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# Good Practice Guide

## **NRW Approach to Bats and Planning**

October 2015

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## 1. Introduction

### 1.1 Purpose

This document explains the approach taken by Natural Resources Wales to developments that may affect bats.

Its main purpose is to introduce a standard advice approach to lower risk cases that are unlikely to be detrimental to the conservation status of bat species. As well as explaining this change, it summarises the context, outlines the current model and gives links to best practice, all of which still apply. This document sits alongside existing guidance about bat survey and how to assess, avoid and mitigate potential impacts.

This approach only applies to bats where they are not a feature of a Special Area of Conservation (SAC).

This is an instruction for Natural Resources Wales staff and guidance for Local Planning Authorities.

### 1.2 Background

Bats are protected by the Conservation of Habitats and Species Regulations 2010 (as amended), that gives effect in the UK to the EU Directive 92/43/EEC on the 'Conservation of Natural Habitats and of Wild Fauna and Flora' (usually shortened to "Habitats Directive"). This protection extends to bats' breeding sites and resting places.

As explained in Planning Policy Wales (*Chapter 5 - Conserving and Improving Natural Heritage and the Coast*), the presence of a European protected species is a material consideration for a development proposal that would be likely to result in disturbance or harm to the species or its breeding sites or resting places.

The Regulations allow developments that would be likely to result in disturbance or harm to individuals of a European protected species, or to their breeding sites and resting places, but only if there is:

- no satisfactory alternative and
- if the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in its natural range. In addition,
- the development works to be authorised must be for the purposes of preserving public health or safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment.

These derogations from the Habitats Directive to allow disturbance or harm to bats and their breeding and resting places are granted by licences issued by Natural Resources Wales.

Planning Policy Wales explains that, to comply with the Habitats Directive, planning authorities should take the above three requirements for derogation into account and avoid giving planning permission for developments that would not get a licence from Natural Resources Wales. Planning Policy Wales also explains that planning authorities should seek the advice of Natural Resources Wales for all planning applications likely to result in disturbance or harm to bats and should always consult them before granting permission. Local Planning Authorities address this by screening applications to identify when there is a reasonable likelihood that bats may be present and, therefore, when to require a bat survey and report that will confirm if bats are present and if they likely to be disturbed or harmed by the proposal.

To summarise, the overall requirement on Local Planning Authorities, Natural Resources Wales and developers is to avoid harm or disturbance to bats and their breeding sites and resting places, unless Natural Resources Wales has given a licence to allow the harm or disturbance. Natural Resources Wales may only give a licence if the requirements for derogation are met, including that disturbance or harm to individual bats (or to their breeding sites and resting places) would not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in its natural range.

## 2. Approach

We have identified circumstances in which there is a lower risk of development being detrimental to the conservation status of populations of bats, even if the development cannot avoid harming or disturbing individual bats or their breeding sites and resting places at the development site.

Our approach still depends on applicants submitting suitable bat reports. It does not change the current model, but we are now standardising the basic advice we have been giving in lower risk cases and we are adding a systematic way of identifying lower risk cases.

The flow chart in Annex 2 outlines the current model for considering bats and the way our approach to lower risk cases relates to that model.

### 2.1 Identifying lower risk cases

A lower risk case is one where a bat report confirms that bats are present, but NONE of the following apply:

- Maternity roosts of any bat species *regardless of the size of the roost*. Please note that some species form small maternity roosts. It is therefore essential that sufficient justification is set out in the bat report to support the assessment of the nature of the use of the roost by bats.
- Hibernation roosts of any species.
- Any proposal involving greater horseshoe bat, lesser horseshoe bat, barbastelle bat, Bechstein's bat, grey long-eared bat, Leisler's bat, serotine bat and Nathusius' pipistrelle bat.

- Any proposal involving roost sites for 3 or more different bat species.
- Any mating or swarming site considered to be important on the basis of the submitted bat report.

If one or more of the above criteria do apply, there is a higher risk of the proposal being detrimental to the maintenance of the population of the species concerned at a favourable conservation status in its natural range.

We recommend this checklist is part of a bat report's executive summary, to make it easy to see if the author has identified it as a lower risk case.

## 2.2 Advice for lower risk cases

Natural Resources Wales considers that development in lower risk cases is not likely to be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in its natural range, provided the recommendations of a suitable bat report are implemented. Such recommendations should be described in a method statement that is secured through planning conditions and/or a Section 106 agreement.

If the bat report concludes that the development is likely to result in disturbance or harm to individual bats or to their breeding sites or resting places, the development will need a licence. In those cases, the planning consent should also include a condition that prevents the commencement of development works until the Local Planning Authority has been provided with a licence that has been issued to the applicant by Natural Resources Wales pursuant to Regulation 53 of the Conservation of Habitats and Species Regulations (2010) authorizing the specified activity/development to ahead, or Natural Resources Wales has informed the applicant that such a licence is not required.

If this advice for lower risk cases is followed, it is unlikely that Natural Resources Wales would refuse a licence for a lower risk case, provided the licence application is consistent with the planning consent. The need for a licence, or the outcome of a licence application, may be affected by changes to the consented plans or if the actual development does not comply with the planning consent. We would advise recipients of planning consent who are unsure about the need for a licence to submit a licence application to us.

This standard advice creates the opportunity for Local Planning Authorities to apply it to lower risk cases without consulting Natural Resources Wales, provided any planning consent included the pre-commencement condition that required the applicant to provide the Local Planning Authority with a copy of a licence from Natural Resources Wales or a copy of a letter from Natural Resources Wales that confirms a licence is not required. If a Local Planning Authority takes this approach to low risk cases, it would be important for them and Natural Resources Wales to review the operation of this approach periodically, to give confidence that there was no risk of breaching the Habitats Directive.

## 2.3 Advice for other cases

If one or more of the above criteria apply, there is a higher risk of affecting conservation status and of Natural Resources Wales requiring amendments for a licence. Natural

Resources Wales will assess bat reports for these cases and give additional advice as necessary to help ensure that the development would not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in its natural range. In these cases, we will aim to give advice that helps the Local Planning Authority consent a proposal that Natural Resources Wales would be likely to licence.

### 3. Guidance

We publish guidance and links to nationally agreed survey guidelines and good practice on the Natural Resources Wales website (NRW homepage > Conservation, biodiversity and wildlife > European protected species > Bats), which includes:

- Bat Surveys 'Frequently Asked Questions'
- Guidance on engaging ecologists
- Information that needs to be provided in an application for a European protected species licence.
- Links to good practice guidance for surveys and mitigation from Natural England and the Bat Conservation Trust, endorsed by Natural Resources Wales.

Natural Resources Wales is normally only able to give formal advice on bats when a suitable and complete bat report is available in support of a planning application.

We also recognise the value of early discussions where proposals appear to carry higher risks or the level of risk is not clear. Therefore, our species advisers are able to help guide in-house ecological advisers employed by local authorities and ecological advisers working for developers in those circumstances.

#### 3.1 Screening

The purpose of screening is for Local Planning Authorities to identify when there is a reasonable likelihood that bats may be present and, therefore, the need for survey to confirm if bats are present and if so, whether they would be affected by the development.

TAN 5 (*Technical Advice Note 5 – Nature Conservation and Planning*) explains that developers should be required to undertake surveys for protected species if there is a reasonable likelihood of them being present. It adds that the level of likelihood that should trigger a requirement for survey should be low where there is a possibility that European protected species might be present and that it is considered best practice that such screening should be carried out by a competent ecologist on the basis of data provided by the relevant Local Record Centre.

Guidance on the need for a bat report is found in the '*Biodiversity Toolkit Bats Protocol*' at:

[http://www.biodiversityplanningtoolkit.com/stylesheet.asp?file=211\\_interactive\\_bat\\_protocol](http://www.biodiversityplanningtoolkit.com/stylesheet.asp?file=211_interactive_bat_protocol)

The British Standard BS 42020:2013 '*Biodiversity Code of practice for planning and development*' gives more general advice to help inform the need for ecological information in support of planning applications.

### 3.2 What does a suitable bat report look like?

Broadly, a report should be suitable for the purpose of assessing effects of the development on bats using the site and recommend effective measures to avoid or mitigate negative effects. It gives information on the context of the development site, the extent to which bats use the site and are likely to be affected by the proposed development and details of mitigation and compensation proposals in the short and long term. The level of information required in support of an application will vary, depending on the scale of the proposed work and its impact on the protected species. A professional ecological consultant should be aware of good practice in this field and requirements for licence applications.

Natural Resources Wales endorses the good practice set out in the 2012 '*Bat Surveys: Good Practice Guidelines 2<sup>nd</sup> Edition*' published by the Bat Conservation Trust. A copy of which can be found on their website. NRW represented the Statutory Nature Conservation Organisations on the Editorial Board on the first and second editions of the Bat Survey Guidelines. There is a statement on p6 of the guidelines setting out the Statutory Nature Conservation Organisations' views that they support the guidance and also that they recognise that the ecologist should use their professional judgement.

To help ensure that reports contain critical information and are easy to assess, we recommend specific approaches to completing the report template in the 2012 guidelines (see Annex 1). Our recommendations include submitting method statements as part of the bat report.



## **ANNEX 1: Additional guidance for bat reports**

Box 5.1 Chapter 5 of *Bat Surveys: Good Practice Guidelines* provides a good general template for bat reports and the information indicated should be provided. However we provide below additional guidance in respect of some sections of Box 5.1 to address those topics for which we have found that bat reports have been deficient for planning purposes. We recommend that this information is also provided.

### **Section 1.2 Proposed Works and Section 4.3.2 Roosts**

It is important that the full details of a proposal are understood by the consultant. Ensuring that the consultant fully understands a proposal is essential to their consideration of the impacts and in helping them plan appropriate mitigation.

### **Section 2.1 Summary of survey methods and Section 4.1 Constraints on survey information**

The description of survey limitations should include a clear explanation of where survey has been limited for health and safety or practical reasons and where it has been limited due to refusal of access.

### **Section 3 and Appendix 3**

We strongly encourage use of photographs and illustrated diagrams to facilitate explanation of the location, nature and extent of any bat evidence found during surveys, as well as flight activity (Eg. around the site and to/from from any potential roost sites). (Note though that it should not be necessary to take photographs of bats in situ to prove their presence as other evidence should be provided, e.g. bat detector recordings, photographs of bat droppings, DNA analysis of droppings, or documentation about how the species was identified by a competent licensed bat worker).

#### **Section 3.1.1 Designated Sites (Special Areas of Conservation (SAC), Sites of Special Scientific Interest (SSSI))**

Rather than only include details of sites designated for their bat interest (Eg. site location map and citation setting out reasons for designation), a bat report should include details of any sites identified, and any flight activity observed between the development site and any identified designated sites.

This information will be vital to inform any impact assessment, particularly for those proposals that will need to be considered as part of a Habitats Regulations Assessment under Regulation 61 of The Conservation of Habitats and Species Regulations 2010 (as amended).

Proposals that need to be considered under Regulation 61 of the Conservation of Habitats and Species Regulations 2010 (as amended) should ensure that they are submitted with all the relevant information needed to inform a Habitats Regulations Assessment. We strongly recommend that these requirements are discussed and agreed with the competent authority well in advance of submission, particularly if they may influence

survey requirements. Such information may need to include the condition status of any Special Areas of Conservation (SAC) concerned.

### **Section 3.1.2 Protected Species**

If protected species records contain details of the roost type, then this information should be included in the bat report.

### **Section 4.3.1 Designated Sites**

The assessment of impacts on bats of a development affecting a designated site (Eg. SAC or SSSI) must be sufficient to enable the planning authority to determine the impacts on each site in accordance with relevant legislation, and national and local planning policy.

In respect of Special Areas of Conservation, the information provided must be sufficient to inform a Habitats Regulations Assessment under Regulation 61 of The Conservation of Habitats and Species Regulations 2010 (as amended).

### **Section 5.1 Recommendations: Further Survey**

If the bat report needs to recommend that further survey work is undertaken, this section should explain what further surveys are considered necessary and why (ie. how they will facilitate the assessment of impacts and determination of mitigation to inform applications for planning consent and EPS licence), and any timing constraints that they may be subject to.

Note that activity surveys for bats are limited to certain times of the year. Surveys undertaken at the wrong time of year may prove inconclusive and may need to be repeated at an appropriate time of year. Financial expenditure on surveys can be economised if programmed appropriately.

### **Section 5.2 Mitigation measures**

With the impact assessment in mind, it is vital that the mitigation measures put forward in the bat report are not only designed to meet the legal tests indicated above, but are also firm commitments of the mitigation that will be implemented as part of the development (and not just indicative of what '*could*' be done). These may need to include both long and short term measures, depending on the nature of the bat species and roosts present and the impacts identified.

Where mitigation measures are to form part of the integral structure of a new or renovated building (Eg. a bat loft, fly-in access), these should be shown on scaled architects drawings that are of sufficient scale and clarity to be able to determine the details (including dimensions). Such drawings should also show the locations of other bat mitigation features such as bat access features, and proposed lighting.

A vegetation scheme should be provided where this is necessary to retain or provide connectivity between new roost sites and foraging areas and commuting routes in the

wider landscape, and is thus an essential factor to the overall success of the bat mitigation. It should include details of the location, extent and species to be used.

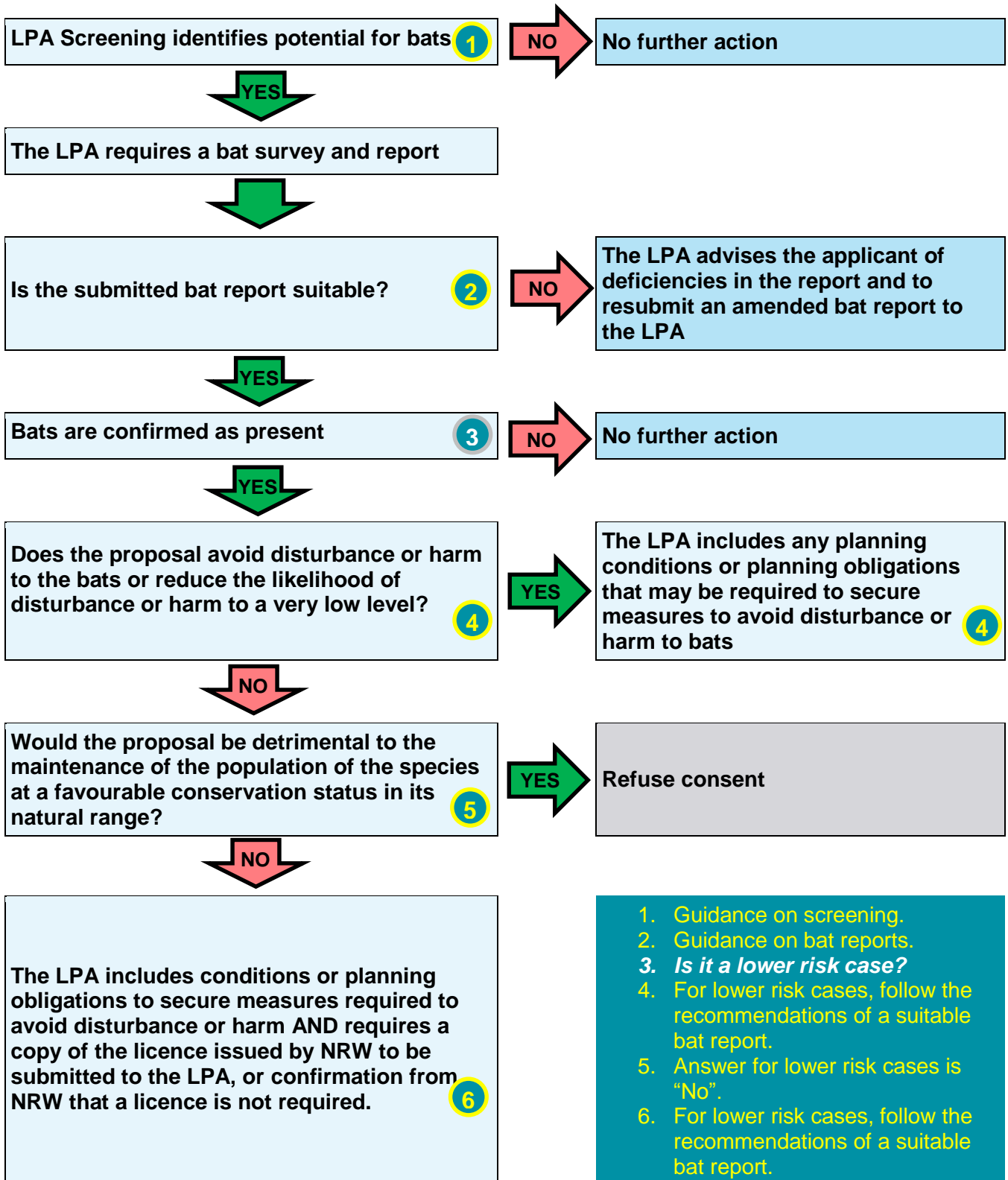
The bat report should also confirm the mechanism through which the bat mitigation will be delivered.

We strongly recommend that if bats are likely to be affected by the proposed development, the bat report includes a bat method statement setting out all the mitigation measures that will be put into place. Such a method statement will be required to support a European Protected Species licence application; producing it at the planning stage will therefore not be an additional requirement of an applicant.

## Appendices

We encourage bat reports to include appendices illustrating mitigation features proposed to be used (Eg. bat boxes, raised bat access features, designs for dedicated bat roosts).

## ANNEX 2: Outline of the bats and planning process model



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