

Recommended approach for bats¹ and small wind turbines in Suffolk (Approximately 10-30m hub height or 5-250kW)

Suffolk Biodiversity Partnership Planning Support Group
March 2013



Suffolk Biodiversity
Partnership

Can the turbine be located so that the blade tip does not come within 50m of **habitat features** including woodland, hedges, water features, meadows or buildings?
AND
Does a desktop assessment of the local habitat matrix⁸ and existing bat records⁵ indicate that it is unlikely that a criminal offence would be committed upon open flying bat species which do not follow linear and other features?

YES¹

Planning application can progress without further issues unless new guidance⁹ is issued by Natural England

NO

Identification of potential impacts to bats¹ and quality of the habitats in and around the site, by a *suitably qualified bat ecologist* based on the bat records held by SBRC & NBN Gateway⁵. This will quantify the risk of a criminal offence being committed⁶

If the *risk* of a criminal offence⁶ including from cumulative effects is likely to be significant, can the turbine location be modified or other effective mitigation be offered?
Yes **No**

Is there no *risk* of a criminal offence⁶ including from cumulative effects, or is the *risk* of a criminal offence is so unlikely as to be insignificant, such that it could not be deemed deliberate?

Bat survey and an assessment of the results by a *suitably qualified bat ecologist*.
The level of survey effort needed should be determined by the site assessment and review of data (see notes 2 & 3).

Is it possible to mitigate to avoid a criminal offence?⁶
NO **YES**

A new site will be required as the project will fail the three tests for European Protected Species⁷

Validation
If within 50m of features, or at a site where open flying species may occur, an *assessment of likely impacts* (including a survey where required) and *mitigation measures* must be submitted by the applicant and included in the consultation

Consultation
Does the impact assessment show a likely significant effect on bats?

NO
LPA seek specialist ecological advice to discharge legal duty

YES
Consult NE Hub

Conditions
If there is likely to be a significant effect on bats, and an appropriate mitigation strategy can control this, effective conditions will need to be agreed with the Local Planning Authority to avoid a criminal offence⁶ to European Protected Species, to demonstrate compliance with Habitats Regulations (see note 4).

It *may* also be necessary to condition an appropriate monitoring strategy to demonstrate the avoidance of a criminal offence⁶.

Habitat Features - A Definition

Many species of bat feed and navigate along rivers, hedge and tree lines, as well as in and around ponds, meadows & pasture, woodland and clumps of trees. They can roost in trees or buildings at various times of year so all these are habitat features for bats. A building is only a habitat feature for bats if it is being used as a roost. This matter will need to be dealt with when the initial investigation into the potential impacts of the proposal on bats is carried out.

Notes

- This advice does not cover turbine proposals within 1km of a SSSI designated for bats which will trigger consultation with NE. Impact on these sites must be evaluated and results submitted with the application. Risks to birds will also need to be considered separately.
- Minimum of 2 remote bat detectors to be placed in appropriate locations on-site for **either**:
2 weeks in April, May, June, September*,
or 1 week in July or August
*Although the 'prime' period for survey is between Apr-Oct. it is unlikely that a two week remote bat detector survey in October alone would provide sufficiently robust data as this is towards the end of the active season and at a time of year when maternity roost colonies would have broken up. Surveying at this time of year is unlikely to give an accurate reflection of site use by bats.
Weather conditions must be suitable throughout the survey period. If weather becomes unsuitable or equipment fails, the survey period will need to be increased accordingly. Multiple small turbines may require more detailed survey information due to an increased risk of harm to bats.
- Sites that may be of importance for bats commuting between maternity sites and hibernacula may need monitoring later in the year (October).
- If survey and assessment work highlights that there will be a **likely significant effect on bats which cannot be adequately controlled**, and Natural England will not grant a licence, the Local Planning Authority should refuse the application. This will avoid any deliberate disturbance of these European Protected Species and so demonstrate compliance with the Habitats Regulations.
- Suffolk Biological Records Centre (SBRC) and National Biodiversity Network (NBN).
- Killing or injuring or deliberate disturbance of any bat species or damage or destruction of a roost is a criminal offence.
- Refer to the rationale that is attached to this flowchart.
- Refer to the guidance on open flying species such as Noctule, attached to the flowchart.
- Natural England (NE) TIN051 *Bats & onshore wind turbines*
NE TIN059 *Bats and single large wind turbines*
NE TIN069 *Birds and onshore wind farms*

Key References

Eurobats Agreement No 3 (2008) *Guidelines for consideration of bats in wind farm projects*
Bat Conservation Trust (2011) *Surveying for onshore wind farms BCT Bat Surveys best practice guidelines 2nd edition*
[Natural England Standing Advice flowchart](#) April 2012
Eaton v NE & RWE Renewables UK
[Park et al Stirling University](#) August 2012

For further information about the Suffolk Biodiversity Partnership please visit www.suffolkbiodiversity.org



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The Rationale for this Advice

Summary of Advice

1. Killing or injuring or deliberate disturbance, of any bat species or damage or destruction of a roost is a criminal offence.
2. If the *blade tip* of a turbine is 50m or more from a habitat feature then the application is satisfactory in this regard and can be validated and determined with no further bat survey or assessment required, unless a relevant designated site is present. (Suffolk biodiversity validation checklist table 1 revised May 2011).
3. If the blade tip is less than 50m from a habitat feature, an evaluation of the impact, including cumulative effects, is required. If there are no significant impacts or risk of killing or injury or deliberate disturbance the location is acceptable.

However, if bats are at risk of killing or injury or deliberate disturbance, a suitable mitigation strategy should be employed to avoid a wildlife crime being committed; for example, moving the turbine location, managing the operating hours of the turbine to reduce the impacts.

To take account of open flying bats including Noctule, a desktop assessment should be undertaken. This should assess the local habitat matrix of feeding and roosting habitats for open flying bat species as well as current records and further survey work may be required.

Although the Suffolk Landscape Character Assessment (LCA) provides an indication of the presence of suitable habitats each site should be assessed on an individual basis with regard to the presence of local woodlands, parkland, pasture, livestock and wetland features. However at a coarse scale, the Suffolk LCA landscape types considered to be likely to support open flying bat species are as follows: Type numbers 1, 2, 3, 4, 6, 7, 14, 15, 16, 17, 18, 23, 24, 26, 27, 28, 29, 30 & 31

4. If it is not possible to mitigate the impact on bats, and so avoid deliberate disturbance or other offences, then the LPA will have to apply the three tests on European Protected Species as set out in the *Conservation of Habitats and Species Regulations 2010* to the proposal. If the application cannot meet this requirement, unless Natural England are prepared to grant a licence under the terms of Regulation 53, it must be revised or withdrawn by the applicant or refused by the LPA, so that the LPA as the *competent authority* can demonstrate they have met their legal duty.

1. To provide consistent and transparent advice

The advice regarding "small" turbines and bats has been unclear in the past, as Natural England and others were responding to a changing situation with new types of development proposals being put forward. The objective of this guidance, which has been produced in conjunction with Natural England, is to clarify the current position and eliminate uncertainty and inconsistency. The intention is to offer applicants, consultants and planning authorities with clear guidance and a range of options to demonstrate that they have complied with Habitats Regulations requirements for European Protected Species.

2. To ensure that Planning Authorities meet their legal duties

This advice is required to ensure that Local Planning Authorities meet their requirements under the terms of *The Conservation of Habitats and Species Regulations 2010* (*Habitats Regulations 2010*) as clarified by the Supreme court ruling on 19 Jan 2011 *Morge (FC) (Appellant) v Hampshire County Council (Respondent) On appeal from the Court of Appeal (Civil Division) [2010] EWCA Civ 608*.

Article 12 of the Habitats Directive contains a range of prohibitions seeking to protect certain species (European Protected Species). Those prohibitions include deliberate capture or killing and deliberate disturbance. The definition of deliberate disturbance has been clarified by the High Court ruling, *Eaton v NE & RWE Renewables UK 23rd August 2012*, to apply to local populations of European Protected Species. Surveys may be required to establish sufficient data to demonstrate compliance with Habitats Regulations.

Article 16 provides for a number of circumstances in which a Member State may derogate from the obligations in Article 12. The Habitats Regulations (Regulation 41) make a breach of the Article 12 provisions a criminal offence. The derogations contained in Article 16 are implemented by way of a licensing regime (Regulation 53) which can make an activity that would otherwise be an offence, lawful if carried out in accordance with a licence.

Regulation 9(5) provides that "a competent authority, in exercising any of their functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions". A Planning Authority is a competent authority for the purposes of these Regulations and is exercising a function in deciding whether or not to grant planning permission. The Supreme Court, in the recent case of *Morge (FC) (Appellant) v Hampshire County Council [2011]UKSC 2*, has recently considered the application of this duty, as it was contained in identical form in a previous set of Regulations. In his leading judgment in the Supreme Court Lord Brown said "I cannot see why a planning permission (and, indeed, a full planning permission save only as to conditions necessary to secure any required mitigation measures) should not ordinarily be granted save only in cases where the Planning Committee conclude that the proposed development would both (a) be likely to offend article 12 (1) and (b) be unlikely to be licensed pursuant to the derogation powers."

If therefore the Planning Authority concludes that the carrying out of the development for which permission has been applied for even if it were to be conditioned, would be likely to offend Article 12(1), by say causing the disturbance of a species with which that Article is concerned, then it must consider the likelihood of a licence being granted. The licensing authority is Natural England.

The Three Tests

The proposed development must meet a purpose 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.”

In addition the authority must be satisfied that both, (a) “that there is no satisfactory alternative” and (b) “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.”

Guidance from the Natural England, as the Licensing Authority, with regard to the provision of a licence for an activity that would otherwise be a criminal offence, unless there is a demonstrable overriding public interest, can be found through the link below.

http://www.naturalengland.org.uk/Images/wml-g12_tcm6-4116.pdf

Applicants have to provide sufficient evidence to demonstrate that all the tests are met before a licence can be issued. Each application is determined on its own merits.

3. The development and modification of this advice

The 50m from blade tip distance is from published advice: TIN 51 Bats & onshore wind turbines (Natural England), TIN 59 Bats & single large wind turbines (joint Natural England, Countryside Council for Wales & Scottish Natural Heritage) which are all partners in the ALGE Biodiversity Planning Toolkit project.

The link below opens the bat page in the ALGE Biodiversity Planning Toolkit. The detailed process for determining planning applications involving bats is set out in the Interactive Bat Protocol on this page;

http://www.biodiversityplanningtoolkit.com/stylesheet.asp?file=511_bats.

Natural England has been a key partner in drawing up and updating this guidance for Suffolk. We suggest that it is reasonable that advice from the Government's advisor on the natural environment should be followed in order to demonstrate that the LPA has discharged its duties in this regard.

A review of published research by Stirling University has been undertaken and consideration given to the need to amend the flowchart. The disturbance effect on Pipistrelle bats at 20m (a distance consistent with the echolocation range of a small bat) has been noted as well as the potential impact on local populations in areas of good habitat. However, as this research had a small sample size, the results are not sufficiently robust to extrapolate to other bat species in relation to the impact of small wind turbines. Therefore further research is considered necessary to justify amending the Suffolk flowchart and guidance. The Defra funded National Bats and Wind Turbines project aims to provide information on the disturbance issues of bats and small wind turbines. This work is being led by [Dr Fiona Matthews at the University of Exeter](#).

Obviously, should new and compelling evidence become available this guidance will be reviewed. We would be pleased to discuss and review new evidence at any time. Until such time as this happens, we suggest that unless this guidance is followed LPAs will not be able to satisfactorily demonstrate that they have met their obligations with regard to European Protected Species.

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