

A428 Black Cat to Caxton Gibbet improvements

TR010044

Volume 9

9.14 Joint Position Statement on matters relating to Habitats Regulations Assessment and mitigation

Planning Act 2008

Rule 8(1)(k)

Infrastructure Planning (Examination Procedure) Rules
2010

August 2021

Infrastructure Planning

Planning Act 2008

**The Infrastructure (Examination Procedure)
Rules 2010**

**A428 Black Cat to Caxton Gibbet
improvements
Development Consent Order 202[]**

**9.14 Joint Position Statement on matters relating to
Habitat Regulations Assessment and mitigation**

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1 Introduction

- 1.1.1 This Joint Position Statement (the Statement) has been produced by Highways England (the Applicant) in response to Action no.7 arising from the Issue Specific Hearing (ISH) 1 [EV-016] held on 18 August 2021, at which the Examining Authority (ExA) requested that the Statement be prepared and submitted by the Applicant at Deadline 1 of the Examination.
- 1.1.2 The Applicant confirmed to the ExA during ISH 1 on 18 August 2021 that a workshop between the Applicant and Natural England was planned to be undertaken on 23 August 2021. Within the workshop, the Applicant presented further rationale and evidence as to why the Habitat Regulations Assessment: No Significant Effects Report [APP-233] has concluded that there would be no likely significant effects on the conservation status of Barbastelle bats within Eversden and Wimpole Woods Special Area of Conservation (SAC) as a result of the construction and operation of the A428 Black Cat to Caxton Gibbet Improvement Scheme (the Scheme).
- 1.1.3 The following Interested Parties identified by the ExA [EV-016] were requested to contribute to the development of the Statement by Deadline 1:
- a. Natural England.
 - b. The Applicant.
 - c. Cambridgeshire County Council¹.
 - d. Bedford Borough Council.
 - e. Central Bedfordshire Council.
- 1.1.4 The positions of the Applicant and Natural England (see **Table 1-1**) were agreed at the meeting held on 23 August 2021 and through subsequent correspondence on 24 and 25 August 2021, which form the basis of the Statement. Subsequent to this, the Applicant shared these positions with the host authorities on 26 August 2021 who were given the opportunity to complete their respective sections of the document for submission at Deadline 1.
- 1.1.5 A full recording of the meeting between the Applicant and Natural England was made available to the host authorities on 26 August 2021; this was re-shared following notification of a file error in what was originally shared.
- 1.1.6 A copy of the minutes from the workshop was shared with the host authorities on 31 August 2021, following approval from Natural England.

¹ Jointly representing South Cambridgeshire District Council (SCDC), Huntingdonshire District Council (HDC) and Cambridgeshire County Council

Table 1-1. Joint Position Statement between Natural England, the Applicant and the local authorities at Deadline 1 (31 August 2021)

Natural England	The Applicant	Current Position	Cambridgeshire County Council (inc. HDC and SCDC)	Bedford Borough Council	Central Bedfordshire Council
<p>Natural England does not consider there is sufficient information available to rule out likely significant effects on the Barbastelle bat population of Eversden and Wimpole Woods SAC, in view of the generally recognised foraging limit of barbastelle bats of 20km², the small sample size of bats tracked from the SAC, and the narrow seasonal variation of bat tracking and lack of male bats tracked.</p> <p>With regard to information presented</p>	<p>The Applicant presented information to Natural England during the workshop held on 23 August 2021 which visually presented historical data collated by the Applicant and others showing the recorded movements of Barbastelle bats in the area surrounding the Scheme.</p>	<p>The Applicant acknowledges Natural England's position and has agreed to undertake further bat surveys, subject to obtaining the necessary consents and agreements, the scope of which seeks to collate further evidence to inform the available baseline. These surveys are being undertaken without prejudice to the Applicant's position that sufficient information already exists to rule out likely significant effects on Eversden and</p>	<p>CCC/HDC/SCDC were not present at the workshop held on 23 August 2021. A recording of the workshop was supplied at 12:00 on 26 August 2021. Unfortunately, it only worked for the first 10 minutes and no meeting notes were provided.</p> <p>CCC/HDC/SCDC are supportive of Natural England's position. Where there is uncertainty about the impact on the bat population, the precautionary principle should apply, and likely significant</p>	<p>A copy of the Statement was shared with Bedford Borough Council on 26 August 2021 for input.</p> <p>Awaiting response.</p>	<p>A copy of the Statement was shared with Central Bedfordshire Council on 26 August 2021 for input.</p> <p>Awaiting response.</p>

² See for example: [Home range use and habitat selection by barbastelle bats \(Barbastella barbastellus\): implications for conservation. \(cabdirect.org\)](#) and [Bats and road construction - Rijkswaterstaat Rapportendatabank \(overheid.nl\)](#)

Natural England	The Applicant	Current Position	Cambridgeshire County Council (inc. HDC and SCDC)	Bedford Borough Council	Central Bedfordshire Council
<p>to Natural England during the workshop held on 23 August 2021, Natural England have noted with regard to the core area for barbastelle (source: South Cambridgeshire Biodiversity SPD. July 2009) there is no indication as to how this area was determined however as this document is now more than 12 years old it should only be used as a guide as the Core Sustainance Zone of barbastelle bats from the SAC may have since changed.</p> <p>Natural England advises that case law such as Sweetman 2013 directs that the test of likely significance is</p>		<p>Wimpole Woods SAC.</p>	<p>effects to SAC bats should be fully examined within the scope of an Appropriate Assessment.</p>		

Natural England	The Applicant	Current Position	Cambridgeshire County Council (inc. HDC and SCDC)	Bedford Borough Council	Central Bedfordshire Council
<p>intended to establish the 'possibility of an effect', which is a low bar for screening purposes</p> <p>Natural England is also of the view that where there is uncertainty, that the precautionary principle should apply, and that likely significant effects to SAC bats should be more fully examined within the scope of an Appropriate Assessment. This is consistent with the Waddenzee ECJ Case C-127/02, 7 September 2004. In summary, we consider there to be scientific uncertainty stemming from a lack of baseline data. There is reasonable scientific doubt as to</p>					

Natural England	The Applicant	Current Position	Cambridgeshire County Council (inc. HDC and SCDC)	Bedford Borough Council	Central Bedfordshire Council
the absence of such effects.					
<p>Natural England is concerned by the comment within the application for the Scheme and the associated HRA that 'bats would be tracked for 5 km'. NE noted that as ideally bats should be tracked to their roosts.</p>	<p>The Applicant confirmed in the workshop held on 23 August 2021 that the statement was poorly drafted and has been interpreted by Natural England as something different to its intended meaning.</p> <p>The Applicant subsequently provided explanation, clarifying that the bat surveys undertaken as part of the Scheme did in fact tag and track bats to their roosts, and that a 5km constraint was not applied.</p>	<p>Natural England accepts the clarification provided by the Applicant.</p>	<p>CCC/HDC/SCDC were not present at the workshop held on 23 August 2021.</p> <p>CCC/HDC/SCDC notes Natural England's acceptance on this matter.</p> <p>CCC/HDC/SCDC requires this information to be included within the submission for deadline 1.</p>	<p>A copy of the Statement was shared with Bedford Borough Council on 26 August 2021 for input.</p> <p>Awaiting response.</p>	<p>A copy of the Statement was shared with Central Bedfordshire Council on 26 August 2021 for input.</p> <p>Awaiting response.</p>
<p>Assessment is required of the winter foraging, hibernation and population</p>	<p>At the workshop held on 23 August 2021, the Applicant informed Natural</p>	<p>Further bat surveys within the remainder of 2021 have been discussed with</p>	<p>CCC/HDC/SCDC welcomes the Applicant's confirmation that bat</p>	<p>A copy of the Statement was shared with Bedford Borough Council on</p>	<p>A copy of the Statement was shared with Central Bedfordshire Council</p>

Natural England	The Applicant	Current Position	Cambridgeshire County Council (inc. HDC and SCDC)	Bedford Borough Council	Central Bedfordshire Council
<p>exchange with other known barbastelle colonies in the area to inform the HRA as these are considered important supporting functions to the SAC.</p>	<p>England of the time constraints associated with the Examination timetable and that it may not be possible to fully accommodate the surveys Natural England has requested in its Relevant Representation [RR-076].</p> <p>The Applicant acknowledged Natural England's position and has prepared a scope for further bat surveys which will seek to establish additional evidence to satisfy Natural England regarding the conclusion of no likely significant effects on the bat population at Eversden and</p>	<p>Natural England, the scope of which includes provision for the trapping and tagging of bats within Eversden and Wimpole Woods SAC, or, if this is not possible, in woodlands surrounding the Scheme.</p> <p>The scope includes for the submission of a survey report to the Examination at Deadline 7.</p> <p>In light of the Examination timescales, Natural England has agreed that it will endeavour to expedite the standard processing times for licences covering the trapping and tagging of Barbastelle bats once applications are</p>	<p>survey work will be undertaken to inform the Examination.</p> <p>The time sensitive pressures of the survey work & ExA process is noted.</p>	<p>26 August 2021 for input.</p> <p>Awaiting response.</p>	<p>on 26 August 2021 for input.</p> <p>Awaiting response.</p>

Natural England	The Applicant	Current Position	Cambridgeshire County Council (inc. HDC and SCDC)	Bedford Borough Council	Central Bedfordshire Council
	Wimpole Woods SAC.	received from the Applicant, in order to reduce the lead-in times for surveys where possible.			
Further clarification is required on the extent and scope of the bat surveys undertaken to inform the biodiversity assessment as presented as Chapter 8, Biodiversity [APP-073] for the Scheme regarding bats.	At the workshop, the Applicant presented full details of the bat surveys undertaken and relied upon in the assessments reported in Chapter 8, Biodiversity [APP-073] of the Environmental Statement and the Habitats Regulations Assessment: No Significant Effects Report [APP-233] . As requested by the ExA [EV-016] , the Applicant has prepared a Technical Note (Submission Reference 9.13: Eversden and Wimpole Woods SAC	The Applicant has submitted the Eversden and Wimpole Woods SAC Technical Note [TR010044/EXAM.9.13] at Deadline 1. The content of this Technical Note builds on information previously shared with Natural England by the Applicant on 20 July 2021, and covers the following matters raised by Natural England in its Relevant Representation [RR-076] : a. Barbastelle bat ranges and SAC population	CCC/HDC/SCDC have not been provided with a copy of the Technical Note (Submission Reference 9.13: Eversden and Wimpole Woods SAC Technical Note). Therefore, CCC/HDC/SCDC cannot comment on this matter until Technical Note 9:13 has been reviewed.	A copy of the Statement was shared with Bedford Borough Council on 26 August 2021 for input. Awaiting response.	A copy of the Statement was shared with Central Bedfordshire Council on 26 August 2021 for input. Awaiting response.

Natural England	The Applicant	Current Position	Cambridgeshire County Council (inc. HDC and SCDC)	Bedford Borough Council	Central Bedfordshire Council
	<p>Technical Note) which provides additional information on bat surveys undertaken and the basis for concluding no likely significant effects on Eversden and Wimpole Woods SAC.</p>	<p>interaction with the Scheme.</p> <ul style="list-style-type: none"> b. Severance and fragmentation of winter foraging and hibernation habitats from the SAC. c. Static detector surveys in winter. d. Use of Advanced Licensed Bat Survey Techniques on the Scheme. e. Cumulative (in combination) impacts. 			

2 Joint Position Statement

2.1.1 The Statement is based upon the information and positions summarised within **Table 1-1** of this document.

2.1.2 In summary:

The Applicant acknowledges Natural England's opinion that there is insufficient information available to rule out likely significant effects on the Barbastelle bat population of Eversden and Wimpole Woods SAC. The Applicant, without prejudice to its position that sufficient information has been made available to do so, has therefore agreed to undertake a range of further barbastelle bat surveys, which will seek to address the matter of "whether there are any winter population exchanges of Barbastelle and/or functional links with the Scheme and Eversden and Wimpole Woods Special Area of Conservation (the SAC) during the autumn/winter period?" raised by the ExA on 18 August 2021 at ISH1.

The scope of the further bat surveys is accepted by Natural England and the Applicant as being time critical, both in terms of suitable and optimal survey windows (or remaining part of the survey windows in 2021) and within the constraints of the Examination timetable. As such, Natural England and the Applicant are willing to support each other to identify efficiencies to expedite the planning, completion and review and reporting of findings of these surveys.

The further bat surveys are expected to commence in September 2021, subject to land access and licensing agreements, and will continue through to December 2021 or as late as data can be reasonably reported on before the close of the examination. This timeframe will allow for proportionate survey data to be collected, analysed and reported, and the subsequent findings to be submitted to the Examination by Deadline 7 for consideration by the ExA and other Interested Parties.

In the event that the outcomes of the further bat surveys fail to provide sufficient evidence for Natural England to conclude that the Scheme will not result in likely significant effects on the Barbastelle bat population of Eversden and Wimpole Woods SAC (i.e. the surveys do not, in Natural England's view, eliminate reasonable scientific doubt), Natural England agrees that it will provide objective and impartial advice on the basis of the available evidence to the ExA prior to the close of Examination on 18 February 2022 on the data the Applicant has been able to collect within the remainder of 2021.

Should Natural England and/or the ExA conclude from a review of the further bat surveys data that likely significant effects cannot be discounted in relation to the site's conservation objectives, then the Applicant will prepare and submit a Stage 2 Habitats Regulations

Assessment Report (i.e. information to inform an Appropriate Assessment) to the Examination, which will demonstrate how the information gathered has been applied in relation to the tests applicable to the Habitats Directive (in particular whether the project will adversely affect the integrity of the European site).

The Applicant's view is that the embedded mitigation measures illustrated on the Environmental Masterplan [APP-091] for all bat species would function to adequately mitigate any potential effects on barbastelle bats associated with Eversden and Wimpole Woods SAC, in the event that the Habitats Regulations Assessment needs to progress to Stage 2. Natural England's view is that until there is a full understanding of the potential impacts (of the Scheme on the SAC) it is not possible to determine the appropriate mitigation. Natural England's advice is that should this mitigation be tested at the Appropriate Assessment stage, it should not be treated as 'embedded mitigation' but as specific mitigation for HRA purposes. Natural England's further advice is that it is appropriate in the circumstances and beneficial for the purposes of the Examination to prepare information to inform an Appropriate Assessment at this relatively early stage of proceedings, rather than leave this very late in the 6 months available to the Examining Authority. Natural England has stated that it is willing to provide advice on the submission of information to inform an Appropriate Assessment in parallel over the coming months if the Applicant wishes to maintain its position of 'no likely significant effect'.