

Twickenham Riverside

Addendum Bat Report 2024

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Client	LB Richmond upon Thames Council
Project	Twickenham Riverside, Discharge of Condition NS39 Bats
Version	FINAL
Project number	P24-382

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Issued to client	Jamie Peacock	Senior Ecologist	31 July 2024

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1 Summary

- 1.1 BSG ecology was commissioned by the London Borough of Richmond Upon Thames Council to conduct update bat surveys at Twickenham Riverside (the Site) to discharge Condition NS39 Bats following the grant of planning permission for the proposed redevelopment of the Site (21/2758/FUL)
- 1.2 The update Preliminary Roost Assessment (PRA) survey recorded no change in suitability for all buildings on Site with the exception of Building 3 (see Figure 1) which was upgraded from negligible to low potential. As with the initial assessment, Building 1 retained low suitability but was upgraded to moderate suitability on a precautionary basis given restricted internal access.
- 1.3 Update dusk emergence surveys undertaken in June 2024 and July 2024 recorded no bats roosting within either Building 1 or Building 3.
- 1.4 As observed in surveys undertaken in 2020, low levels of activity were recorded with fewer species noted across both surveys undertaken (only soprano pipistrelle recorded).
- 1.5 There are no known constraints relating to bats and the buildings on Site. Further update surveys are recommended should the commencement of the demolition of buildings extend beyond 15 July 2025.
- 1.6 Lighting recommendations should be followed utilising the latest industry guidance on Bats and Artificial Lighting at Night (BCT and ILP, 2023).

2 Introduction

Background to commission

- 2.1 BSG Ecology was approached by The London Borough of Richmond upon Thames Council to undertake update surveys of buildings within the Twickenham Riverside development in order to discharge “Condition NS39 Bats” following the successful planning application being granted (Planning application: 21/2758/FUL). Condition NS39 Bats is set out below.

“Prior to the demolition of any building, a full ECiA (and any relevant surveys) will be submitted to and approved in writing by the Local Planning Authority. Should bats be discovered during the pre-works surveys, all works must stop until the necessary license from Natural England has been obtained. REASON: To protect the ecological value of the site.”

- 2.2 Update surveys were commissioned on 06 June 2024 and included update external assessments and emergence surveys of Buildings 1 to 4 (as shown on Figure 1).
- 2.3 Following discussions with The London Borough of Richmond upon Thames Council, it was agreed that an addendum bat report was suitable to submit in order to discharge “Condition NS39 Bats”. This was agreed on via email communications on the 10 June 2024.

Site description

- 2.4 The Site, which is approximately 1.34 ha in extent, is located in Twickenham, Surrey, on the northern bank of the River Thames. The Site is predominantly hardstanding (roads, pavements and a children’s play park), but also contains a small area of broadleaved woodland, an artificial turf area and shrubs which form Diamond Jubilee Gardens, a public garden and formerly an open air swimming pool. There are several commercial buildings within the Site, including the café for the Diamond Jubilee Gardens, and retail buildings on King Street. A small area, roughly 0.1 ha of the River Thames is also included.
- 2.5 The Site is located within the busy Twickenham Town Centre and is bound by commercial units at the northern edge along King Street, residential uses to the east and west, and the Eel Pie Island to the south of the Site across the footbridge.

Description of project

- 2.6 The proposals include the demolition of existing buildings and structures and redevelopment of the Site comprising residential (Use Class C3), ground floor commercial/retail/café (Use Class E), and public house (Sui Generis), boathouse locker storage, floating pontoon and floating ecosystems with associated landscaping, restoration of Diamond Jubilee Gardens and other relevant works.

3 Scope of Study

Aims of study

3.1 The aims of the study are as follows;

- To update the assessment of buildings on Site for bats via external assessment.
- To undertake update emergence surveys of buildings with suitability to support roosting bats due to be demolished as part of the proposed development.
- To identify the ecological impacts of the proposed development and to set out appropriate avoidance, mitigation, compensation and enhancement measures where necessary.

Personnel

3.2 The team for this project involved the following members of staff:

- Anna Muckle MCIEEM, Principal Ecologist at BSG Ecology and licenced bat ecologist (Natural England class licence CL18: 2015-11522-CLS-CLS), conducted the update external bat inspections, and led the bat emergence and re-entry surveys of buildings within the Site. Anna also technically reviewed this report.
- Jamie Peacock, a Graduate member of CIEEM, Senior Ecologist at BSG Ecology assisted with the emergence surveys of buildings on Site and authored this report.

3.3 Further information on the skills and experience of the project team is available on the BSG Ecology website (see <https://www.bsg-ecology.com/people/>).

Previous survey work

3.4 Previous survey work conducted in 2020 by BSG Ecology, recorded one building with suitability to support roosting bats, Building 1 (B1), which was given low suitability but upgraded to moderate suitability on a precautionary basis given limitations with regards to accessing the building internally. All other buildings Building 2, Building 3 and Building 4 (B2, B3 and B4) were assessed as having negligible suitability for supporting roosting bats.

3.5 Further survey work, in the form of two emergence and re-entry surveys were undertaken on B1 to determine whether bats were using the building. Surveys recorded no bats emerging or returning to the buildings and low levels of activity generally were recorded across both surveys. Species recorded during surveys included common pipistrelle *Pipistrellus pipistrellus*, soprano pipistrelle *Pipistrellus pygmaeus* and noctule *Nyctalus noctula*.

4 Methods

Consultation

- 4.1 The London Borough of Richmond upon Thames Council was consulted on 10 June to clarify the requirements of the Condition (NS39 Bats). At this point, it was confirmed that reassessment of the buildings for bats and provision of an accompanying Addendum Bat report was required, as opposed to provision of a full ecological Impact Assessment (EclA) report (as outlined in the Condition wording)..

Field survey

Preliminary roost assessment

- 4.2 An update Preliminary Roost Assessment (PRA) of all the buildings within the Site (B1-4) was undertaken by Anna Muckle on 18 June 2024. Anna holds a Level 2 Licence for bat survey from Natural England (licence number 2015-11522-CLS-CLS). This comprised an external inspection of all accessible areas of the building, taking into account industry guidance (Collins, 2023). The exteriors of all buildings were inspected from the ground for:
- Features which could provide bats with access into roosting spaces or provide roosting spaces (such as gaps under roofing tiles, gaps in ridge tiles, gaps in soffit boxes, gaps under lead flashing and cracks or crevices in the stonework).
 - Evidence of the presence of bats such as bat droppings on windows, windowsills, walls and the ground, or scratch marks or staining from bat's fur around possible roost access/egress points.
- 4.3 The inspection was aided by the use of close-focussing binoculars and a high-powered torch where necessary. The buildings were assigned a category for their suitability to support roosting bats based on the presence of potential roosting features as summarised in Table 1.

Table 1: Potential of buildings to support roosting bats (adapted from Table 4.1 in Collins, 2023)

Suitability	Roosting Habitat
None	No features likely to be used by any roosting bats at any time of year (i.e. a complete absence of crevices /suitable shelter at all ground/underground levels).
Negligible	A structure with no obvious potential roost features (PRFs), likely to be used by roosting bats; however, a small element of uncertainty remains as bats can use small and apparently unsuitable features on occasion.
Low	A structure with one or more PRFs which have a very limited potential to be used by individual opportunistic bats at any time of year. Any identified features do not have the correct dimensions or conditions and/or are not connected to suitable foraging habitat that could be used by a larger number of bats (i.e. unlikely to be suitable for a maternity roost and not a classic cool/stable hibernation site but could be used by individual hibernating bats).
Moderate	A structure with one or more PRFs which could be used by bats because of their dimension and conditions as well as surrounding habitat. However these features are unlikely to support a roost of high conservation status with respect to roost type only. The structure may also have PRFs which are obscured or not possible to survey from the ground level. The surrounding habitat is continuous and/or well connected to the wider landscape.
High	A structure with one or more PRFs which are obviously suitable for use by a larger number of bats on a more regular basis and potentially for longer periods of time, due to their dimensions and conditions. The surrounding habitat is high quality,

Suitability	Roosting Habitat
	continuous and/or well connected to the wider landscape. These structures have the potential to support high conservation status roosts, e.g. maternity or classic cool/stable hibernation site.
Confirmed Roost	Presence of bats or evidence of recent use by roosting bats.

Emergence and re-entry bat surveys

- 4.4 With reference to industry guidance (Collins, 2023), two buildings, B1 and B3 (as shown on Figure 1) were surveyed following the update PRA. Following the previous assessment in 2020, B1 maintained a precautionary assessment of moderate suitability (see limitations) to support roosting bats and was subject to two dusk emergence surveys whilst B3 was subject to a single dusk emergence survey following the update PRA raising its suitability to low.
- 4.5 Surveyors were equipped with ultrasonic bat detectors (to record calls for later analysis where necessary), IR cameras and lighting (where health and safety allowed – see limitations below) and observed the previously identified roost features to identify any bats emerging from the building. The dusk surveys began 15 minutes before sunset, and continued for 90 minutes after sunset. Surveyor locations are noted in Figure 1.
- 4.6 The weather conditions at the time of the surveys were suitable for bat activity, and are shown in Tables 2 and 3 below, along with the surveyors undertaking each survey. Surveys were undertaken in optimal conditions with warm temperatures and no rain or strong winds limiting potential bat activity.

Table 2: Weather conditions during dusk emergence surveys of Building 1

Date	Weather conditions				Surveyors
	Temperature	Cloud (Oktas)	Wind (Beaufort scale)	Rain	
18/06/24	18°C	7/8	2/7	None	Anna Muckle Susie Topple Ben Bear
16/07/24	18°C	2/8	0/7	None	Anna Muckle Gem Toes-Crichton Ben Bear

Table 3: Weather conditions during dusk emergence surveys of Building 3

Date	Weather conditions				Surveyors
	Temperature	Cloud (Oktas)	Wind (Beaufort scale)	Rain	
16/07/24	18°C	2/8	0/7	None	Jamie Peacock Anna Muckle

Limitations to methods

- 4.7 As in 2020, no internal survey of B1 was conducted due to health and safety concerns over the potential presence of asbestos and safety of the buildings. Considerations which informed this decision included the age and type of building and absence of asbestos information; the building being abandoned for a number of years and uncertainty as to the condition of internal structures

(i.e. floors etc.); the possibility of people sleeping rough within the building; likely presence of possible drug paraphernalia and damage associated with vandalism at the Site. Safe internal inspection of Building 3 was also not possible, given the lack of asbestos information made available.

- 4.8 Based on the external inspection and its context (including significant levels of overnight lighting) B1 was assessed as having low potential to support roosting bats. This assessment drew on our experience of the internal opportunities offered by this type of building. Given the absence of an internal inspection, and as a precaution, the suitability of B1 was upgraded to moderate survey effort to ensure robust results.
- 4.9 Given the urban and publicly accessible location of the Site, the surveyor observing the south east corner of B1 and the southern aspect of B3 did not use an IR camera as a survey aid. This is not considered a significant limitation as the lighting levels from the street lighting along The Embankment road were suitable to provide the surveyor with enough artificial light to observe any bats emerging (see Photographs 1 to 3).
- 4.10 The eastern aspect of B1 was only surveyed on one occasion, however, this is not seen as significant as this aspect did not exhibit any suitable roosting features for bats during the original or update PRA surveys, and was included in the survey effort as a precaution and to provide context to bat activity generally across the Site.

5 Results and Evaluation

- 5.1 Details of the legislation and planning policy afforded to the protection of bats are included in Appendix 1.

External building inspection

- 5.2 Building 1 (Photographs 4 to 13) was re-assessed as having the same low level of suitability for bats based on the external inspection which identified the ongoing presence of several potential access points to bats on the exterior of the structure, its context (including significant levels of overnight lighting), previous survey observations and our experience of the limited internal opportunities typically offered by this type of building. However, as no internal survey could be undertaken, a precautionary assessment of moderate suitability to support roosting bats was maintained. The potential access points are shown on Figure 1 and include; weep holes in the brickwork in the south-eastern corner of the building, broken window boarding, a broken door, and an open toilet block at the northern end of the building. No features were noted on the eastern aspect of the building with brickwork well sealed, no missing mortar and dense vegetation in the north eastern corner limiting access for bats. Overall, the building has not deteriorated further offering similar roosting opportunities as it did in 2020.
- 5.3 Building 3 (Photographs 14 to 16) was re-assessed and was upgraded from the previous assessment of negligible suitability, to having low suitability to support roosting bats. Features consisted of a small hole around a pipe in brickwork on the northern aspect and small holes on the southern aspect where previously bug hotels were attached to the wall. No features were noted on the eastern aspect and dense vegetation was noted covering the western aspect.
- 5.4 All other buildings (B2 and B4) were assessed as still having negligible suitability for roosting bats due to the absence of suitable features where bats could access the buildings or shelter. See Photos 17 to 21.

Bat emergence / re-entry surveys and use of the Site by bats

- 5.5 No bats were observed emerging from B1 or B3 during the dusk emergence surveys. As with the previous surveys undertaken in 202, bat activity during the surveys was low, with low numbers of foraging soprano pipistrelle recorded flying around the tree canopy of B1, and additionally adjacent to the northern aspect of B3.
- 5.6 The dusk emergence surveys of the Site were undertaken in optimal conditions with surveyors located in close proximity to the river, the patch of self seeded woodland and the northern extent of the hornbeams on Site. During the update surveys, confirmed species recorded were limited to soprano pipistrelle, no common pipistrelle or noctule were recorded when compared to surveys undertaken in 2020. There was no evidence recorded during either survey that suggests that the Site is of importance for bats either as a commuting route or as a key foraging resource.

6 Potential Impacts and Recommendations

Potential impacts on bats

- 6.1 Update bat surveys of B1 and B3 confirmed that bats are likely absent from these buildings. Building 2 and B4 are still of negligible suitability for supporting roosting bats, and the habitats at the Site are considered unlikely to be of importance for commuting foraging bats.

Recommendations

- 6.2 Demolition of the buildings should commence within 12 months of these completed updated surveys (before mid-July 2025). Should buildings not be demolished prior to this, an update assessment should be undertaken to maintain confidence that buildings remain unsuitable (B2 and B4) or do not present additional roosting opportunities / require update survey work (B1 and B3).
- 6.3 Recommendations set out in the Ecological Impact Assessment (EclA) report submitted with the planning application (BSG Ecology, 2021) should continue to be followed. This includes planting of high value pollinator species within the new landscaping, retention of trees and sensitive lighting strategy.
- 6.4 With regards to lighting, however, it should be noted that industry guidance on bats and artificial lighting (BCT & ILP, 2023) has been updated since the previous assessment.
- 6.5 The following key recommendations should inform the lighting specifications:
- Avoidance of lighting where feasible.
 - Lighting should lack UV elements; metal halide, compact fluorescent sources should not be used.
 - LED luminaires should be used where possible due to their sharp cut-off, lower intensity, good colour rendition and dimming capability.
 - Lights should have a 0% upward light ratio as far as reasonably practicable.
 - A warm white light source (2700Kelvin or lower) should be adopted to reduce blue light component.
 - LEDs should have a peak wavelength higher than 550 nm where possible.
 - Downward directional luminaires should be used where possible.
- 6.6 Sensors (PIRs) should be used in the residential common areas (stairs, corridors and entrance lobbies) and the office to ensure that lighting in these areas is turned off when they are not in use to minimise light spill.

7 References

BCT and ILP (2023). *Guidance Note GN08/28 - Bats and artificial lighting at night*.

BSG Ecology. (2021). *Twickenham Riverside, Ecological Impact Assessment (EclA) (non-EIA)*.

Collins, J. (ed.) (2023) *Bat Surveys for Professional Ecologists: Good Practice Guidelines (4th edition)*. The Bat Conservation Trust, London.

8 Figures

Buildings with Bat Suitability and Surveyor Locations

(overleaf)









- Site boundary
- Building suitability for roosting bats**
- Moderate
- Low
- Negligible
- Potential Access Points**
- 1 Broken window boarding
- 2 Weep holes in brick work
- 3 Broken door
- 4 Open toilet block
- 5 Holes in brick work
- Surveyor locations

PROJECT TITLE
 TWICKENHAM RIVERSIDE DISCHSRGE OF CONDITIONS NS39 BATS
 DRAWING TITLE

FIGURE 1: BUILDINGS WITH BAT SUITABILITY AND SURVEYOR LOCATIONS

DATE: 29/07/2024	CHECKED: JP	SCALE: 1:800
DRAWN: JP	APPROVED: AM	VERSION: 1.0

9 Photographs

<p>Photograph 1: Lighting levels south of Building 1 (background) and 3 (foreground).</p>	<p>Photograph 2: Lighting levels south of Building 1 (background) and 3 (foreground).</p>
	
<p>Photograph 3: Lighting levels south of Building 3.</p>	<p>Photograph 4: Building 1 western aspect.</p>
	
<p>Photograph 5: Building 1 western aspect.</p>	<p>Photograph 6: Building 1 western aspect.</p>
	
<p>Photograph 7: Building 1 western aspect.</p>	<p>Photograph 8: Building 1 western aspect.</p>



Photograph 9: Building 1 eastern aspect.



Photograph 10: Building 1 eastern aspect.



Photograph 11: Building 1 eastern aspect with dense buddleia vegetation.



Photograph 12: Building 1 northern aspect.



Photograph 13: Building 1 northern aspect.



Photograph 14: Building 3 northern aspect.



Photograph 15: Building 3 northern aspect.



Photograph 16: Building 3 eastern aspect.



Photograph 17: Building 2 southern aspect.



Photograph 18: Building 4 southern aspect.




Photograph 19: Building 4 southern aspect.



Photograph 20: Building 4 southern aspect.



Photograph 21: Building 4 southern aspect.	
 A photograph showing the southern aspect of a two-story brick building. The building has a blue door on the ground floor and a large window on the upper floor. A yellow sign is visible on the wall. A white car is partially visible on the left, and a wooden pallet is on the ground in front of the building. The sky is blue with some clouds.	

Appendix 1: Summaries of Relevant Policy, Legislation and Other Instruments

This section briefly summarises the legislation, policy and related issues that are relevant to the main text of the report. The following text does not constitute legal or planning advice.

National Planning Policy Framework

The Government issued the National Planning Policy Framework (NPPF) in December 2023. Text excerpts from the NPPF are shown where they may be relevant to planning applications and biodiversity including protected sites, habitats and species.

The Government sets out the three objectives for sustainable development (economy, social and environmental) at paragraphs 8-10 to be delivered through the plan preparation and implementation level and 'are not criteria against which every decision can or should be judged' (paragraph 9). The planning system's environmental objective is 'to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity...' (paragraph 8c).

In conserving and enhancing the natural environment, the NPPF (Paragraph 180) states that 'planning policies and decisions should contribute to and enhance the natural and local environment' by:

- Protecting and enhancing...sites of biodiversity value... '(in a manner commensurate with their statutory status or identified quality in the development plan)'.
- Recognising the wider benefits from natural capital and ecosystem services... including... trees and woodland.
- Minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.
- Preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability.

In respect of protected sites, at paragraph 181, the NPPF requires local planning authorities to distinguish, at the plan level, '...between the hierarchy of international, national and locally designated sites; allocate land with the least environmental or amenity value...take a strategic approach to maintaining and enhancing networks of habitats and green infrastructure; and plan for the enhancement of natural capital at a catchment or landscape scale across local authority boundaries.' A footnote to paragraph 181 refers to the preferred use of agricultural land of poorer quality if significant development of agricultural land is to take place.

Paragraph 185 refers to how plans should aim to protect and enhance biodiversity. Plans should: 'identify, map and safeguard components of local wildlife-rich habitats and wider ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity [a footnote refers to ODPM Circular 06/2005 for further guidance in respect of statutory obligations for biodiversity in the planning system], wildlife corridors and stepping stones that connect them and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation;' and to 'promote the conservation, restoration and re-creation of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity.'

Paragraph 186 advises that, when determining planning applications, '...local planning authorities should apply the following principles:

- if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;
- development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments)

should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;

- development resulting in the loss or deterioration of irreplaceable habitats, (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists; and
- development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.'

In paragraph 187, the following should be given the same protection as habitats sites:

- potential Special Protection Areas and possible Special Areas of Conservation;
- listed or proposed Ramsar sites; and
- sites identified, or required, as compensatory measures for adverse effects on habitats sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.'

In paragraph 188 the NPPF refers back to sustainable development in relation to appropriate assessment and states: 'the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site'.

In paragraph 189, the NPPF refers to planning policies and decisions taking account of ground conditions and risks arising from land instability and contamination at sites. In relation to risks associated with land remediation account is to be taken of 'potential impacts on the natural environment' that arise from land remediation.

In paragraph 191 the NPPF states that planning policies and decisions should ensure that development is appropriate to the location and take into account likely effects (including cumulative) on the natural environment and, in doing so, they 'should limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation' (paragraph 191c).

Government Circular ODPM 06/2005 Biodiversity and Geological Conservation

Paragraph 98 of Government Circular 06/2005 advises that "the presence of a protected species is a material consideration when a planning authority is considering a development proposal that, if carried out, would be likely to result in harm to the species or its habitat. Local authorities should consult Natural England before granting planning permission. They should consider attaching appropriate planning conditions or entering into planning obligations under which the developer would take steps to secure the long-term protection of the species. They should also advise developers that they must comply with any statutory species' protection provisions affecting the site concerned..."

Paragraph 99 of Government Circular 06/2005¹ advises 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".

¹ ODPM Circular 06/2005. *Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impacts within the Planning System* (2005). HMSO Norwich.

Standing Advice (GOV.UK)

The GOV.UK website provides information regarding protected species and sites in relation to development proposals: 'Local planning authorities should take advice from Natural England or the Environment Agency about planning applications for developments that may affect protected species.' GOV.UK advises that 'some species have standing advice which you can use to help with planning decisions. For others you should contact Natural England or the Environment Agency for an individual response.'

The standing advice (originally from Natural England and now held and updated on GOV.UK2) provides advice to planners on deciding if there is a 'reasonable likelihood' of protected species being present. It also provides advice on survey and mitigation requirements.

When determining an application for development that is covered by standing advice, in accordance with guidance in Government Circular 06/2005, Local planning authorities are required to take the standing advice into account. In paragraph 82 of the aforementioned Circular, it is stated that: 'The standing advice will be a material consideration in the determination of the planning application in the same way as any advice received from a statutory consultee...it is up to the planning authority to decide the weight to be attached to the standing advice, in the same way as it would decide the weight to be attached to a response from a statutory consultee.'

The Environment Act 2021

The Environment Act includes the requirement for mandatory biodiversity gain for all qualifying developments in England through an amendment to the Town and Country Planning Act 1990 which came into force on 12 February 2024. For all qualifying developments in England, The Environment Act 2021 (Commencement No. 8 and Transitional Provisions) Regulations 2024 (SI44) at Regulation 3 advises in relation to planning applications that '*the biodiversity gain planning condition does not apply in relation to a planning permission within the scope of regulation 2 (2) of these Regulations, where the application for planning permission was made before 12th February 2024*'. From 12 February 2024, the Act and associated secondary Regulations (SI2024 No's 44- 50) insert amendments into the Town and Country Planning Act 1990 which in summary require the following for all qualifying developments in England:

- The provision of a required percentage of biodiversity gain, currently set nationally to be at 10%, as a general condition of planning permission,
- The use of the statutory Biodiversity Metric to calculate the biodiversity gain,
- Submission to and approval by the planning authority, of a Biodiversity Gain Plan (BGP) for the development before the development may be begun; the BGP is to be prepared using a template prepared by Defra to demonstrate how biodiversity gain will be delivered on and / or off-site and how the biodiversity gain hierarchy has been applied so that the local planning authority can take account of the approach taken when deciding whether to approve the BGP,
- Significant on-site biodiversity gain and all offsite biodiversity gain to be secured for a fixed period, currently nationally set at 30 years,
- Alternative arrangements to be made for the purpose of minimising the adverse effect of development to habitats deemed to be irreplaceable habitat (see NPPF),
- Demonstration of how the biodiversity gain will be secured, typically through planning obligations in a section 106 agreement,
- Registration of offsite biodiversity gain and allocation of relevant biodiversity units to a given development in a national register for which Natural England is the Register Operator,
- Use of statutory biodiversity credits through the Secretary of State, which is considered to be a last resort, if onsite and/or offsite biodiversity gains cannot achieve the required percentage.

² <https://www.gov.uk/guidance/protected-species-how-to-review-planning-applications#standing-advice-for-protected-species>

European protected species (Animals)

The Conservation of Habitats and Species Regulations 2017 (as amended) consolidates various amendments that have been made to the original (1994) Regulations which transposed the EC Habitats Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora (Council Directive 92/43/EEC) into national law.

“European protected species” (EPS) of animal are those which are shown on Schedule 2 of the Conservation of Habitats and Species Regulations 2017 (as amended). They are subject to the provisions of Regulation 43 of those Regulations. All EPS are also protected under the Wildlife and Countryside Act 1981 (as amended). Taken together, these pieces of legislation make it an offence to:

- a. Intentionally or deliberately capture, injure or kill any wild animal included amongst these species
- b. Possess or control any live or dead specimens or any part of, or anything derived from a these species
- c. deliberately or recklessly disturb wild animals of any such species
- d. deliberately take or destroy the eggs of such an animal, or
- e. intentionally, deliberately or recklessly damage or destroy a breeding site or resting place of such an animal, or obstruct access to such a place

For the purposes of paragraph (c), disturbance of animals includes in particular any disturbance which is likely—

- a. to impair their ability—
 - i. to survive, to breed or reproduce, or to rear or nurture their young, or
 - ii. in the case of animals of a hibernating or migratory species, to hibernate or migrate; or
- b. to affect significantly the local distribution or abundance of the species to which they belong.

Although the law provides strict protection to these species, it also allows this protection to be set aside (derogated) through the issuing of licences. The licences in England are currently determined by Natural England (NE) for development works and by Natural Resources Wales in Wales. In accordance with the requirements of the Regulations (2017, as amended), a licence can only be issued where the following requirements are satisfied:

- a. The proposal is necessary ‘to preserve 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’
- b. ‘There is no satisfactory alternative’
- c. The proposals ‘will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.’

Definition of breeding sites and resting places

Guidance for all European Protected Species of animal, including bats and great crested newt, regarding the definition of breeding and of breeding and resting places is provided by The European Council (EC) which has prepared specific guidance in respect of the interpretation of various Articles of the EC Habitats Directive.³ Section II.3.4.b) provides definitions and examples of both breeding and resting places at paragraphs 57 and 59 respectively. This guidance states that ‘The provision in Article 12(1)(d) [of the EC Habitats Directive] should therefore be understood as aiming to safeguard the ecological functionality of breeding sites and resting places.’ Further the guidance states: ‘It thus follows from Article 12(1)(d) that such breeding sites and resting places also need to be protected when they are not being used, but where there is a reasonably high probability that the species concerned will return to these sites and places. If for example a certain cave is used every year by a number of bats for hibernation (because the species has the habit of returning to the same winter roost every year), the functionality of this cave as a hibernating site should be

³ Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC. (February 2007), EC.

protected in summer as well so that the bats can re-use it in winter. On the other hand, if a certain cave is used only occasionally for breeding or resting purposes, it is very likely that the site does not qualify as a breeding site or resting place.'