

Memo

To: Gary Miles

From: Cathy Holwill (RBC Ecology Consultations)

CC:

Date: 17 July 2023

Re: Planning application ref: 230250

Address: 8 Burnham Rise Reading RG4 8XJ

Description: Proposed rear first floor extension and side single storey pitched roof Extension including modification to the existing roof.

The bat survey report (John Wenman Ecological Consultancy, July 2023, ref: 3464/b) has been undertaken to an appropriate standard and found a small number of bat droppings within the roof void close to the party wall. As such, the report states that further surveys should be undertaken to determine the status of the roost within the house.

Further information is given below.

Planning policy and legislation

All species of bats receive special protection under UK law and it is a criminal offence under the Wildlife and Countryside Act 1981 (as amended) and The Conservation of Habitats and Species Regulations 2010 (The Habitat Regulations), deliberately or recklessly to destroy or damage their roosts, or to disturb, kill or injure them without first having obtained the relevant licence for derogation from the regulations from the Statutory Nature Conservation Organisation (the SNCO - Natural England in England).

If a bat roost will be affected by the works, a licence for development works affecting bats (i.e. for derogation from the provisions of the Habitat Regulations) will need to be obtained before works which could impact upon the roost can commence. This involves submitting a licence application to Natural England with a detailed mitigation plan informed by surveys undertaken in accordance with national guidelines.

In order to obtain such a licence, the SNCO must apply the requirements of the Regulations and, in particular, the three tests set out in sub-paragraphs 53(2)(e), (9)(a) and (9)(b). These are as follows:

- (1) Regulation 53(2)(e) states that a licence can be granted for the purposes of “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) Regulation 53(9)(a) states that the appropriate authority (the SNCO) shall not grant a licence unless they are satisfied “that there is no satisfactory alternative”.

(3) Regulation 53(9)(b) states that the appropriate authority (the SNCO) shall not grant a licence unless they are satisfied “that 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 licensing process is separate and distinct from planning permission but the Local Planning Authority has statutory obligations under the Habitat Regulations. This means that the Local Planning Authority needs to be satisfied that the proposals are likely to meet the three tests of the Habitat Regulations (see above) and that a licence is likely to be obtained from Natural England before they can issue planning permission [The courts have considered the application of a planning authority's duty under the Habitat Regulations (and therefore the Habitat Directive) in the cases of Woolley vs Cheshire Borough Council (2009) and Morge vs Hampshire County Council (2010). In the Morge vs Hampshire County Council case the supreme court has ruled that it cannot see why planning permission should not be granted unless the proposed development: A) Would be likely to offend the prohibitions in Article 12(1) and B) Would be unlikely to be licensed as a derogation from those provisions.]

Paragraph 99 of the government Circular 06/05: Biodiversity and Geological Conservation - Statutory Obligations and Their Impact Within The Planning System (this document has not been revoked by the National Planning Policy Framework) states that:

“It is essential that the presence or otherwise of protected species, 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 need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted.”

In this case, since 1) the extent to which bats (which are a protected species) may be affected by the proposals has not been established, and 2) there appear to be no “exceptional circumstances”, the application would not be in accordance with the above planning policy.

Further survey requirements

The Bat Conservation Trust’s Bat Survey Guidelines state that to determine the presence or absence of bats where the building has been assessed as having “moderate” suitability for use by roosting bats (as is the case here) two dusk emergence / pre-dawn re-entry bat surveys need to be carried out. Surveys need to be carried out between May and September, with at least one taking place in the optimum period of May to August (inclusive), and with at least one being a pre-dawn survey.

Summary

The house was found to have been used by roosting bats previously. Further surveys would need to be undertaken determine the status of the roost. The application should not be determined until the surveys have been carried out and the results, including a mitigation plan, submitted to the council. If this information is not provided, the application would need to be refused on the grounds that insufficient information has been provided for the council to determine the likely impact of the proposals upon bats, which are a protected species and material consideration in the planning process.

The applicant should be aware that bat emergence/re-entry surveys will need to be carried out over the summer months and should ensure that they factor this into their timeframe for the project.