

European protected species

Our advice below is in line with Natural England's advice

If a planning proposal may impact on a European Protected Species (in Hertfordshire, this would most likely be bats, great crested newts, otters and possibly dormice). A primary assessment may need to be submitted with the application to show whether European Protected Species are present or absent – if they are present, then a more detailed survey will be required to describe the impact the proposal will have on protected species.

If you are unsure whether an assessment will be required, check the development proposal against Natural England's checklist/flowchart first of all.

[Checklist](#)

[Flowchart](#)

The above measures are necessary as since the Woolley Case clarified this issue (outlined below), Local planning authorities must now apply the same three tests as Natural England when deciding whether to grant planning permission where species protected by European Law may be harmed.

The three tests are;

- the activity must be for imperative reasons of overriding public interest or for public health and safety;
- there must be no satisfactory alternative;
- favourable conservation status of the species must be maintained.

As the final test cannot be assessed without an assessment and possibly a full survey, if bats are found to be present, we recommend this application be withdrawn until a full survey can allow the LA to assess the 3rd test.

[Natural England state](#): "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". It will not be sufficient to add a Condition for a bat survey to any permission, as Natural England will no longer grant licenses under these circumstances.

The Woolley Case, October 2009

This judgment clarifies a legal duty which was already in existence, although many planning authorities were not applying it correctly.

Local planning authorities must apply the same three tests as Natural England when deciding whether to grant planning permission where species protected by European Law may be harmed.

The three tests are:

- the activity must be for imperative reasons of overriding public interest or for public health and safety;
- there must be no satisfactory alternative;
- favourable conservation status of the species must be maintained.

His Honour Judge Waksman QC, in the High Court in June 2009, handed down this ruling in the case of R (on the application of Simon Woolley) v Cheshire East Borough Council concerning a development with a bat roost.

The species protection provisions of the Habitats Directive, as implemented by the Conservation Regulations, contain three 'derogation tests' which must be applied by Natural England when deciding whether to grant a license to a person carrying out an activity which would harm a European protected species for example bats, great crested newts dormice or otters. This license is usually obtained after planning permission has been granted. This judgment makes it clear that the local planning authority must also apply these three tests. Planners failing to do so, will be in breach of Regulation 3(4) of the Conservation Regulations.

The case related to an application for a judicial review of a decision to grant planning permission for a development in Wilmslow where an Edwardian Villa was to be demolished a three luxury apartments built. A bat roost had been identified at the original property following a survey. The bats issue was raised but was not given as a reason for refusal. It was common ground that in order to demolish the building a license from Natural England was needed. This was granted and the building demolished. The judicial review was brought by Mr. Woolley claiming that, amongst other things, the planning authority had failed in its duty by failing to give consideration to the three derogation tests. The court agreed.

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.