

Bat Conservation Trust



Natural England's proposed new policies for EPS licensing - Bat Conservation Trust's response to public consultation 30.03.16

The Bat Conservation Trust (BCT) welcomes the opportunity to respond to this consultation on four proposed new Natural England licensing policies. BCT was formed in 1991; we are a dynamic, influential and growing national charity. Established by far-seeing individuals who recognised that the combination of challenges to the conservation of bats was unique, BCT is proud to be the leading non-governmental organisation devoted solely to the conservation of bats and their environment. We work to ensure that bat conservation is acknowledged as an integral part of sustainable development; our response to this consultation is therefore written with specific reference to bats and their habitats.

General Comments

Relevant European Protected Species (EPS)

The EPS to which these proposed policies could potentially apply are not defined except for great crested newt (GCN - all four proposed policies), bats (proposed policies 2 and 4) and other amphibians/reptiles/dormice (proposed policy 3). It is acknowledged that each of the EPS is very different ecologically. These policies should not be applied to other EPS (over and above GCN, for which all four policies have been considered in greater detail) without further consultation directly relating to the species in question. This way the implications can be properly considered in the light of current ecological knowledge about the relevant species. It is recognised that this consultation is part of that process; however we would anticipate that if these policies were to be proposed for non-GCN species additional discussion would be required.

Creation, management and long-term protection of compensatory habitats

Each of the proposed policies envisages compensatory habitat being secured through Section 106 agreements with the Local Planning Authority (LPA). There are three points about the use of Section 106 agreements that we would like to highlight:

1. These proposed policies relate solely to EPS licensing and there is no exploration of how these would align with local or national planning policies. Planning decisions inevitably involve a trade-off between different aspects of local planning policy.
2. We have concerns about the use of Section 106 agreements to secure compensatory habitat, particularly in LPAs where there is little or no ecological expertise. A report by the Association of Local Government Ecologists (ALGE) recently found that over 60% of local planning authorities have no in-house ecological expertise, 48% of planners regularly have to make decisions on biodiversity matters without the relevant expertise and many LPAs have neither the capacity nor competence to fulfil even their basic statutory duties (Oxford, 2013).

3. There is currently little evidence of monitoring of planning conditions and therefore there can be little confidence that obligations made under Section 106 agreements will actually be monitored. With no monitoring after planning permission is granted there can be no certainty that compensatory measures were implemented in the first instance, or that they are being managed and maintained in the longer term.

BCT therefore seeks reassurances about how the issues listed above would be addressed when considering the use of Section 106 agreements as a route to securing, protecting and maintaining habitats and species.

Where compensatory habitat is not protected at the planning stage, NE proposes that an agreement could be created under the NERC Act. Sufficient long-term resourcing would be required within NE to pursue this approach and reassurance would be required that this resourcing is secure.

As a third option to protect compensatory habitats, conservation covenants are suggested. Such covenants do not exist in English law and it appears it is not clear how they should be set up, how they should work in practice and how they can adequately protect the compensatory habitats that would be created under this policy in the long-term. If conservation covenants are developed and these current hurdles overcome they have the potential to be a better option to bind landowners to protect biodiversity in compensation areas. However, at this stage it appears they are not a feasible option.

It is relevant to flag here that the ongoing concern regarding the current lack of monitoring of outcomes (in terms of both implementation and success) is not addressed by these proposed policies and so remains a serious concern.

Proposed Licensing Policy 1. Greater flexibility when excluding and relocating EPS from development sites.

General Comments.

Whilst compensatory habitat is described as being protected through local planning policy, Section 106 agreements etc. there remains the concern that the period of time over which compensatory habitat must be protected is not defined.

Q1. Do you think this policy could benefit GCN?

No comment

Q2. Do you think this policy could benefit other EPS?

Our response to this question relates only to bats; we are not in a position to comment on other EPS. BCT is strongly of the view that this policy would not benefit bats.

There are well-established and accepted methods to exclude bats from roosts (with the relevant licence) on development sites when development works commence. There are three primary methods: (a) exclusion of bats using devices such as tubes and acetate sheets fitted by an ecologist over bat exit points that allow bats to leave their roosting sites but prevent them returning, (b) soft stripping, in the presence of an ecologist, any areas where bats are known or likely to be present such as ridge tiles, wall top tiles/slates and flaking bark, and (c) cutting sections of trees containing roost features and lowering them carefully to the ground to allow bats to depart safely at dusk.

Whilst these methods have seasonal constraints, these are readily factored in to a development project's schedule and once started bat exclusion can be completed relatively quickly and cheaply in comparison to the exclusion of GCN.

BCT is not aware of any problems/issues created by this current system, if planned in advance. Further, it appears to work well for both for bats and developers. We therefore strongly recommend maintaining the approach currently in place for bats.

Applying policy 1 to bats would have implications for the 'long-term prospects of a population'. As such we strongly recommend that this policy is not considered for bats and we have therefore not provided responses to questions 3 and 4.

Q3. Do you think that this policy could reduce costs, delays and uncertainty for developers?

No comment

Q4. Do you have examples of where this policy could have been helpful?

No comment

Proposed Licensing Policy 2. Greater flexibility in the location of newly created habitats that compensate for habitats that will be lost.

General Comments.

See General Comments under Proposed Licensing Policy 1 regarding the lack of clarity about the length of time compensatory habitats should be maintained and protected for.

Q5. Do you think that this policy could benefit GCN?

No comment

Q6. Do you think that this policy could benefit other EPS?

Our response to this question relates only to bats; we are not in a position to comment on other EPS.

It is important to be clear what is meant by 'newly created habitats that compensate for habitats that will be lost'. Where bats are concerned we have taken 'newly created habitats' to mean roosts plus the necessary unlit commuting and foraging habitats that support the individuals from those roosts.

The consultation document acknowledges that there are some bat species that are very loyal to long-used roost sites. It is also known that some species are loyal to historic flight routes and some are dependent on roosting and foraging habitats with restricted availability. It is unlikely that this policy would be appropriate for such species.

However, the policy could potentially be applied to more widespread bat species with generalist habitat requirements such as common pipistrelle, or to common species where habitat requirements are better known such as soprano pipistrelle and brown long-eared bat. This is providing compensatory roosts are located within the core sustenance zone (see http://www.bats.org.uk/data/files/Core_Sustenance_Zones_Explained_-_04.02.16.pdf) of the roost to be lost and close to known flightlines, thus allowing bats from the colony in question to find these compensatory roosts.

As is acknowledged in the consultation document, bats rely on interconnected commuting routes and foraging areas free from barriers such as lighting close to their roosting sites. It is essential that the immediate and surrounding habitat is appropriately established when providing compensatory roosts to maximise the chance of success. This could create benefits for bats where space is limited on the original development site but not at the compensation site.

It is also essential that any compensatory habitat is monitored, at least in the short-term (e.g. during the first five years), and protected and maintained in the long-term (see General Comments under Proposed Licensing Policy 1 with respect to the long-term protection of compensatory habitats), with clarity regarding roles and responsibilities set out in legally binding documents, particularly where properties are sold on post-development.

In the consultation document it is stated that this policy would only be applied in well-surveyed locations where there is a good understanding of the species to which this policy could apply. BCT wishes to flag that this doesn't negate the need for adequate survey work at the site itself prior to development, to establish the wider range of species that are present, their numbers and roost types. For species outwith this policy, the conventional approach to mitigation would still be necessary.

In addition, appropriate measures to avoid harm to bats when works start should be applied, as discussed under Proposed Licensing Policy 1.

Q7. Do you think that this policy could reduce costs, delays and uncertainty for developers?

Unexpected costs, delays and uncertainty for developers arise when EPS are not considered from the very earliest stages of a project. When an ecological consultant is commissioned in the early stages of the development process costs can be factored into the budget and the proposed schedule can take into account seasonal constraints. Adequate ecological information can then be submitted with a planning application and uncertainty is removed. The issues that currently cause the existing system to run less smoothly are when developers (i) do not engage an ecologist at all or only at a late stage, (ii) fail to account for EPS issues in budgets and programmes, and (iii) submit no, or inadequate, information with planning applications. It is unlikely that this proposed policy will address these issues.

The current system also falters due to the fact that many LPAs do not have the expertise to deal with EPS issues (see General Comments at the beginning of this response for LPA capacity and competence). This proposed policy will not address this issue.

The policy could reduce delays if compensatory roosts and habitat are provided well in advance of development to allow bats to find them and reduce delays on site that may have previously arisen from waiting for compensatory roosts to be colonised by bats. It may also remove the difficulty of providing compensatory habitats (including roosts and unlit commuting and foraging habitat) on a development site where there is limited space.

Q8. Do you have examples of where this policy could have been helpful?

No comment

Proposed Licensing Policy 3. Allowing EPS to have access to temporary habitats that will be developed at a later date.

Q9. Do you think that this policy could benefit GCN?

No comment

Q10. Do you think that this policy could benefit other EPS?

Our response to this question relates only to bats; we are not in a position to comment on other EPS. BCT is strongly of the view that this policy could not be applied to bats. We would add that clarity is needed to ensure this proposed policy is not misinterpreted as applying to bats that utilise built structures on site during the pre-development stage.

More generally, the policy is in need of clarification. Read together with Proposed Licensing Policies 1 and 2, it could give rise to the misunderstanding that EPS from a development site could be *translocated* to a new site (temporary habitat) that could subsequently be developed without full mitigation/compensation measures. It should be made clear that this is not preventing access by EPS rather than proactively introducing EPS.

Q11. Do you think that this policy could reduce costs, delays and uncertainty for developers?

No comment

Q12. Do you have any examples of where this policy could have been helpful?

No comment

Proposed Licensing Policy 4. Appropriate and relevant surveys where the impacts of development can be confidently predicted.

Q13. Do you think that this policy could benefit GCN and bats?

Our response to this question relates only to bats; we are not in a position to comment on GCN.

The potential benefits, risks and points of clarification regarding this 'worst case scenario' or 'maximum mitigation' approach are given below.

The potential benefits:

- increased investment in bat roost mitigation/compensation rather than surveys;
- increased levels of roost provision than may otherwise have been provided; and
- more proportionate costs versus the benefits accrued, one upshot of which is the reduction of the perception of bats as barriers to development.

The potential risks:

- it weakens the role and value of survey information in the process of impact assessment and mitigation/compensation design;
- the possibility of not detecting important and/or significant roosts of bats;
- it removes the ability to accurately assess and monitor impacts (whilst noting a lack of monitoring is the unfortunate situation within the current system); and
- it removes the ability to monitor the failure or success of mitigation/compensation, which undermines the importance of monitoring (whilst noting a lack of monitoring is the unfortunate situation within the current system).

Points that require clarification or attention are:

- in the sentence that precedes the bullet points it should be made clear that all of the bulleted circumstances would need to apply;
- in bullet point one what is the definition of ‘genuine need’?;
- also in bullet point one instead of ‘particular timescale’, which has no real meaning, this should be made clearer by saying ‘shorter timescale than would be possible with a full set of surveys’;
- in bullet point three what is the definition of ‘disproportionate’?;
- it is acknowledged that cases can vary greatly and so no set criteria can be expected that would apply as a qualifier for this policy in all cases. However, it is important that key principles and thresholds are set and agreed ahead of applying this policy;
- how this system fits within the current approach of gaining full survey data before a licensing decision is made;
- how this system will align with the planning system, where best practice dictates that full survey data is collected before a planning decision is made;
- the case study is a fairly typical scenario and therefore in what circumstances would this policy *not be applicable* for bats; and
- that precautionary measures with respect to the timing of works and measures to avoid harm should still be applied.

BCT feels that this policy could be applied in appropriate circumstances, for example, in the case of small roosts of species that roost openly and therefore leave obvious signs, e.g. brown long-eared, both species of horseshoe bats and potentially Natterer’s bat, where species identification is possible using DNA analysis. In cases where evidence of bats could be hidden in inaccessible cavities and crevices that would be adversely impacted and there is a chance of maternity colonies being present we would suggest that this policy would be less appropriate.

Further research should be carried out to establish to what extent a series of emergence and dawn surveys iteratively provide further information over and above the preliminary roost assessment. The results of this research could be used to establish whether subsequent surveys are of value or whether such surveys do not add value in proportion to the cost.

Q14. Do you think that this policy could benefit other EPS?

No comment

Q15. Do you think that this policy could reduce costs, delays and uncertainty for developers?

See our response to Q7. This approach could potentially reduce costs, delays and uncertainty in scenarios where bats haven’t been factored in at the early stages of a project. The cost of surveys would also potentially be reduced.

Q16. Do you have examples of where this policy could have been helpful?

No comment

References

Oxford, M. (2013) Ecological capacity and competence in English Planning Authorities. Association of Local Government Ecologists.