



## ECOLOGICAL ADVICE SERVICE

**TO:** *Marion Geary*

**FROM:** *Emma England*

**DATE:** *18 January 2024*

**SUBJECT:** *23/504471/OUT / Land At Moat Road, Headcorn*

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*The following is provided by Kent County Council's Ecological Advice Service (KCC EAS) for Local Planning Authorities. It is independent, professional advice and is not a comment/position on the application from the county council. It is intended to advise the relevant planning officer(s) on the potential ecological impacts of the planning application and if sufficient/appropriate ecological information has been provided.*

*Any additional information, queries or comments on this advice that the applicant or other interested parties may have must be directed in every instance to the planning officer, who will seek input from the EAS where appropriate and necessary.*

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### **SUMMARY – ADDITIONAL INFORMATION REQUIRED**

We have reviewed the ecological information submitted in support of this application and advise that additional information is sought from the applicant prior to determination of the planning application. This includes:

- A countersigned DLL impact assessment and conservation payment certificate (IACPC); and
- Complete bat survey results with regards to building B4.

The results of any necessary further surveys, and mitigation/compensation measures, will need to be submitted prior to determination of the planning application. This is in alignment with paragraph 99 of the ODPM 06/2005, which states "*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*".

### **Great Crested Newt**

The letter by email from Aspect Ecology, dated 15<sup>th</sup> December 2023 acknowledges the requirement for a countersigned District Level Licensing (DLL) impact assessment and conservation payment certificate (IACPC) to be submitted to the local planning authority

prior to determination of the application<sup>1</sup>. However, this information appears to be still outstanding.

## **Bats**

We have reviewed the letter by email from Aspect Ecology, dated 15<sup>th</sup> December 2023 in relation to bats.

We acknowledge that KCC EAS provided comments in relation to ecology matters for application 22/505616/OUT, validated 5<sup>th</sup> December 2022 and withdrawn 28<sup>th</sup> March 2023. An ecological appraisal by Aspect Ecology and dated 11<sup>th</sup> November 2022, for the same site, stated that preliminary roost assessments of the buildings on site were carried out in April 2021. The building labelled B4 within this report was classified as having low suitability for roosting bats, and as such, in line with survey guidelines at the time<sup>2</sup>, the minimum recommended one survey emergence survey was conducted on 11<sup>th</sup> August 2021. The same information has been used to support the current application in an updated ecological appraisal report dated 21<sup>st</sup> September 2023.

Our previous comments associated with application 22/505616/OUT and dated 22<sup>nd</sup> March 2023 stated that with regards to bats, we were satisfied with the mitigation proposals regarding the construction phase. With regards to B4, the following mitigation measures were proposed within the November 2022 ecological appraisal:

- *“Should any considerable time (e.g. >2 years) elapse between the survey work detailed above and any development works, a further survey of the buildings with potential to support roosting bats should be undertaken prior to the commencement of works to confirm the continued absence of bats.”*
- *“Removal of any roofs or other structures with potential to support or conceal roosting bats, in particular building B4 (from which bats were seen emerging from the barn entrance) should be undertaken with care during favourable weather conditions (not during heavy rain, high winds or unseasonable low temperatures) and under an appropriate watching brief. Given the possible presence of roosting bats within this building, it is recommended that this work is carried out under a protected species licence which should be obtained from Natural England prior to building removal.”*

This ecological appraisal does not state what compensatory roosting measures would be required for the loss of a bat roost in B4, or where they would be located. The report also seems to indicate that a protected species licence is a recommendation rather than a legal requirement.

The updated ecological appraisal report dated 21<sup>st</sup> September 2023 states the same mitigation measures, and fails to identify the compensatory roosting measures required. Whilst we acknowledge that we were previously satisfied with this approach, we now request further clarification for the following reasons:

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<sup>1</sup> [Great crested newts: district level licensing for local planning authorities - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/great-crested-newts-district-level-licensing-for-local-planning-authorities)

<sup>2</sup> [Bat Survey Guidelines 2015](#)

1. **Age of Data.** Survey data for roosting bats was obtained in April and August 2021<sup>3</sup>. The previous application was validated in December 2022, just over a year after the bat emergence survey on B4 was carried out. The current application was validated 16<sup>th</sup> October 2023, just over two years after the bat emergence survey on B4 was carried out. At just over two years old, survey data for mobile species such as roosting bats is on the limit of what is acceptable to support a planning application. The 2023 survey season would have provided time to obtain additional information about the roost and clarify its status prior to submitting the application. The Chartered Institute of Ecology and Environmental Management (CIEEM) states that for ecological data between 18 months and three years old, *“some or all of the ...ecological surveys may need to be updated...the likelihood of surveys needing to be updated increases with time, and is greater for mobile species or in circumstances where the habitat or its management has changed significantly since the surveys were undertaken<sup>4</sup>.”*
2. **Bat Roost Presence and Numbers of Bats.** Paragraph 99 of the Office of the Deputy Prime Minister (ODPM) Circular 06/2005<sup>5</sup> states *“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”*. We would like to highlight that this paragraph states that not only must the presence or otherwise of protected species be identified, but also the extent to which they may be affected by the proposed development.

The submitted report indicates the following in Table 10 of the submitted ecological appraisal report: *“Single Common Pipistrelle emergences were recorded from the open barn entrance on the eastern elevation (location A on plan 6196/ECO5) at 20:49, 20:57 and 21:22. When leaving the barn, these bats each spent up to a minute leaving/re-entering the barn. These bats may have been light sampling after leaving their roosting locating within the building, or may have been foraging.*

*It is noted that during the dawn survey, a single Common Pipistrelle was incidentally sighted entering an open doorway on the southern elevation of building B4 (location B on plan 6196/ECO5) before immediately leaving (likely foraging behaviour).”*

In paragraph 5.3.8 of the same report, the following further statements are made: *“It is possible that those bats seen leaving the barn entrance had been roosting within this building, particularly given that two of these sightings were relatively soon after sunset (24 minutes and 32 minutes respectively) and therefore during the typical emergence period for this species. However, given that bats use more than one entrance of this building, it is also possible that these bats had simply passed through this building. Based on this, and taking a precautionary approach, Building B4 is considered to be likely to provide a day roost or feeding roost for a small number of Common Pipistrelle.”*

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<sup>3</sup> An updated Phase 1 Survey of the site was undertaken in August 2022, but this appears to focus on assessing the habitat baseline for Biodiversity Net Gain calculations.

<sup>4</sup> [Advice-Note.pdf \(cieem.net\)](#)

<sup>5</sup> [odpm-circ-0605.qxd \(publishing.service.gov.uk\)](#)

The statements made in paragraph 5.3.8 indicate that although one survey was carried out of B4 in August 2021, insufficient information was obtained to clarify the presence/likely absence of bats in B4. The recent letter by email from Aspect Ecology further indicates that *“updated bat surveys will need to be undertaken for the purpose of determining the numbers of bats that the licence would need to cover. This may require up to three survey visits during spring/summer 2024. In the eventuality that these surveys do not find any bats or evidence of them, we will not be able to apply for (nor would we need) a licence as we can then confirm that the building is no longer (or never was) used as a bat roost.”* Whilst this letter indicates that a maternity/ hibernation roost is unlikely, it also indicates that the number of bats potentially using the building needs to be clarified.

The 2016 professional survey guidelines for bats indicate that when roosting *“presence is established, this should trigger roost characterisation surveys unless sufficient information has already been collected to inform the impact assessment and design of mitigation measures. Roost characterisation surveys include emergence/re-entry surveys. They also include the collection of information about the physical characteristics of the roost and surrounding area”*. The 2023 professional survey guidelines for bats have been expanded upon, but essentially still recommend roost characterisation surveys unless sufficient information has already been obtained.

Due to the uncertainty outlined above, we suggest that further roost characterisation surveys should have been triggered, and that in their absence, insufficient information is available in line with paragraph 99 of the ODPM Circular 06/2005 prior to determination of the planning application to clarify whether a bat roost is indeed present, and if so, supporting how many bats.

3. **Compensatory Roosts.** Although, bat boxes are recommended as enhancements within the submitted report, the applicant has not clearly demonstrated how the roost (if present) in B4 will be compensated for in line with current guidance<sup>6</sup> *i.e.*, the number, type and locations of compensatory roost spaces have not been stated.

The local planning authority must have enough information prior to determination to be assured that a Natural England mitigation licence will be issued and in so doing must address the three tests when deciding whether to grant planning permission for the proposed development<sup>7</sup>. Any proposed mitigation and compensation measures must not conflict with the requirements of a Natural England mitigation

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<sup>6</sup> [UK Bat Mitigation Guidelines 2023 | CIEEM](#)

<sup>7</sup> The three tests are:

1. Regulation 55(2)(e) states: a licence can be granted for the purposes of *“preserving 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”*.
2. Regulation 55(9)(a) states: the appropriate authority shall not grant a licence unless they are satisfied *“that there is no satisfactory alternative”*.
3. Regulation 55(9)(b) states: the appropriate authority shall not grant a licence unless they are satisfied *“that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.”*

licence. Government standing advice indicates that information pertaining to mitigation and compensation measures should be available prior to determination<sup>8</sup>.

### **Summary**

We currently consider there is a lack of information relating to the presence or likely absence of a bat roost in B4, its likely location within the building, numbers of bats roosting, and the provision of compensatory measures.

We would like to restate that sufficient survey data for bats should be provided prior to determination. This should provide clarity regarding the necessary mitigation/compensation measures required for roosting bats at the site.

If you have any queries regarding our comments, please do not hesitate to get in touch.

### **Emma England** **Biodiversity Officer**

This response was submitted following consideration of the following documents:

*Aspect Ecology (November 2022) Ecological Appraisal. Land North of Moat Road, Headcorn.*

*Aspect Ecology (September 2023) Ecological Appraisal. Land North of Moat Road, Headcorn.*

*Aspect Ecology (September 2023) Biodiversity Net Gain Assessment. Land at Moat Road, Headcorn.*

*Aspect Ecology (December 2023) Letter Sent By Email Only. Land at Moat Road, Headcorn.*

*RSK (September 2023) Lighting Impact Assessment. Land at Moat Road, Headcorn.*

*Thrive Architects (August 2023) Sketch Layout Master Plan – 01. Moat Road, Headcorn.*

*Thrive Architects (October 2023) Framework Plan – 01. Moat Road, Headcorn.*

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<sup>8</sup> [Protected species and development: advice for local planning authorities - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/protected-species-and-development-advice-for-local-planning-authorities)