

**Ten ‘Handy Hints’ for obtaining a bat mitigation licence at first submission
&
Ten common reasons for ‘minded to refuse’ responses to bat applications**



Ten ‘Handy Hints’ for obtaining a bat mitigation licence at first submission

1. Following mitigation and survey guidance within the following three key documents will enhance the likelihood of your application being acceptable. Deviations from the recommendations contained within these guidelines should be justified within the Method Statement.
 - “Bat Workers’ Manual” www.jncc.gov.uk/page-2861#download;
 - “Bat mitigation guidelines” naturalengland.communisis.com/naturalenglandshop/docs/IN13.6.pdf;
 - “Bat Surveys. Good Practice Guidelines”
www.bats.org.uk/publications.php?keyword=bat+surveys&month=&year=&category=&search=Search.
2. ‘Document 2’ of the Method Statement forms part of the licence and becomes a legally enforceable document. Consequently, it must be clear, unambiguous and specific. Method Statements are assessed against ‘**SMART**’ principles (**Specific, Measurable, Achievable, Relevant** and **Time-bound**). Application proposals should reflect this style and should also use the latest templates. These change from time to time so the Natural England website should be checked regularly. Forms can be found at: www.naturalengland.org.uk/conservation/wildlife-management-licensing/forms.htm#bats
3. Ensure that all relevant documents required for the assessment of all ‘three tests’ are completed and accompany the application form, and that all of these documents are sent to the WLU together. These ‘three tests’ are the ‘overriding public interest or health and safety’ test, the ‘no other satisfactory alternative’ test and the ‘favourable conservation status’ test (fcs).

Wildlife Advisers check Method Statements against the third test (‘fcs’), but documents may not be forwarded for this one assessment until all necessary information is received by the WLU. It is applications with more complex planning history that should be most aware of this problem and remember to provide, where necessary, the following commonly absent documents: -

- References and evidence of the applicant’s and accredited agent relevant experience in bat mitigation work;
- Discharge of planning conditions set by the LPA;
- Copy of the Delegated Powers report supporting planning approval;
- Signed and dated responses from the LPA concerning s.106 and s.278 (highways) agreements.

However, be aware that procedural changes occur from time to time and these can alter the range of documents required by the WLU, including those listed above. The Natural England website should be checked regularly for such changes, at: www.naturalengland.org.uk/conservation/wildlife-management-licensing

4. Be specific and accurate with details in the Method Statement; e.g. dates, times, actions, areas and distances. Applicants are expected to state what *will* happen, not what possibly *could* happen, e.g. “a new bat roost will be created”, not, “consideration will be given to creating a new bat roost”. The exact number of e.g. bat roosts, access points, their dimensions and locations, bat boxes types to be used etc. should be specified.
5. Try to keep the Method Statement concise, but not short at the expense of providing necessary detail. Only provide detailed information when it is relevant. For example, it may not be necessary to include details on what and when amenity cabling and pipelines will be installed as part of a refurbishment, but it would be useful to state that these will not travel through a dedicated bat roost, thereby avoiding bat disturbance by any unexpected maintenance.
6. It is essential to provide good and specific detail when describing those methods involving the encountering of bats, bat handling and bat exclusion, since bats could easily be harmed by failing to conduct the right actions at the right time. There are three main aspects to describing actions when finding/handling bats that need be considered, 1) action supervised by the bat ecologist when bats are found, e.g. roof demolition, 2) bats found by e.g. builders at other times, and 3) both of these scenarios described under weather conditions when bats are active or in torpor, or injured. Actions described must state who will handle bats, how they will be transported and where will they go.

Bat exclusion methods must be equally well described and justified, stating the method and how long installed under what weather conditions.

7. Ensure that reference to tables, diagrams and annexes, and the information they portray, tally with the body of the text. Ensure that maps and diagrams are accurate, specific, legible and relevant to the section they relate to. Maps should have a North bearing and diagrams should have scales, since images can become resized by the time they are assessed. Maps and diagrams should be provided to clearly show the locations or areas of a building or survey site where signs of bats were found, where bat roosts will be lost, and where replacement roosts, including bat boxes will be created and erected.
8. The timetable should chronologically list all relevant licensable activities in a specific, realistic and time bound manner, including a completion date of works affecting bats. The timetable will be regarded by the assessing Wildlife Adviser as a critical part of the Method Statement and grounds for recommending a rejection if it is incorrect, especially where high status bat roosts are involved.

The use of seasons should be avoided (except perhaps for monitoring purposes) and the use of exact dates may be too restrictive, although can be acceptable if actions are confirmed and known to occur on specific dates.

Works that have both positive and negative impacts on bats should be timetabled, including relevant mitigation work carried out *prior* to the application.

The timetable must be achievable - when submitting a Method Statement to Natural England for assessment, the timetable of works must take into account the full 30 working days that may be required to determine a licence, i.e. applications should avoid being submitted within a month of the commencement date of works that will affect bats. This includes the submission of amended Method Statements.

Be aware that a bat licence may be issued for up to two years. If two years of post-development monitoring is described in the Method Statement's timetable of works and the licence is issued for two years, then this monitoring is enforceable. It is then the responsibility of the licence holder to ensure that monitoring is carried out as stated during that time period. Failure to conduct the stated monitoring may result in a breach of licence.

9. Details on the application form must be accurate. Ensure that the range of licensable activities applied for make sense. For example, if proposing to capture bats during the course of the works then on section 10(a) ensure that you tick the boxes for 'capture' and 'disturb' for 'Activity to be licensed' (since the act of capturing a bat might also constitute disturbance). If bats are to be captured during works, you do not necessarily need to include 'transport' as an activity to be licensed, since this implies transporting bats beyond the bounds of a development site.

The WLU prefers to license bat *species* therefore only those species affected by the development should be applied for. It is acknowledged that some bats are difficult to separate, for instance Common/ Soprano Pipistrelle bats and Brandt's/ Whiskered bats, and the WLU, in some cases, may decide to license applications like this. However, where Nathusius' Pipistrelle and Grey Long-eared Bat are suspected, being especially rare, their presence/ absence must be confirmed before an application is submitted.

10. Finally, do you really need to apply? Changes to the Conservation (Natural Habitats, &c.) Regulations 1994 ("Habitats Regulations") in autumn 2007 includes a more specific definition of what is now regarded as 'disturbance'. The changes also removed the 'dwelling house defence', meaning that it is now an offence to damage or destroy a breeding site or resting place of a bat, or to deliberately [and significantly] disturb a bat within a dwelling house.

This extended protection to bats in houses should not encourage precautionary applications since Natural England does not issue precautionary licences. In some situations, changing the timing of the proposed work, using appropriate materials and being mindful to avoid damaging bat access may be enough avoid licensing. Natural England's "Bats in houses: guidance for householders in England", can be found at: <http://www.naturalengland.org.uk/conservation/wildlife-management/licensing/docs/Bats%20in%20houses%20-%20guidance%20for%20householders.pdf>

Ultimately, it is the developer, under guidance from their consultant bat ecologist, who will decide whether or not they wish to apply for a licence. Natural England does not make the decision on whether or not a licence should be applied for.

Ten common reasons for ‘minded to refuse’ responses to bat applications

1. ‘Mitigation’ (development) licences are generally only issued in instances when the named ecologist holds a current conservation, or science and education’ licence; without this, applications are likely to be rejected. Sufficient and relevant evidence needs to be provided by two suitable referees about the applicant’s/ bat consultant’s experience, when that applicant/ bat consultant has not had a previous mitigation licence involving the specified bat species. This also applies to accredited agents. Applications with insufficient information or experience should expect to be rejected. Even if favourable comments from referees are received by the WLU, if neither has held a mitigation licence themselves, the applicant should expect to be refused.
2. Unless there is an overriding reason that has prevented enough survey work to reach minimum requirements of standard guidance, the application should expect to be rejected. Data should be presented clearly and summarised if there is a lot of raw data. If the ‘evaluation of survey results’ (C8) i.e. bat status, is not supported by survey results or sound judgements based on relevant experience, then the application should expect to be rejected. Relying on evidence gathered immediately prior to demolition work or during a destructive search to back up insufficient or/ and old survey data, in nearly all situations, is not an acceptable proposal.
3. Ambiguously worded bat capture and exclusion exercises, or an unjustified non-standard method should expect to be rejected. This includes failing to explain how and where bats will be taken to and during what weather conditions will exclusion devices be operating. Method Statements should not state “contact Natural England for advice if bats are found”.
4. A proposal to disturb and capture bats during the hibernation period in situations where bats are likely to be present and in deep torpor, should expect to be rejected. Where none or few bats are possibly present in winter and action to expose bats during this time is scheduled to only occur during mild periods (describe this), then a ‘minded to refuse’ response may be avoided.
5. Applications with ambiguously described bat lofts and access points will normally be rejected. Phrasing like, for example, “a number of bat access points will be installed” and “access suitable for bats” are not considered adequate. Applications sometimes fail to describe or shown diagrammatically how bats will negotiate newly installed loft membranes. The Wildlife Adviser assessing the case should be able to imagine that a builder is not likely to misinterpret the Method Statement to the detriment of the bats. Internal loft features should also be properly described, including their design and placement. If these features are crucial to the application, e.g. it’s a Natterer’s Bat maternity or autumn mating roost, and are not properly described, the application will likely be rejected.
6. The ‘impact assessment’ (D) section must be written as if in the *absence* of mitigation. The anticipated short and long term impact on bats *with* mitigation can also be provided, but should not substitute for what may happen in its absence.

7. Inadequate timetabling of works, which does not clearly state each development stage that affects bats, will most likely be rejected. This includes actions that both adversely impact upon and benefit bats. Actions must correspond with details provided in the main body of text.
8. An application timetabling unachievable actions is also likely to be rejected. For example, if a supervised 'soft' roof demolition is proposed during mid to late-April and the Wildlife Adviser knows that an assessment recommendation cannot be made until the end of April, then that application may be rejected. Ecologists will often try to timetable destructive works during the favoured periods of early spring and late autumn, and understandably sometimes submit 'late' applications to attempt rapid licensing, rather than delay a development until the next opportune period. This is a risky venture; however, inclusion of a double-timetable i.e. mid to late-April, but if licensed too late, will instead conduct work in mid to late-September, and not before, can be acceptable if carefully worded.
9. Bat compensation should be proportionate and justifiable, even 'worst case scenario' overcompensation may result in a 'minded to refuse' response. Applications that under compensate for bats on site and where insufficient information is provided to describe suitable alternative roosts off/ adjacent to the site, should expect to be rejected due to failing the 'third test'. Conversely, overcompensating due to a lack of knowledge about bats on site is not a substitute for poor survey data, in most cases. Applications attempting this can become confused, for instance, assuming a maternity roost is present and therefore providing a suitably large bat loft may be fine, but since limited surveys only suggested a few non-breeding bats, bat exclusion is scheduled during mid-summer – exclusion of *presumed* maternity roosts is not usually licensed at this time so the application should expect to be rejected.
10. A Method Statement that leaves too much reliance on the bat consultant's expertise to resolve problems as and when they occur on site should expect to be rejected. This is not a reflection on Natural England's assessment of the bat ecologist's competence. Compliance with actions in the Method Statement is a licence condition and licences are now enforceable. Partly for this reason Natural England insists that Method Statements are unambiguous, particularly since it needs to avoid misinterpretation between the Wildlife Adviser, the bat ecologist and accredited agents, the architect, building contractors and labourers, and the client.

Wildlife Advisers have only limited scope for requesting verbal or emailed clarification about aspects of a Method Statement. However, if doing so it appears that a material change to the Method Statement has occurred, then a re-submission will be requested.

It is important for bat ecologists and their clients to be aware that in the majority of 'minded to refuse' responses, it will be the details within the application that require alteration and not the overall scheme which is at fault, meaning that the application is not so much flatly rejected, but instead regarded as a draft which will most likely eventually result in a licence being issued.