

BATS AND TREES IN ENGLAND

Some bat species rely exclusively on trees for roost sites; others use them for part of the year. This leaflet outlines legislation, which must be taken into account when working on trees.



This note is for guidance only, and should not be interpreted as law. BCT will not be held responsible for any legal action arising out of this guidance.

Obligations relating to bats – foresters and tree surgeons must be aware of the following regulations, as they apply to works undertaken on trees.

The Wildlife & Countryside Act 1981

The Act applies in England, Scotland and Wales, and provides protection for all bats and their roosts and requires consultation with the appropriate Statutory Nature Conservation Organisation (SNCO) - English Nature in England, *before* carrying out activities which might harm or disturb bats or their roost – regardless of whether the bat is in the roost at the time. Similar legislation applies in Northern Ireland and the Isle of Man.

Countryside and Rights of Way Act 2000

The CROW Act applies only to England and Wales, and importantly adds the word “reckless” to the offence of damaging or destroying a place a bat uses for shelter or rest, or disturbing a bat while using a roost. This has implications for all those involved in the management of trees, because now that bats and roosts are protected from reckless (as well as intentional) destruction/disturbance, inspection of trees is necessary to ensure they are not/have not been used by bats.

EC Council Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora, 1992

This sets down requirements for wildlife conservation in EU countries. All bats are in Annex IV, which includes animal and plant species of Community interest in need of strict protection. Some bat species are also in Annex II, which includes animal and plant species of Community interest whose conservation requires the designation of Special Areas of Conservation. The Directive is implemented in the UK through The Conservation (Natural Habitats, &c.) Regulations 1994. Under this, it is an offence to damage or destroy a breeding site or resting place of any bat, or to deliberately capture, kill or disturb a bat. In the UK, therefore, works to structures that would disturb bats or their roosts need to be granted a Habitats Regulations Licence if they would contravene the Habitats Regulations. In England, an application for a Licence should be made to the Department of Environment, Food and Rural Affairs (DEFRA) where bats are likely to be affected by works to trees. This application should be made well before the works are due to be undertaken to allow time for any necessary survey work.

Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention)

Within this global convention the Agreement on the Conservation of Bats in Europe (1991) establishes a mechanism for international collaboration to conserve

bats and their habitats, including foraging habitats. The UK is one of the parties to the Agreement. The Agreement has its own reporting procedures to identify activities carried out to meet its agreed plan.

Planning Policy Guidance Note 9 (PPG 9) Nature Conservation

PPG 9 gives direction to local planning authorities and others in their decision-making with respect to land use and development. In PPG9, paragraph 47 states “the presence of a protected species is a material consideration when a local planning authority is considering a development proposal which, if carried out, would be likely to result in harm to the species or its habitat . . .” All bats in the UK are protected species.

Obligations relating to trees – foresters and tree surgeons must be aware of bats when carrying out any work to trees.

The Hedgerow Regulations 1997

This provides for the conservation of “important” hedgerows, including constituent trees, as defined in the Regulations. The presence of a protected species (bats) is relevant and included when assessing whether a hedgerow is important. Application to remove a hedge must be made to the local planning authority under the Hedgerow Regulations. A decision on whether the hedgerow is deemed “important” will be based on consultations and research undertaken.

Forestry Commission Felling Permissions

Permission is normally required from the Forestry Commission (via a Felling Licence or approval under a Dedication Scheme) to fell growing trees (but not lopping/topping) except in the following cases: -

- If less than 5 cubic metres is felled in a calendar quarter on your property, and not more than 2 cubic metres are sold
- If the felling is part of a Plan approved by the Forestry Commission
- Felling fruit trees or trees growing in a garden, orchard, churchyard or designated public space (e.g. under the Commons Act 1899)
- Felling trees which, when measured at a height of 1.3m, have a diameter of 8cm or less, if thinnings have a diameter of 10cm or less, or if coppice or underwood have a diameter of 15cm or less
- Trees needing to be felled to implement development authorized by the Town & Country Planning Act 1990, or to enable work to be carried out by statutory undertakers
- If trees are dead or dangerous
- If trees have to be felled because of an Act of Parliament.

(If the wrong trees are felled and there is no valid FC permission, anyone involved can be prosecuted.) The FC does not make reference to bats in its permissions, so the forestry workers involved should be aware that bats/roosts may be present and make the necessary inspections, **even if** the FC has given its permission to fell trees.

Tree Preservation Orders (TPOs)

The law relating to TPOs is in Part VIII of the Town & Country Planning Act 1990 (amended by Section 23 of the Planning & Compensation Act 1991) and in the Town & Country Planning (Trees) Regulations 1999. For details see Tree Preservation Orders, a guide to the law and good practice (DETR, March 2000); chapter 6, paragraph 6.3 makes specific reference to bats.

A TPO is an order made by a local planning authority which in general makes it an offence to cut down, top, lop, uproot, willfully damage or destroy a tree without the planning authority's permission. Anyone who has good reason to think that a tree should be preserved has a right to apply to their local authority for such an order – even if the tree is not on their property. However, the presence of a bat roost is not a reason for a TPO to be placed on a tree, nor can a TPO be used to thwart the reasonable use or development of land. The purpose of a TPO is to preserve trees for reasons of amenity and to enhance the appearance of the environment. However, these trees are often old and may have cracks, crevices and hollows that are used by bats, so inspection of trees should always be undertaken prior to the works. There are some cases where the planning authority's permission is not needed to work on a protected tree – see DETR's *Protected Trees, a guide to tree preservation procedures* – although the planning authority should still be notified of any works. Trees within well-managed woodlands are unlikely to be granted TPOs.

Highways, Rights of Way and Public Services

Local and national authorities have to cut back branches or fell trees which obscure public rights of way, street lights or sight lines along highways. Trees can be removed or cut back by railway and airport authorities, land drainage authorities, electricity, telephone, and pipeline managers.

Conflicts of Interest

Protected species legislation can conflict with human health and safety legislation. Compromises are sometimes achievable, and there have been cases where branches have been propped up, and tall stumps harbouring bat roosts guyed. If a roost has to be disturbed, your SNCO should be informed, and its advice followed. If a tree/branch has to be cut, sometimes the section containing the bat roost can be strapped to a sound tree nearby; bat roosting boxes on nearby trees may also help – your SNCO will advise.

Land Development and Planning

In all cases, bat conservation is most successful if considered as part of the planning process, rather than trying to save roosts when work has already been approved. Talking at an early stage to those involved can often save a bat roost, or at least minimize the damaging effect by influencing the management plans for

woodlands and open space, planning policies in development plans, and planning permissions of individual developments. Successful protection can often be achieved by education and reasoned argument, particularly in the early stages of any proposed change. Recourse to the courts to try to resolve problems is an expensive and often frustrating process, and should be used as a last resort.

Trees and Boundaries

House owners should also be aware of the legislation relating to bats and trees in their garden. Branches overhanging a neighbouring property can be legally cut by the neighbour, but s/he must also have regard to the protected species legislation above and take care not to injure the tree. (The cut tree parts should legally be returned to the tree's owner, but in practice it is best to discuss the need to cut neighbouring trees with the owner first.)

References

Please enclose a SAE to the appropriate address if you require a copy of these leaflets.

Bats and Trees, a guide to the management of trees – The Bat Conservation Trust 2000

Tree Felling, getting permission – The Forestry Commission 2000

Protected Trees, a guide to tree preservation procedures – DETR 1999 (from your LPA)

Tree Preservation Orders, a guide to the law and good practice – DETR 2000

PPG 9: Nature Conservation – DOE 1994 (details of cost from HMSO)

Trees and Bats, Guidance Notes 1 – Arboriculture Association 1998 (details of cost from AA)

Contacts

English Nature, Northminster House, Peterborough, PE1 1UA
Tel: 01733 455000 www.english-nature.org.uk

Forestry Commission, 231 Corstorphine Road, Edinburgh, EH12 7AT
Tel: 0131 334 0303 www.forestry.gov.uk

Arboricultural Association, Ampfield House, Ampfield, Romsey, SO51 9PA
Tel: 01794 368717 www.trees.org.uk

Tree Advice Trust, Alice Holt Lodge, Wrecclesham, Farnham, GU10 4LH
Tel: 01420 22022 www.treadviceservice.org.uk

Department of Environment, Food and Rural Affairs (DEFRA), European Wildlife Division, Zone 1/08, Kite Wing, Temple Quay House, 2 The Square, Bristol, BS1 6EB
Tel: 0117 372 8182

**The Bat Conservation Trust, 15 Cloisters House,
8 Battersea Park Road, London, SW8 4BG
Tel: 020 7627 2629
www.bats.org.uk**

**The Bat Conservation Trust is the only national
organisation solely devoted to the conservation of
bats and their habitats. Write for an information
pack and membership details.**

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