

BIODIVERSITY ADVICE NOTE

March 2017

Permitted Development Rights and Biodiversity (England)

Class Q Agricultural Buildings to Residential Town and Country Planning General Permitted Development Order (GPDO) 2015

Statutory Obligations

Section 40 of the Natural Environment and Rural Communities Act 2006 (NERC) requires all public bodies to have regard to biodiversity conservation when carrying out their functions.

In the exercise of their functions local planning authorities (LPAs) are also required to have regard to the requirements of Regulation 9 of The Conservation of Habitats and Species Regulations 2010 (as amended) (Habitats Regulations) which states that that public bodies must exercise their nature conservation functions so as to comply with the Habitats Directive. Regulations 41 and 45 of the Regulations afford legal protection to European protected species.

The Secretary of State for Communities and Local Government stated in a letter to the Bat Conservation Trust on 10th June 2014 that:

“All development, including under permitted development rights, must comply with all relevant legislation and regulations. This includes EU regulations such as the Conservation of Species and Habitats Regulations 2010.

We have been clear that those undertaking a change of use under permitted development rights must satisfy themselves that they comply with all other necessary planning requirements, building regulations and other legislation such as related to habitats and biodiversity and consider that this provides the necessary safeguards”

Permitted Development and the Prior Approval Process

The Town and Country Planning (General Permitted Development) (England) Order 2015¹ has introduced a 'prior approval' process to help prevent 'unacceptable impacts' of development from occurring under Permitted Development rights.

The Government has made clear that the implications for protected species should be considered as 'impacts or risks'.

Determination in Accordance with the National Planning Policy Framework (NPPF)

Prior approval applications are required to be determined with regard to the requirements of the NPPF. This requires decisions to be taken with regard to protected species.

Class Q Development (agricultural to residential)

For Permitted Development under Class Q (agricultural buildings to residential) the criteria that the LPA must take into account are more wide-ranging than they are under certain other classes. In particular, these criteria include consideration as to *whether the location or siting of the building makes it impractical for any other reason or undesirable for the building to change from agricultural use to residential use* (e.g. Class C3).

This introduces, under Class Q, a range of other factors that may be considered before agricultural buildings are converted to residential use - not least of which is whether protected species, such as bats, are present and how they might be harmed or affected.

Consequently, where protected species are at risk of harm from the development, LPAs should require an application for prior approval that is accompanied by an assessment of the potential impact upon protected species and, where necessary, supported with proposals for appropriate mitigation. This means that ecological surveys may reasonably be requested and that pre-commencement conditions to secure necessary protection measures may be attached to a notice of prior approval under Class Q.

¹ www.legislation.gov.uk/ukSI/2015/596/contents/made

Appeal Decision in Support of this Advice Note

Inspector: Joanne Jones
Appeal Ref APP/L3245/W/15/3004467 Bridgenorth, Shropshire

In presenting her conclusions on this appeal, the Inspector stated:

"The application was refused by the Council because no ecological surveys had been provided to assess the likely impact of the proposal on protected species, which have a reasonable likelihood of being effected by the proposal. No surveys have been provided with the appeal documentation.

I am mindful that although protected species are not specifically referred to in the GPDO, Regulation 9 of 'The Conservation of Habitats and Species Regulations 2010' would still apply. This states that the "competent authority must exercise their functions which are relevant to nature conservation... so as to secure compliance with the requirements of the [Habitats] Directive". Accordingly, competent authorities must consider the Directives in making decisions relating to any of their planning functions.

Therefore, even though there is no 'reminder' in the GPDO, European protected species must still be taken into account. As I have been alerted to the Council's concerns about protected species, it is incumbent on me to consider whether there is a reasonable likelihood of protected species being present and affected by the development.

From what I saw on my site visit the appeal premises would offer a suitable habitat for bats and this position is supported by the comments made by the Council's Ecologist, whose professional opinion I afford significant weight. Bats are protected species and I cannot give approval without adequate evidence to be satisfied the Regulations won't be breached and subsequently being able to establish if works may be licensed.

In the light of the strict protection afforded to bats, and that survey information is missing, I am not satisfied that there would not be a material adverse effect on the protected species. As such, I conclude that the proposed works would fail to satisfy the requirements of paragraph Q.2(e). Accordingly, it would not be permitted development as set out under Class Q of the GPDO".

Resources available

There are a number of helpful resources available to LPAs and developers:

- ALGE and CIEEM members can provide advice and support in the prior approval process for developers and LPAs.
- ALGE (working with others) has produced an [Online Interactive Bat Protocol](#) to assist LPAs and developers to embed consideration of bats into development.
- The British Standard BS42020:2013 provides a [code of practice for planning and development](#).
- Information for developers and Local Planning Authorities on [avoiding harm to protected areas and species during development work](#) is also available on the government webpages.
- Case studies and examples of embedding biodiversity safeguards into the planning process are available within the RSPB/CIEEM publication [Planning Naturally](#), available on the CIEEM website.
- National Planning Policy Guidance <https://www.gov.uk/guidance/when-is-permission-required#agricultural-building-change>

The **Chartered Institute of Ecology and Environmental Management** (CIEEM) works to advance the understanding and standards of practice of ecological and environmental management for the benefit of the natural environment and society.

The **Association of Local Government Ecologists** (ALGE) represents the professional ecologists working in local government in the UK and, in partnership, supports and develops the nature conservation work of local authorities.

Acknowledgements

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