

<p><b>What legal protection do bats have?</b></p>	<p>It is a criminal offence to adversely affect bats, under 2 pieces of legislation –</p> <ul style="list-style-type: none"> <li>• The Wildlife and Countryside Act 1981 (W&amp;C Act)</li> <li>• The Conservation of Habitats and Species Regulations 2017 (as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019) - (often referred to as the 'Habitats Regulations')</li> </ul> <p><b><u>Regulation 43 of the Conservation of Habitats and Species Regulations 2017</u></b></p> <p>states that it is an offence to –</p> <ul style="list-style-type: none"> <li>• deliberately kill, disturb, capture a bat</li> <li>• damage/destroy its breeding site or resting place</li> <li>• deliberately disturb a bat (including any disturbance which is likely <ul style="list-style-type: none"> <li>▪ to impair their ability to survive/breed/reproduce, or to rear/nurture their young</li> <li>▪ to impair their ability to hibernate or migrate</li> <li>▪ to affect significantly the local distribution or abundance of the species to which they belong.</li> </ul> </li> </ul> <p><b><u>Regulation 55</u></b>, however, states that a Licence may be granted (for works which would cause the above) but only where all the following 3 tests are satisfied –</p> <ul style="list-style-type: none"> <li>• <b>there are 'imperative reasons of overriding public interest'.</b> (These are reasons with such weight that they would override nature conservation considerations, but this would depend on the circumstances of each case. They have been taken to include large housing developments incorporating affordable properties, on allocated sites in a Local Plan).</li> <li>• <b>there is no satisfactory alternative</b></li> <li>• <b>the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status</b> The developer must satisfy Natural England that its proposed mitigation measures will meet this particular test.</li> <li>• Applications for licences (to Natural England) are distinct from planning applications to local planning authorities (LPAs). It is Natural England, the government's adviser on the natural environment, who makes the above judgements before deciding whether to grant a licence or not.</li> </ul>
<p><b>Should local planning authorities take this legal protection into account when making decisions on planning applications?</b></p>	<ul style="list-style-type: none"> <li>• Yes. National planning policy (contained in the National Planning Policy Framework (NPPF)) states that planning decisions must reflect the requirements of the law and a Government Circular 06/2005 outlines how this must be done.</li> <li>• The presence of a protected species is a material planning consideration if a development proposal would be likely to harm it or its habitat.</li> </ul>

	<ul style="list-style-type: none"> <li>• Developers should undertake a protected species survey if there is a reasonable likelihood of a protected species being present and affected by the development.</li> <li>• LPAs should – <ul style="list-style-type: none"> <li>▪ advise developers that they must comply with any statutory species protection provisions affecting the site</li> <li>▪ establish how the species will be affected, and any necessary measures for its long term protection, through conditions and/or planning obligations, before granting any permission</li> <li>▪ consult Natural England (or Natural England’s online guidance – <b><i>Protected species and development: advice for local planning authorities</i></b>; and <b><i>Bats: Surveys and mitigation for development projects</i></b>)</li> </ul> </li> <li>• The LPA should not give planning permission if, in the LPA’s opinion, Natural England would be unlikely to issue a licence for the works required to implement the planning permission which would cause legal offences against bats. The LPA should ensure that it has sufficient information/evidence upon which to base its opinion.</li> </ul>
What bat surveys need to be carried out?	<ul style="list-style-type: none"> <li>• Bat surveys need to be carried out in accordance with the following guidelines provided by the Bat Conservation Trust – <b><i>Bat Surveys for Professional Ecologists, Good Practice Guidelines (Bat Conservation Trust 2016)</i></b></li> </ul>
What activities are likely to adversely affect bats?	<ul style="list-style-type: none"> <li>• <u>Adverse effects on foraging habitat</u> by, for example - <ul style="list-style-type: none"> <li>▪ building on the foraging habitat (e.g. on pasture and wetlands)</li> <li>▪ converting species-rich grassland to ‘playing field’ grassland</li> <li>▪ felling woodland and destruction of woodland edge</li> <li>▪ altering drainage of wetland areas</li> <li>▪ introducing disturbance into Foraging Habitat (e.g. public access, artificial lighting from streetlights, vehicle lights, housing and gardens)</li> </ul> </li> <li>• <u>Adverse effects on commuting habitat</u> by, for example – <ul style="list-style-type: none"> <li>▪ removal of hedgerow/treeline</li> <li>▪ changes in the maintenance of hedgerows</li> <li>▪ increased illumination of sections of hedgerow/treelines, from streetlights, vehicle lights, housing and gardens</li> </ul> </li> <li>• <u>Adverse effects on roosts</u> by, for example – <ul style="list-style-type: none"> <li>▪ tree removal</li> <li>▪ demolition of old buildings</li> <li>▪ roof and loft alterations</li> <li>▪ lighting interference</li> <li>▪ removing connecting habitat</li> </ul> </li> </ul>
What mitigation measures are used to minimise adverse effects on bats?	<ul style="list-style-type: none"> <li>• maintaining connectivity of commuting routes by linking on-site habitats to offsite hedgerow networks</li> <li>• enhancing existing or creating new dark hedgerow corridors with wide buffers</li> <li>• designing the development so that lighting sources are located away from hedgerows</li> <li>• locating barriers (e.g. fences or parallel hedgerows) between light sources and hedgerows used by light sensitive bats</li> </ul>

## Frequently asked questions: Bats

	<ul style="list-style-type: none"> <li>• enhancing existing or creating new foraging habitat</li> <li>• creating new bat roosts</li> <li>• providing commitments for management and funding of long-term maintenance of mitigation measures</li> </ul>
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### Greater Horseshoe Bats (GHBs)

<b>What is so special about Greater Horseshoe Bats?</b>	<ol style="list-style-type: none"> <li>1. they are very rare in Europe and therefore have additional legal protection</li> <li>2. they are found in only a few parts of the UK, including south Devon</li> <li>3. they have requirements which need special care and attention in planning applications for development, to safeguard the future of their population</li> </ol>
<b>What is the additional legal protection they have in south Devon?</b>	<ul style="list-style-type: none"> <li>• GHBs have legal protection as a European Protected Species under the Habitats and Species Regulations 2017, just like any other bat species. But there is additional legal protection for GHBs that roost in the caves or mines of south Devon which are designated as part of the South Hams Special Area of Conservation (SHSAC).</li> <li>• This additional legal protection arises because GHBs are one of the rarest and most threatened bats in Europe. The caves and mines of the SHSAC and the features of the intervening countryside, are particularly suited to their requirements and provide one of the last refuges for them in the UK and Europe. There are at least 2500 GHBs in south Devon, a significant proportion of the UK population. The designation of the caves and mines as part of the SHSAC recognises their importance for this GHB population.</li> <li>• The SHSAC consists of 5 cave or mine sites. These 5 sites are also recognised as Sites of Special Scientific Interest (SSSI) – <ul style="list-style-type: none"> <li>▪ Berry Head to Sharkham Point SSSI</li> <li>▪ Buckfastleigh Caves SSSI</li> <li>▪ Bulkamore Iron Mine SSSI</li> <li>▪ Chudleigh Caves and Woods SSSI</li> <li>▪ Haytor and Smallacombe Iron Mines SSSI</li> </ul> </li> <li>• The SHSAC is designated partly because it provides significant summer maternity roosts and winter hibernation roosts for GHBs.</li> <li>• The Conservation of Habitats and Species Regulations 2017 requires that where a plan or project is likely to result in a significant effect on a European site, a competent authority is required to make an Appropriate Assessment of the implications of that plan or project on the integrity of the European site in view of the site's conservation objectives.</li> <li>• Translated into plain English, this means that when a local planning authority is considering a planning application for development, it must – <ol style="list-style-type: none"> <li>1. consider whether the planning application is likely to have a significant adverse effect on a GHB population that uses the caves or mines which are designated as part of the South Hams Special Area of Conservation (<b>without</b> taking into account</li> </ol> </li> </ul>

	<p>measures to reduce this adverse effect). If it does consider that a significant effect is likely, it must then –</p> <ol style="list-style-type: none"> <li>2. make an assessment (taking into account measures to reduce this adverse effect so that it is not significant) of the implications for the future of the GHB population.</li> </ol>
<p><b>What are the requirements of GHBs which need special care and attention in planning applications?</b></p>	<p>The survival of the GHB population of the SHSAC depends on their particular requirements being met. These include the following –</p> <ul style="list-style-type: none"> <li>• <u>GHBs require a network of unimpeded linear habitats</u> <ul style="list-style-type: none"> <li>▪ GHBs have a weak echolocation call (which bats use to navigate). They therefore fly close to the ground (up to 2m) and close to linear landscape features such as hedgerows, tree lines, woodland edges and vegetated watercourses.</li> <li>▪ GHBs are night flyers. They are light sensitive and will avoid areas of artificial lighting. GHBs depend on a network of unlit linear habitats. The introduction of artificial lighting on a section of this network will make the section unusable.</li> <li>▪ GHBs, from different colonies, need to meet to breed. These ‘genetic flows’ depend upon features of the landscape being available for travel between roosts.</li> </ul> </li> <li>• <u>GHBs require food sources relatively close to their roosts</u> <ul style="list-style-type: none"> <li>▪ GHBs feed in different habitats at different times of the year according to prey availability. These habitats include cattle grazed pasture, meadows, thick hedgerows, woodland edges, and vegetated watercourses.</li> <li>▪ Young GHBs need to have access to food within a short distance (about 1 km) from their maternity roost. Adult GHBs tend to forage within 4 km of their roost, although longer distances are sometimes covered.</li> </ul> </li> </ul>
<p><b>What adverse effects on GHBs do planning applications need to avoid causing?</b></p>	<p>Natural England, in conjunction with local authorities in south Devon, has produced guidance for planning applications affecting the SHSAC population of GHBs, particularly on how the legal requirements of the Conservation of Habitats and Species Regulations can be met. This guidance can be found by searching online for –</p> <p><b><i>South Hams Special Area of Conservation Greater Horseshoe Bats Habitats Regulations Assessment Guidance 2019</i></b></p> <p>The guidance defines 2 types of zone -</p> <p><u>a Landscape Connectivity Zone</u></p> <ul style="list-style-type: none"> <li>• the landscape connectivity zone boundary defines the area covered by a complex network of commuting routes used by the SHSAC GHB population. GHBs are dispersed across this zone and occur at low density.</li> <li>• The guidance says that impacts on <u>individual</u> commuting routes would be unlikely to have a significant effect on the GHB population as a whole.</li> <li>• However, loss, damage or disturbance at a landscape scale, to <u>a network</u> of commuting routes within this area <i>could result in a significant number of bats having to find new, longer routes across</i></li> </ul>

	<p><i>the countryside (potentially reducing their ability to survive due to using up energy pre and post hibernation) or being prevented from accessing roosts altogether. These impacts could have a likely significant effect on the SHSAC population as a whole.</i></p> <ul style="list-style-type: none"> <li>• Outside the landscape connectivity zone, the guidance says that <i>impacts on roosts and habitats will impact on so few bats that there will not be a likely significant effect on the SHSAC GHB population (unless there is evidence to the contrary).</i></li> </ul> <p><u>Sustenance zones</u></p> <ul style="list-style-type: none"> <li>• within the landscape connectivity zone, sustenance zones are identified, using a radius of 4 kms from the centre of each SHSAC roost. In addition to the 5 SSSI roosts above, the guidance considers a 6<sup>th</sup> roost (at High Marks Barn SSSI) to be integral to the GHB population and defines a sustenance zone for it).</li> <li>• The guidance says that <i>proposals impacting on foraging habitat and commuting routes in sustenance zones may have a likely significant effect on the SHSAC GHB population.</i></li> <li>• This impact could include – <ul style="list-style-type: none"> <li>▪ loss, damage, disturbance, or increased illumination to – <ul style="list-style-type: none"> <li>○ a designated roost</li> <li>○ a foraging habitat</li> <li>○ a commuting route</li> <li>○ a pinch point (a restricted/encroached upon commuting route)</li> </ul> </li> <li>▪ increased risk of collisions (through increased traffic or wind turbines)</li> <li>▪ loss, damage, or disturbance to an existing mitigation feature</li> </ul> </li> </ul> <p>The above is only a brief outline. For details, please refer to the NE Guidance cited above.</p>
<p><b>Do <u>all</u> details of mitigation measures need to be provided at the outline planning application stage?</b></p>	<ul style="list-style-type: none"> <li>• No. According to a 2021 Judicial Review Judgment, it is not necessary for <u>all</u> details of matters which could affect an SAC's integrity to be provided and assessed at the outline planning application stage. <i><b>Justice Lang's High Court Judgment 11.3.21: Abbotskerswell Parish Council and Secretary of State for HC&amp;LG and others (para.152)</b></i></li> <li>• Regulation 70(3) of the Conservation of Habitats and Species Regulations 2017 indicates that <b>planning conditions or limitations on an outline planning permission</b> have a role in contributing to the avoidance of adverse effects on the integrity of SACs. This allows outline planning permission to be granted subject to planning conditions which require further details of mitigation measures to ensure the integrity of an SAC. These can be submitted and assessed at later (reserved matters application) stages, where more definite details of the schemes design will be available.</li> </ul>

	<p><b>70(3)</b> Where the assessment provisions apply, outline planning permission must not be granted unless the competent authority is satisfied (whether by reason of the conditions and limitations to which the outline planning permission is to be made subject, or otherwise) that no development likely adversely to affect the integrity of a European site or a European offshore marine site could be carried out under the permission, whether before or after obtaining approval of any reserved matters.</p>
How much weight should be given to Natural England's opinion?	<ul style="list-style-type: none"> <li>Natural England is the government's statutory adviser on the natural environment and Planning Inspectors (at Planning Appeals), and Judges (at Judicial Reviews), usually give great weight to its opinions.</li> </ul> <p><i>Natural England (whose views as a statutory consultee should be given considerable weight, and only departed from for cogent reasons.....)</i></p> <p><b>Justice Lang's High Court Judgment 11.3.21: Abbotskerswell Parish Council and Secretary of State for HC&amp;LG and others (para.138)</b></p>
How should a bat survey be carried out?	<ul style="list-style-type: none"> <li>Large developments may require bat detector surveys involving several visits at dawn or dusk, spread over several weeks in the bats' active season between May and September. Requirements will differ according to individual circumstances.</li> <li>Bat Surveys need to be carried out in accordance with the following guidelines provided by the Bat Conservation Trust – <b>Bat Surveys for Professional Ecologists, Good Practice Guidelines (Bat Conservation Trust 2016)</b></li> <li>Bat Surveys that do not accord with the above will not fully account for bat activity at the site and therefore should not be accepted by the local planning authority.</li> </ul>
How should artificial lighting be dealt with?	<ul style="list-style-type: none"> <li>Guidance on artificial lighting, illuminance levels, impact and mitigation measures, are provided in – <b>Guidance Note 08/18: Bats and artificial lighting in the UK (Bat Conservation Trust and Institution of Lighting Professionals)</b></li> <li>The issue is complex and, in certain cases, will require the input of a lighting professional as well as an ecologist.</li> <li>DWT's stance on illuminated hedgerows, is that the provision of physical barriers (eg. fences, walls, parallel hedges) to light sources will be more permanent and effective in the long term, than lighting restrictions (which may not be complied with or enforced). This is particularly important where dark flight corridors need to be provided or retained.</li> </ul>