

Complaint

I allege the absolute failure of High Peak Borough Council to fulfil its obligations under The Natural Environment and Rural Communities Act 2006 and Articles 12 and 13 of the European Union's Council Directive 92/43/EEC of 21 May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora, resulting in numerous breaches of the Wildlife & Countryside Act 1981 (as amended), The Countryside & Rights of Way Act 2000 and The Conservation of Habitats and Species Regulations 2010 with respect to bats in Glossop. This failure has resulted in the deaths of a vast number of bats and brings shame on Glossop. I believe I have provided sufficient examples of serious lapses in HPBC's assessment and protection of bats between 2008 and 2011 in the SK13 postcode area to warrant a full scale external inquiry into this matter.

Daniel Bennett

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Summary

In every major development in the SK13 postal region submitted in 2008 and 2011 that was approved, HPBC failed to ensure that risks to bats were properly assessed, accepted substandard bat surveys, ignored advice from the Environment Agency and consultants with respect to the need for bat surveys, lighting conditions or roost mitigation or ignored unambiguous evidence of roosts. In no instances did they insist on or even recommend any bat mitigation in development. This represents a serious, fundamental and systemic failure of HPBC to properly assess risks to bats from development and to respond to information about the presence or likely presence of bats at development sites.

It further suggests that these failings extend beyond the time frame and geographical region examined

A. Methodology

A request for details of all bat surveys requested or submitted to HPBC as part of planning applications since 2000 was refused on the grounds of cost (FOI officer, HPBC, personal communication).

Using the HPBC planning portal ("the website") at:

(<http://planning.highpeak.gov.uk/portal/servlets/ApplicationSearchServlet>)

1. I searched for applications that included "sk13" in the address submitted in 2008 and 2011. I chose 2008 and 2011 to accommodate the Bat Conservation Trust (2007). Bat Surveys – Good Practice Guidelines. Bat Conservation Trust, London. ISBN 978-1-872745-99-which formed the basis of Natural England's statutory requirements for bat surveys between 2008 and early 2012. That document sets out the legal responsibilities that local authorities have to ensure that risks to bats are assessed properly, and outlines acceptable survey methodologies and survey effort. The most relevant chapters for methodology discussed here are 1, 2, 3, 4, 6, and 8. Of specific relevance are

Box 2.1 Likelihood of bat presence – planning and development trigger list for bat surveys

Box 3.1 Guidance for assessing the value of habitat features within the landscape for bats and hence the likelihood of bats being present.

Table 4.7 Minimum visit frequency and timing for manual bat activity surveys away from and at roosts

2. I have only considered applications that were granted and made by private individuals. I have omitted applications from educational bodies or local government because details were obviously missing.

3. Because of time restraints I have only considered applications which involved loft conversions, rebuilds, demolition and new build. Other activities, especially those that involve disturbance to trees, roofs and stone/brick work can also impact on bats.

3. For each development I looked for bat surveys or comments about bats in ecological reports. I compared effort of bat surveys with that required for each development according to site criteria (see 1 above and 4 below). Where my opinion was that the evidence presented was insufficient or inaccurate, I asked the opinion of two anonymous referees who are licensed bat workers with wide experience of planning matters but who have never been to Glossop. Where they disagreed with my criticisms I have deferred to their opinions.

4. I considered each site according to its geographical position (proximity to waterways and woodlands) and type of development (loft conversions, barn conversions, demolitions, new build and rebuild) and refer to the Bat Mitigation Guidelines for assessing each such development.

5. I discuss each application in terms of the specifications set out in the Bat Mitigation Guidelines. I found no statement in any application that claimed less than the standard amount of effort was required to survey a site.

B. Assumption of Previous Knowledge

In many cases knowledge of bat records for the area and records held by wildlife trusts and bat groups form a useful tool for identifying areas where bat activity has been previously recorded. These records are normally available to planning departments, and together with records from previous surveys form an important database of knowledge. For example, a recent planning appeal decision in relation to Dinting Road cites previous known records of bats in the area as evidence suggesting that bats are likely to occur at the disputed site. Absence of records from an area cannot be used as evidence that species are unlikely to occur there unless multiple surveys have been carried out in the area over all reasonable times of year and all have yielded negative results. In most cases an assessment of the type of development and the location and flora of the site are the main criteria by which decisions about likelihood of occurrence can be made.

Here I have assumed that in 2008 HPBC had no records whatsoever of bats in Glossop except the following records from Derbyshire Wildlife Trust that are cited in Appendix 1 of the bat report for application HPK/2008/0708

SK021944 Dinting C of E Primary School Pipistrelle
SK045948 8 Kingsmoor Road SK13 7RG 2000 Pipistrelle
SK037948 2 Smithy Bar, Woodhead Road 2003 Pipistrelle bat

By the end of 2008 HPBC were also aware that there were bats at Easton House (bat survey for HPK/2008/0708) and probably in the sandhole area (bat survey for HPK/2008/0612 and 0613).

C. Applications granted from 2008.

1. HPK/2008/0208 Kinderlee Mill – demolition and rebuild of 13 apartments

The site (590m²) appears to be within 100m of woodland and water courses.

Neither bat surveys nor environmental statements were included in this application, or the relevant items are missing from the website. The application was granted subject to the following conditions (in italics):

- 26. Before work commences, a summer bat emergence survey shall be undertaken by a licenced bat ecologist. A copy of the bat survey report shall be submitted to the Local Planning Authority and any necessary mitigation plan shall be agreed in consultation with Natural England and confirmed in writing by the Local Planning Authority.*
- 27. A bat dusk emergence survey shall be carried out. A suitably qualified ecologist shall undertake the survey and full details of the survey results along with all proposed mitigation measures and bat conservation works (if required), including a timetable for the implementation of the works, shall be submitted to and approved in writing by the Local Planning Authority (in consultation with Natural England). The mitigation measures shall be carried out in accordance with the approved plan.*

Details of bat surveys and any subsequent mitigation or licensing do not exist or are not on the website.

The website also lists HPK/2008/0780, listed as a resubmission of HPK/2008/0208, which was approved with no conditions relating to bats. No bat surveys were included in this application, or they are missing from the website.

Opinion: Planning permission should not be granted until surveys for protected species have been completed- this represents a serious failing. If bat surveys to Natural England specifications for the site were not included in HPK/2008/0780 – this represents a serious failing.

2. HPK/2008/0349 Loft Conversion at Park Close

No information about bats was provided with the application and no conditions relating to bats were attached in the decision.

This loft conversion was in an area of Glossop where roosts had been previously recorded. HPBC should have been aware or had access to a record of a bat roost at 8 Kingsmoor Road from 2000 and another on Woodhead Road. The proximity to Blackshaw Clough (<100m) and woodlands at Manor Park (<40m?) were strong reasons to adopt a precautionary approach in this instance.

Opinion: There was ample evidence in this case that bat surveys were required to assess the risks of development. This represents a serious failing on the part of HPBC

3. HPK/2008/0612 and HPK/2008/0613

George Street Clinic – demolition and rebuild

An ecological appraisal accompanying the application included the following recommendations (in italics)

Bats

5.8 The survey and data search has identified that bats are likely to be using the Site for foraging and commuting.

5.9 The Glossop Brook and associated trees are likely to provide commuting and foraging opportunities for bats, and bat activity surveys should be undertaken to determine this. Surveys can be undertaken between May and August, inclusive. It is recommended that lighting be kept to a minimum along the Glossop Brook to reduce disturbance to bats utilising this area as a commuting route or for foraging. An appropriate mitigation strategy can be drawn up, if necessary, following a bat activity survey.

5.10 There are opportunities to provide enhanced roosting opportunities for bats through the supply of bat boxes across the development and through new landscape planting. In addition, the provision of new buildings with built in bat roost structures may provide further roosting opportunities for bats.

No conditions protecting bats were made in the decision letter. Around November 2011 and in March 2012 HPBC planning staff denied any knowledge of bats at the site both to me and to the Glossop Chronicle.

Opinion: – HPBC ignored all of the advice of the applicant’s ecological appraisal regarding the likelihood of bats using the site, the need for activity surveys, the need to protect the river from light and the opportunity to provide enhanced roosting in assessing this application. This represents a very serious failing.

4. HPK/2008/0708 Easton House. Change of use to Pharmacy

This application contained an ecological survey report which included a bat survey. Parts are reproduced in italics below:

3.2.4 Bat Emergence Survey

No bats were seen to emerge from Easton House or the Coach House. The first bat to be heard

*was a common pipistrelle *Pipistrellus pipistrellus* in the woodland in the northern corner of the*

site at 21:28, approximately seven minutes after sunset. A considerable amount of bat activity

occurred throughout the survey, on all sides of Easton House, but particularly around the front

elevation (see Figure 13) and the open area in front of the Coach House. All the bats observed foraging on site were common pipistrelle, with three or four individual bats regularly feeding together. Both common pipistrelle and soprano pipistrelle

**Pipistrellus pygmaeus* were heard*

foraging over the old mill pond. Bat activity subsided at about 22:10.

At 22:15 a single common pipistrelle bat was observed circling around the easternmost corner of Easton House. The bat then entered the hole in the soffit at the corner of the house (see Figure 13 and 14 and Target Note 4). It was not seen to re-emerge. However, the survey finished at 22:20.

5.1 Further Survey

There are no recommendations for further survey.

5.2 Mitigation Measures

5.2.1 Bats

It would appear that individual pipistrelle bats are occasionally using the holes in the soffits of

Easton House as a temporary night time roost. However, as common and soprano pipistrelle bats

are the most common and widespread species in the UK, the roost is considered to be of

negligible conservation significance and the roost is not thought to support a significant number

of bats. Therefore, it is not considered that there is a need to secure a European Protected

Species Licence in order that the proposed works can proceed, providing that a suitable

mitigation strategy can be drawn up and implemented that will not result in damage or

destruction of the roost.

The mitigation strategy will need to show how the proposed works will be undertaken in such a

way as to minimise any potential impacts on bats and avoid a breach of the legislation set out in

Section 4.2.1. The timing of any works to the eaves and roof will therefore be critical and will

need to be undertaken between October and March, as this is the time of year when bats are

typically inactive and are unlikely to be roosting in the eaves (it is not considered that

Easton

House is used as a hibernation site). It is recommended that the removal of the eaves is carried

out under the supervision of an ecologist, to allow for the unlikely event that a bat is discovered.

Again, in order to avoid committing an offence under the Habitats Regulations, the mitigation

strategy will also need to show how access to the existing roost locations will be retained once

the proposed works have been undertaken. Presumably the proposed works will include the

replacement of the fascias and soffits of the boxed eaves. When these are replaced, it is

suggested that gaps are left between the wall and soffit board that will continue to allow bats

access to the cavity within the boxed eave. These gaps will need to be in the same locations as

the current access points, but will need to be no more than 20mm wide in order to allow bats

access.

It is recommended that the mitigation strategy is put together by an ecologist, in partnership

with the architects, and then submitted to the local planning authority for approval prior to the

start of works.

This survey fell so far short of normal standards that HPBC should reasonably have been expected to question its validity. Two independent reviewers and myself agreed that

1. The roost was spuriously considered to be a “temporary night time roost”, an almost unknown phenomenon in bat surveys, and the much more realistic possibility that it was a maternity roost should have been considered by the report. This represents a very serious failing in assessment.
2. The conclusion that no further survey work was required was clearly incorrect and contrary to the relevant guidelines. This represents a very serious failing in assessment.
3. The conclusion that no EPS licence was required for development was incorrect: such a licence would definitely have been required under the circumstances. This represents a very serious failing in assessment.

The decision notice makes no reference to bats.

Opinion: HPBC failed to notice serious errors in the bat survey conducted at the site, ignored the presence of a bat roost in the building when granting permission and imposed no conditions whatsoever on the development application. This represents a very serious failing.

5. HPK/2008/0721 Hole Hill House, Chisworth

Mixed development consisting of B1 office units and 22 no. houses

The ENVIRONMENTAL DESK STUDY accompanying this application states that (in italics):

1.2 The Local Authority has already been consulted with respect to redeveloping the site.

Advice with regard to the property was subsequently sought by the Local Authority from the

Environment Agency (EA). The EA objected to the redevelopment of the site on three counts:

i) an adequate flood risk assessment had not been provided;

ii) a bat survey had not been completed; and,

iii) a desk study had not been undertaken.

1.3 The Land Consultancy Limited (TLC) has been commissioned by John McCall Architects, on behalf of Prisma Colour Ltd, to undertake an environmental desk study for the site so that point iii) can be satisfied. It is understood that points i) and ii) are being addressed by others.

There is no bat survey for the application on the portal and no reference to bats in the decision letter.

Opinion: HPBC ignored the objections of the Environment Agency regarding the need for bat surveys. This represents a serious failing

The above list represents all the developments applications made involving demolition, construction, rebuild or new build in the SK13 postcode area that were granted in 2008 with the exception of [HPK/2008/0283](#) which proposed demolition of an unsafe wall and was not considered.

D. Applications granted -2011 submissions

1. HPK/2011/0001

Roof void conversion, dormer window & solar panel on North Road

No bat survey despite proximity to woodland and known bat roosts. By 2011 HPBC should have been aware of bats on Dinting Road as well as roosts on Woodhead Road. This is contrary to advice in Bat Mitigation Guidelines

Opinion: –failure to require bat surveys in an area of high suitability for bats represents a serious failing.

2. HPK/2011/0069 and 0070 New Houses on Pyegrove

No bat surveys were required despite the proximity to woodland and the position between Shire Hill and Manor Park. This is contrary to advice in Bat Mitigation Guidelines

Opinion: –failure to require bat surveys in an area of high suitability for bats represents a serious failing.

3. HPK/2011/0080 Conversion of first and part second floor of the Howard Town Mill building to provide a hotel

Applicant answers no to 13a, indicating no bats have been found in any surveys that have been carried out at the site previously. Highly unlikely in view of proximity to Glossop Brook and status as disused mill. Local people are well aware of the presence of bats on the top floor of Lux Lux in the 1980s and the known presence of bats at Easton House and their likely presence at Sandhole, together with the type of development indicates that HPBC should have been aware that bats were more than likely to occur at this site. HPBC were unable to provide me with any bat surveys conducted at the site as of 7 July 2012. I believe that HPBC failed in their duty to assess threats to bats by development at this site and because half of Glossop knows that the top floor was full of bats there is no point pretending that there really might not have been bats at this site. Certainly if the minimum required survey effort had been made there is no question that bats would have been found, allowing some mitigation plan to have been performed.

Opinion: - Failure of HPBC to assess and protect the bats at Howard Town Mill represents an extremely serious failure to assess risks to bats in a proper manner.

4. HPK/2011/0166 two houses on Wren Nest terrace.

The proximity of the site to a water course (<100m) and a major treeline (<50m) from Shrewsbury Street to Glossop Brook Road indicates that bat surveys were required to assess impacts unless good reason were known why bats were unlikely to occupy the area.

Complaint: HSBC failed to assess the threat to bats by this development.

HPK/2011/0359 convert vacant office building into dwelling

This site is within 3m of a water course and 120m of excellent bat habitat at Manor Park.

A daytime assessment and a dawn activity survey are included in the application. The dawn activity survey found evidence of swarming bats at one end of the building. The survey lasted two hours, and the last bat detected was 14 minutes before sunrise. An extract from the survey follows (in italics)

Pipistrelle bats – which tend to roost in crevice situations associated with the exteriors of buildings – typically return to roost by around 20 minutes before sunrise. There was constant feeding activity by at least 2 common pipistrelles leading up to this time and 2 bats were seen to “swarm” around a gable close to the time when these bats return to roost. Although they did not return to roost in the building on this occasion, the activity is indicative of the fact that the building possibly is used at times by roosting pipistrelles. The photographs below show the gable end; and it’s chimney in more detail. There is a gap in the mortarwork of the copings stones typical of the sort of roosting place used by small numbers of pipistrelle bats:

3

The Anabat only recorded common pipistrelle bats, but some bats heard by observers were not recorded, as the machine was located away from the observers. Although 3 or 4 bats thought possibly to be of species that roost in lofts, were heard briefly near the start of the survey, there was no swarming activity indicative of roosting. Pipistrelle bats – which tend to roost in crevice situations associated with the exteriors of buildings – typically return to roost by around 20 minutes before sunrise. There was constant feeding activity by at least 2 common pipistrelles leading up to this time and 2 bats were seen to “swarm” around a gable close to the time when these bats return to roost. Although they did not return to roost in the building on this occasion, the activity is indicative of the fact that the building possibly is used at times by roosting pipistrelles. The photographs below show the gable end; and it’s chimney in more detail. There is a gap in the mortarwork of the copings stones typical of the sort of roosting place used by small numbers of pipistrelle bats:

Conclusions.

There was no evidence at the dawn survey or within the loft to suggest typical loftdwelling species of bat, such as the brown long-eared, roost here.

I conclude that this development will not impact on the favourable conservation status of bat species that typically dwell within lofts.

There were no pipistrelle bats roosting in association with the building at the time of the survey, but these bats move around frequently between known roosting places.

There is a medium to high risk of some, probably casual, use of the building by small numbers of pipistrelle bats, in particular the chimney illustrated.

4

Re-roofing and re-pointing works could impact on roosting bats if an appropriate methodology isn’t followed to minimise the risk of harming a bat or bats in the course of the work and/or excluding bats from a roost.

The impact of the work is unlikely to be so significant that a European Protected Species Licence is needed to cover it, but due care still needs to be taken to ensure an offence is not committed under the Wildlife and Countryside Act of 1981.

4

Re-roofing and re-pointing works could impact on roosting bats if an appropriate methodology isn’t followed to minimise the risk of harming a bat or bats in the course of the work and/or excluding bats from a roost.

The impact of the work is unlikely to be so significant that a European Protected Species Licence is needed to cover it, but due care still needs to be taken to ensure an offence is not committed under the Wildlife and Countryside Act of 1981.

Recommendations.

These recommendations should be read in conjunction with the conclusions.

If possible do no re-pointing or roofing works in the vicinity of the chimney where bats were seen swarming. Alternatively a methodology should be agreed by a bat consultant to ensure bats can continue to return to roost. See examples in Appendix 1.

If any roofing and/or re-pointing works are to be undertaken in the warmer months (April to October inclusive depending on the severity of the weather) a bat activity survey is needed just beforehand to ensure as far as possible that no bats are present at the time. If such works are done in the colder months a bat consultant should be present as slates/ridges/ flashing and/or coping stones are lifted.

In the absence of a bat consultant, if at any time during the work a bat or droppings that may have come from a bat are found, work must stop immediately. As far as practicable the feature that was sheltering the bat/s should be replaced. Further advice must then be sought before work continues, even if the bat has flown off, either from myself or another bat consultant.

If the project is not under way by May 2012 the dawn survey should be repeated.

The decision letter makes no reference to bats.

Opinion: : The activity surveys conducted were inadequate and insufficient according to Bat Mitigation Guidelines. The high probability of a roost indicates the high probability that a European Protected Species licence would be required for this work to be carried out lawfully, and the proper course of action would have been to conduct the minimum number of surveys recommended in the guidelines for an old church next to a river 100m from a park. HPBC had a duty to recognize the inadequacies of the survey and to respond to the survey finding that there *is a medium to high risk of some, probably casual, use of the building by small numbers of pipistrelle bats* by ensuring the development protected bats. Failure to make an effort to protect, properly assess or mitigate for the effect of the development on bats represents a serious failure.

5. HPK/2011/0405 Norfolk Street partial demolition, rebuilding and modernisation including extended accomodation to the rear and loft conversion

This site is close to bat roosts that HPBC knew about at Kingsmoor Road and Dinting Road. It is close to major treelines and within 200m of excellent bat habitat at Manor Park. The applicant has answered no to question 13a but HPBC had a duty to assume that the answer was possibly yes and required bat surveys to the minimum requirements before granting permission. This represents a failing to protect bats.

6. HPK/2011/0465 – Dinting Lane – detached house.

This application apparently relates to an earlier application that was approved. It is very close to the river, treelines and a roost at Dintng School that HPBC were aware of. If bat surveys to the minimum requirements were not carried out and any necessary mitigation required this represents a failure to protect bats.

7. HPK/2011/0493 Bridge Mills, Tinsel. redevelopment comprising 1,394 sq m of new business floorspace and up to 81 dwellings with all associated engineering operations, vehicle parking and landscaping.

This large site is within 200m of a major waterway and close to a treeline and between two major waterbodies <500m to the east and west. The applicant has

answered no to 13a which is ridiculous based on the pictures in the ecological habitat survey that formed part of the application. That survey makes no reference to bats but the pictures provided indicate a very strong likelihood of bat activity on the site. No bat survey is included in the application, and no explanation for why bat activity surveys were not required is given. The decision notice makes no reference to bats. **Opinion:** HPBC failed to ensure proper assessment of bats and because of the size of the site and its location this represents a very serious failure.

8. HPK/2011/0575 Bankfield Farm, conversion of existing stone barn and lean to, to create 1 no 3 bedroom dwelling, associated parking and landscaping.

This application contains a bat survey to the required standards of effort (three surveys at dusk and dawn). It is the only example I found in this search. The survey results in their entirety are given below in italics.

4.1 3x Bat Dusk and Dawn Surveys. No bats were recorded entering or leaving any building.

4.2 No signs of bat presence found during physical search

No evidence whatsoever of bat activity is recorded in the survey, nor details of which, if any, species of bats are active on the site. The very short results section is unacceptable unless no bats were found on the site. The fact that this is not stated explicitly in the text should have been noted by HPBC and a fuller account of bat activity at the site sought. Any competent ecologist would have recognized that the lack of statement about bat activity and species on site made it impossible to assess properly. It is highly unlikely that there was no activity at a site like this on three suitable dusk and dawn surveys in June. Glossop Bat Group surveyed areas of nearby Town lane and Chapel Brow on 29 May 2012 and found loads of *Pipistrellus* and *Myotis* bats. *Myotis* bats are intolerant of artificial light and if present on the site suitable mitigation would have had to be made in terms of lighting conditions.

Opinion: HPBC failed to assess the risks to bats properly by not determining if there was bat activity at the site or which species utilized the site. This represents a failure to properly assess risks to bats.

E. Omissions and Inaccuracies.

My comments assume that the website hold a complete record of applications and that all file within application are properly labeled.

In addition there are numerous proposals for smaller developments (extensions etc) in which the applicant has answered no to 14a and HPBC have made no attempt to verify the answer even when they have evidence that there are bats nearby.

F. Summary

I believe I have provided sufficient examples of serious lapses in HPBC's assessment and protection of bats between 2008 and 2011 in the SK13 postcode area to warrant a full scale external inquiry into what appear to be enormous failures on the part of HPBC planning department. **The examples represent almost all of the major project applications submitted in the two years reviewed. Of equal concern is that fact that in the two years of decisions I have looked through, not a single**

granted application makes any allowances for bats in the development that is approved. This is a disgrace to Glossop and show blatant disregard for the strict laws that protect bats and set out the local authority's duty to protect bats. The problem appears too serious for an internal investigation to assess satisfactorily.

G. My Role/Interest in this Matter

I was born in Glossop and I live in Glossop. I hold a BSC Hons. Degree in Zoology from the University of Aberdeen and a PhD from the University of Leeds. I hold Natural England and Scottish Natural Heritage licences to disturb and capture bats for scientific purposes. I have experience of bat surveys worldwide since 1996 and since 2007 in respect of planning applications in England, Scotland and Northern Ireland, from minor house alterations to major infrastructure developments, with Corvus Consulting, Belfast. Around October 2011 I became aware that the new clinic on George Street was illuminated in a way that cast light on the Glossop Brook. I had no doubt that this was an error in planning conditions and alerted HPBC planning department. They informed me that they had had no information that there were bats at the Sandhole. I believed them, and consequently formed Glossop Bat Group (www.glossopbatgroup.com) in March 2012, with the aims of learning about the bats of Glossop, how they behave, and to raise awareness of their status and requirements. We conducted surveys in some areas of Glossop and published our first report in June 2012. After publication of that report I began to look at other bat surveys that had been conducted in Glossop using the HPBC planning portal. I was very disappointed with what I found there and feel it is my duty as a Glossopian and a wildlife biologist to make efforts to improve the situation.



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working for our community

My Ref HPK
E-mail *removed*
Direct dial *removed*
Your Ref

By e mail

7 September 2012

Dear Dr Bennett,

Bats and Planning Applications

Thank you for your undated letter concerning the above and received at this office on 8 July 2012, which I am responding to at Stage 1 of the Council's Corporate Complaint handling procedure. You have set out various matters and I will respond using the same order.

As set out in your e-mail I understand you have made an analysis of certain categories of planning applications received by High Peak Borough Council as Local Planning Authority (LPA) referenced by the post code SK13 and that you have identified five applications for the year 2008 and ten applications for the year 2011 of which you are critical. More recently you contacted me about High Peak application HPK/2012/0349.

I believe in the majority of cases I have been able to provide as full a response as can be given. I accept though that in some cases further examination of the particulars may be needed than it has so far been possible to provide. In general though, the Council's adopted processes in relation to protected species and planning applications have evolved to a point where I now hope you would find them to be properly compliant with the expectations which case law and advice, in particular that of Natural England, have established to be necessary. The most recent revisions were made by the Council in 2011 with an up-date to the validation guidelines. Natural England itself substantially revised its advice in 2011. Although you have taken your analysis back to 2008 some of the land-mark case law, in relation to bats for example, has only reached its conclusion in the courts more recently.

Broadly the Council expects all relevant planning applications to be accompanied by bat reports when they are submitted and the criteria to trigger this requirement are those of the Bat Conservation Trust as is recommended in Natural England's standing advice. If the appropriate report is not present the application will normally not be validated. Once an application is received with appropriate reports there are several lines of specialist input which the planning case officer can draw on. In particular specialist professional advice is obtained





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from Natural England, and the Derbyshire Wildlife Trust in accordance with a Service Level Agreement for which an annual subscription fee is paid to the Trust. In addition, as a result of the Alliance with Staffordshire Moorlands District Council, there is opportunity to consult with a degree qualified and experienced ecologist who is a Member of the Institute of Ecology and Environmental Management. Since November 2011 this post holder has been based within the Planning Applications Team. I hope you will agree that this in itself represents a significant opportunity to further develop and improve the methods and procedures followed.

Response to specific planning cases 2008, 2011 and 2012

HPK/2008/0208/ proposed demolition and re-build of 13 apartments, Kinderlee Mill, Marple Road, Chisworth

Your criticism in this case is that the LPA should have obtained all necessary information regarding bats prior to considering the application rather than relying upon conditions requiring bat surveys after permission was granted. This is indeed the currently adopted normal practice and the criticism is understood. It should be noted however that this approach followed the advice of the Environment Agency at the time of the application who responded to the Council's consultation with no objection subject to certain conditions including a bat survey prior to demolition. This application was re-submitted in January 2009 under reference 2008/0780 when the EA was again consulted but on this occasion made no reference to any requirement for bat surveys and the subsequent approval contained no conditions or other reference to bats. You will no doubt be aware that the conversion and development is now substantially underway.

HPK/2008/0349 proposed loft conversion at 10 Park Close, Glossop

Your criticism is that the proximity of this building to bat habitat features such as Blackshaw Clough which you put at 100m and Manor Park which you put at 40m should have led to precautionary consideration of bats in relation to this property. We currently exercise some discretion in requesting bat surveys in relation to individual householder applications. Our currently adopted standard would normally be to at least require a scoping opinion from a bat specialist as to whether any fuller survey should be submitted to accompany the planning application in this case. On this basis your criticism is accepted.

HPK/2008 – 0612 and 0613, demolition of health centre for new primary care centre at George Street, Glossop

Your criticism is that despite an accompanying ecological appraisal making various recommendations none of these appear to have been taken into account, for example by inclusion of conditions, in the permission subsequently granted.





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Regrettably this must be accepted as a fair criticism. A more detailed approach would be required if this application were being considered now. This would certainly include a specialist bat 'scoping' survey which in this case would be likely to lead to a fuller activity survey which would allow any subsequent planning application to incorporate any necessary bat mitigation and compensation provisions backed up with conditions if necessary in the event of any permission being granted. I also understand that with this application you have a particular concern about the spread of new lighting into the Glossop Brook corridor. Clearly if bats had been considered further at the time of the application any appropriate lighting design limits judged necessary could have been considered for incorporation in the permission granted.

HPK/2008/0708 Easton House Glossop – change of use to pharmacy and offices

Surveys were undertaken and submitted with the application although you are firstly critical of the quality of the survey itself, critical of the LPA for not detecting the alleged weaknesses and, secondly, critical that the decision makes no reference to bats. To a great extent the Planning Officers should be able to rely on the surveys where they are submitted by appropriately qualified staff of reputable companies. However, it must be accepted that a clear set of mitigation measures were stipulated by the ecology consultants which should have been incorporated in the approval but were not. By chance this permission has not been implemented and has now lapsed. The building is owned by HPBC and this puts us in a prime position to instigate further survey at the appropriate time in relation to any new planning application. I have alerted the Council's Property Services Manager to the bat issues at these premises.

HPK/2008/0721/ Hole Hill House, Chisworth involving demolitions of existing buildings and a mixed-use re-development – outline.

Your criticism is that no surveys were obtained and no reference to bats was included in the permission despite the recommendation by the Environment Agency (EA) that any permission should include a survey for bats. It is notable that at this date the EA was still seeking surveys post approval which now, as a result of case law and more detailed guidance, is no longer an accepted approach. It is therefore accepted that the approach taken at the time of this application would no longer be acceptable. At least a specialist 'scoping' survey would be required and if this recommended a fuller bat activity survey this would be required to accompany the application. This proposal was re-submitted in January 2012 as an application for an extension of time. Regrettably no information regarding bats accompanied the re-application and this should have been obtained before determining this application. However not all the buildings are included for demolition and this means that at the time of any reserved matters application being received full bat survey details can be requested. I





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propose to write to the owners advising of these requirements notwithstanding the outline consent granted.

HPK/2011/0001 roof void conversion with dormer window and solar panel

Your criticism is that a bat survey should have accompanied this application. We currently exercise some discretion in requesting bat surveys in relation to individual householder applications. Our currently adopted standard would normally be to at least require a scoping opinion from a bat specialist as to whether any fuller survey should be submitted to accompany the planning application in this case. On this basis your criticism is accepted.

HPK/2011/0069 erection of a single dwelling

Your criticism is that no bat survey or bat consideration was made despite the habitat being conducive to bats. Our current approach would not normally trigger a requirement for a bat survey or assessment in relation to a proposal of this type.

HPK/2011/0070 erection of a single dwelling

Your criticism is that no bat survey or consideration was made despite the habitat being conducive to bats. Again, our current approach would not normally trigger a requirement for a bat survey or assessment in relation to a proposal of this type.

HPK/2011/0080 conversion of 1st and part 2nd floor of Howard Town Mill to hotel

Your criticism is that a bat assessment should have accompanied the application. As an element within a larger scheme with a history of permissions this site needs further fuller consideration. It is accepted that the implications for bats need to be assessed for applications at this site.

HPK/2011/0166 two houses on Wren Nest Terrace

Your criticism is that no bat survey or consideration was made despite the habitat being conducive to bats. Our current approach would not normally trigger a requirement for a bat survey or assessment in relation to a proposal of this type.

HPK/2011/0359 Conversion of vacant office into dwelling

Your criticism is that despite a bat survey accompanying the application with details of bats associated with the extant property the decision notice made no reference to bats. You are also critical of the quality and thoroughness of the bat surveys submitted by the applicant's





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appointed ecological consultants. As I have commented elsewhere above the Planning Officers should be able to rely on the adequacy and competency of bat surveys submitted by the recognised professionals. It should be noted that this application was a re-submission of one that had been withdrawn, in part at least, because of absence of bat information when first submitted. The bat information submitted with the new application was reviewed by an officer of the Derbyshire Wildlife Trust and ultimately the advice was that the development could proceed subject to the incorporation of the recommendations of the applicant's bat survey and report. Reference to this was included in the Planning Officer's report and condition 4 of the permission stipulated that "The development shall be carried out in strict accordance with the ecological report submitted with the application, including provision of any proposed details of habitat protection / creation."

HPK/2011/0405 partial demolition, extension and loft conversion – Norfolk Street

Your criticism is that despite proximity to bat roosts and likely bat foraging habitat no survey or bat assessment was obtained.

We currently exercise some discretion in requesting bat surveys in relation to individual householder applications. Our currently adopted standard would normally be to at least require a scoping opinion from a bat specialist as to whether any fuller survey should be submitted to accompany the planning application in this case. On this basis your criticism is accepted.

HPK/2011/0465 proposed detached house – reserved matters for previously granted outline ref 0155 approved June 2011

Your criticism is that no bat survey or consideration was made despite the habitat being conducive to bats. Our current approach would not normally trigger a requirement for a bat survey or assessment in relation to a proposal of this type.

HPK/2011/0493 Bridge Mill, Tinsel

Your criticism is that no bat survey or consideration was made despite the habitat being conducive to bats. Our current approach would not normally trigger a requirement for a bat survey or assessment in relation to a proposal of this type. I would add that specialist conservation advice was received in relation to this application from the Derbyshire Wildlife Trust and consideration was given to an ecological report which accompanied the application. Reference was made to ecology in the planning officer's committee report and condition 16 of the permission sets requirements for further survey to accompany any future reserved matters application. The applicant's ecology report recommended provision of bat and bird boxes within retained tree margins to the developed site.





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HPK/2011/0575 Barn Conversion, Bankfield Farm

Your criticism here is that the bat survey work which accompanied the application was in your view inadequate to the extent that the survey results themselves were not present, merely the concluding recommendation. It is accepted that a report should set out the actual results not least in order to provide at least some credence and verification of the overall process.

HPK/2012/0349

With this application you are critical of the standard of the applicant's bat consultant report and you also ask about the time period for public consultation. Specifically you have asked when was this secondary report added to the publicly accessible website. Our records indicate the report was received on Friday 3rd August 2012 and added to the public website on Monday 6th August 2012.

I would be pleased to receive any further comments on individual planning applications as submitted.

I trust that this has brought your complaint to a satisfactory conclusion. However, should you remain dissatisfied you may now request for it to be reviewed at Stage 2 by Mr D Larner, Executive Director, Regeneration, responsible for the Planning Applications service.

Yours sincerely,

M W Green

Planning Applications Manager
High Peak Borough Council &
Staffordshire Moorlands District Council
removed



8th September 2012

To: Dai Larner

Executive Director, HPBC

Dear Mr Larner,

I refer to my complaint about the treatment of bats in planning applications around Glossop, and the response from Mr Green dated 7th September 2012. I do not consider this matter satisfactorily resolved and request that you review it as stage 2 of your complaints procedure.

Whilst Mr Green's response satisfactorily addresses my comments about specific examples of planning applications where the potential effects on European Protected Species were not properly assessed or considered, it does not address my actual complaint which was **"the absolute failure of High Peak Borough Council to fulfill its obligations under The Natural Environment and Rural Communities Act 2006 and Articles 12 and 13 of the European Union's Council Directive 92/43/EEC of 21 May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora, resulting in numerous breaches of the Wildlife & Countryside Act 1981 (as amended), The Countryside & Rights of Way Act 2000 and The Conservation of Habitats and Species Regulations 2010 with respect to bats in Glossop"**. It is apparent from Mr Green's response that 1) no examples of development sites that required action to protect bats are available and 2) no attempt has been made to answer my actual complaint, other than offer evidence supporting it.

Taking the Howardtown Mill development as an example, Mr Green acknowledges that "as an element within a larger scheme with a history of permissions this site needs further fuller consideration. It is accepted that the implications for bats need to be assessed for applications at this site". Mr Green makes no specific proposals for further consideration of this matter, nor does he refer to any bat surveys carried out at the site. Therefore I presume that "further fuller consideration" of this matter falls within the scope of Part 2 of your complaints procedure. I suspect that the entire Howardtown Mill development was permitted without any meaningful bat surveys whatsoever, and that this is representative of HPBC's complete failure to protect bats throughout the area before 2012.

A satisfactory response to this complaint will include any evidence that HPBC have set out conditions protecting bats in local permitted developments in the past, or acknowledgement that things have gone seriously wrong and a willingness to identify the cause of the problem in order to ensure that in future bats get the protection they are entitled to under law.

You will be aware that two planning applications in the area validated this year acknowledge the presence of bat roosts on the site which require European

Protected Species licensing and mitigation. This is clearly a great leap forward, but one of these sites was originally validated without a bat survey and it was due to my comment on the application (HPK/2012/0339) that the developers were informed that bat surveys were required. Prior to 2012 I have been unable to find a single example of a planning application in the area where the presence of European Protected Species on site was recognized, and licensing was required. It is beyond the bounds of possibility that bats have only recently begun to roost in the High Peak, and that species such as brown long-eared bats are recent additions to our local fauna. I am encouraged by Mr Green's comments that an ecologist has been part of the planning team since November 2011. However the fact that I have had to make equally serious objections to, or comments on, a number of planning applications validated since July 2012 because they do not include adequate bat surveys, indicates that the neglect I have complained about is ongoing.

Thanks,

Daniel Bennett

By email: mampam@mampam.com
mampam@gmail.com

Dear Dr Bennett

Bats and Planning Applications – High Peak Borough Council

Thank you for your further e-mail dated 8th September 2012 requesting consideration of your complaint at Stage 2 of the Council's Complaints Procedure. The purpose of the second stage of the Complaints Procedure is for me as Director to review the response given at Stage 1 and consider any points raised by you as complainant following receipt of the Stage 1 complaint response.

Having read the response given by Mr Green at Stage 1 my immediate reaction is that this is both a full and detailed response. On a case by case basis a considered response is given to the complaints you have raised. The criticisms you have made are accepted frankly and openly where that is appropriate. I am not sure that the Council could be reasonably expected to say any more. We are grateful to you for bringing the matter to our attention.

You have asked in this case either that the Council should identify planning applications where conditions have been used to regulate impacts on bats or to admit wrong and express willingness to put matters right. On reviewing the Stage 1 reply I consider that it should be apparent from that response that all of these points already apply. For example, whilst not overtly referring to bats in the decision notice for application reference HPK/2011/0359, condition 4 effectively picked up on the bat issues that had arisen in consideration of the application.

Regrettably, as admitted in the Stage 1 response there are however instances, which you have highlighted, where omissions have been identified. Finally the response sets out in broad terms the approach which is now intended. Further to this it is Mr Green's intention that the ecologist based with the Council's planning team should have an increased input in order to continue the up-date of our systems in relation to Protected Species.

I hope therefore that you might accept that the response given recognises the concerns you have rightly raised and that, as a result of the measures we have now put in place, there is a firm basis to believe that omissions in relation to Protected Species whilst they may have been identified in the past will not arise in future.

We take our responsibilities for ensuring the protection of wildlife seriously and are grateful for the assistance that you have given us to improve our procedures.

I trust that this Stage 2 review has brought your complaint to a satisfactory conclusion. However, should you remain dissatisfied; on this occasion we feel nothing further can be achieved through our internal complaints procedure and will waive Stage 3, thus allowing you to refer the matter directly to the Local Government Ombudsman who will give consideration to conducting an independent review.

Full contact details for the Ombudsman are as follows:-

Local Government Ombudsman
PO Box 4771
Coventry
CV4 0EH.
Telephone: 0300 0610614

Yours sincerely

Dai Lerner
Executive Director