6.4 When the building comes to be constructed, there will be a Preliminary Roost Assessment conducted, and (if necessary) bat surveys will be undertaken to the extent required to gain a Bat Licence from Natural England.
- 6.5 Mitigation measures will however already be in place to cover any roost that is discovered, since in the absence of a survey the maximum will have already been done.
- 6.6 Under the upcoming planning regime, a small application like this that does not affect a Ramsar site would be judged against the Environmental Delivery Plan for bats, which Natural England will draw up.

- *your proposed working methods*
- *the layout of the development to retain supporting habitats or special features*
- *the timing of the development to avoid sensitive times, such as hibernation and breeding seasons”*
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## *Proposals, Continued*

- 6.7 In the case of bats, it is possible to anticipate the maximum that this advice may require for a small project like this to show
1. Where demolition will need to be supervised by a licenced bat handler
  2. Where boxes for crevice dwelling bats will be located
  3. Where bat tiles and roosts would be located, allowing bats that hang from rafters to do so, without contact with dangerous synthetic membranes e.g. Tyvek
  4. In areas identified as used by larger bats that fly to their roost, where an open bat loft will be located
  5. Where external lighting will be avoided on bat commuting routes.
  6. Where biodiversity enhancements will be made to increase the supply of prey, specifically night flying moths
- 6.8 All of these measures can and should be implemented in a proposal in a wooded rural site like this, even if no bats are found in emergence surveys. Indeed, this is such a suitable bat habitat that if no bats were found, the Ecologist would put this down to the fact that surveys are just a ‘snapshot’ and recommend bat boxes anyway. There is simply no necessity for the emergence surveys, they do not change a thing.
- 6.9 The money saved in bat surveyor’s fees could be spent on bats instead, with plenty left over to enhance the biodiversity objective.
- This is the thinking behind the upcoming Planning and Infrastructure Bill. No wonder its aims are stated as a win-win for both development and biodiversity.
- 6.10 The Planning Application, if it comes in 2027, will likely be under this regime. This pre-application suggests that this should be taken into account.

## *Proposals, Continued*

### **7 Compliance with SODC Policy**

- 7.1 Council Policy also anticipates the coming regime where there will be specific actions required of developers on all sites. Developers, and private individuals such as the applicant, will be only too happy to include bat and bird boxes.
- 7.2 There may be some resistance to hibernacula on some sites, on the grounds that they look 'untidy' but this could be overcome with good design. Once all schemes include them, it will seem normal and be accepted.
- 7.3 The enthusiasm from the public to 'Bee Hotels' shows that SODC policy, as well as aligning with the coming regime, also aligns with common sense.
- 7.4 Existing procedures, which restrict provision to those species identified in site specific surveys, do not align with common sense. No matter how intensive a site survey is, it will inevitably miss species that lie outside the boundary of the site, or are not present at the time of the surveys. Existing procedures are restricted to mitigating impact on resident bat species, they do nothing to encourage non-resident bat species to take residence on the site.
- 7.5 The policy objective does align with the proposed strategy, which provides ALL the measures for ALL the bat species found in the area. This strategy follows the overriding objective, which is biodiversity, without getting lost in the weeds of site-specific surveying.
- 7.6 This 'objective:biodiversity' strategy will result in overprovision of bat roosts, but will not omit one that a survey could have recommended. If no non-resident bat species is attracted to the 'extra' roosts no harm is done. If the empty roosts are populated by species other than bats, this is a positive enhancement.

*"all major and most minor developments are expected to include features such as ..."*

*"bat and bird boxes on buildings and retained trees, plus hibernacula (mixed earth/wood/stone piles) and log piles within any areas of retained or created habitats"*

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## ***Conclusion***

### **8 Long Term Value**

- 8.1 The question asked in this study is whether the ‘biodiversity objective’ can be best served by adding a suitable condition to a planning consent. The answer is yes.
- 8.2 This assumes that a qualified Ecologist would provide sufficient evidence that bat mitigation is practicable, and a licence obtainable. Not just mitigation and calendar restrictions but also Biodiversity Enhancement measures would be recommended in the PEA. This would be provided at Application stage, so that following the PEA’s recommendations could be the basis of the condition.
- 8.3 Bat roost surveys, and emergence surveys would take place as part of the licencing process, prior to implementation of the consent, but after the issue of an approval.
- 8.4 Long term maintenance conditions are well established, when it comes to trees. To get over the difficulty of enforcing long term conditions, it might also be possible to build some suitable wording into the CIL exemption that are provided for domestic projects.