



Norfolk County Council

Infrastructure, Infrastructure
Delivery
County Hall
Martineau Lane
Norwich
NR1 2SG

BY EMAIL

Mr Nick Johnson
Planning Services
Norfolk County Council

NCC contact number: 0344 800 8020
Text relay no.: 18001 0344 800 8020

Your Ref: FUL/2024/0022
Date: 20 January 2025

My Ref: [REDACTED] 1002
Tel No.: 0344 800 8020
Email: norwichwesternlink@norfolk.gov.uk

Dear Mr Johnson

Town and County Planning Act 1990 (As Amended)

Planning Application for the Construction of a link road to comprise the dualling of the A1067 Fakenham Road, from its existing junction with the A1270 Broadland Northway, to a new junction with the A47 near Honingham, and associated works (the Norwich Western Link).

I refer to our recent correspondence in connection with how, as the Applicant, we could proceed with the current planning application.

You may be aware that we wrote to Natural England on 22 October 2024 to seek clarification on its position with respect to its objection, as set out in their response to the consultation on our planning application, and the approaches that have informed it.

We received a response to this letter on 11 December 2024 (copy attached). In Natural England's response they state they are "highlighting [their] general approach to licensing casework rather than discussing the specifics of this case". Accordingly, they do not respond directly to the queries we have put to them about the approach they have taken on the Norwich Western Link. As a result, we have not gained any clarity on how Natural England has applied the licensing regime in the case of this project, which was the aim in writing to them.

This response is disappointing given our close collaboration with Natural England over a number of years, including through Natural England's discretionary advice service. Through this engagement, we had sought to understand and address the issues of concern relating to European protected species.

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As recently as summer 2023, when our proposals for the project were well-progressed, we received advice from Natural England regarding our proposals which, while caveated, provided us with reassurance that we were on the right track. It was only in March 2024, days before we were due to submit the planning application, that we became aware that Natural England's position had changed and we had a significant impediment to delivering the Norwich Western Link. Since that point, our serious efforts to understand and resolve the issues Natural England has raised have unfortunately not provided a way forward.

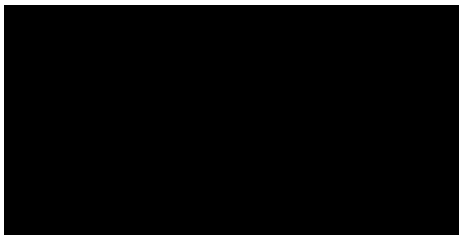
The Leader of the Council also wrote to the Secretary of State for Environment, Food and Rural Affairs the Rt Hon Steve Reed OBE MP and the now former Secretary of State for Transport Louise Haigh MP on 14 November 2024.

A response from the Parliamentary Under Secretary of State for Nature was received on 20 December 2024 (copy attached). This response did not acknowledge or respond to the specific points set out in the Leader's letter or suggest a desire to help to resolve the issues related to Natural England's position on the scheme.

We intend to write to Natural England and Defra again to attempt to seek the clarity we had requested in our original letters. We have not yet had a response from Department for Transport (DfT) Ministers, and we intend to discuss the next steps for the Norwich Western Link project with DfT representatives shortly. However, it is clear that the responses from Natural England and the Parliamentary Under Secretary for Nature so far do not help us to resolve the Natural England objection and we therefore have no option but to withdraw the current application.

In the circumstances I would like to formally request that we now withdraw the current planning application.

Yours sincerely



Senior Project Manager

Date: 11 December 2024
Our ref: 477933
Your ref: [REDACTED] 1002



Norfolk County Council
Infrastructure Delivery
County Hall
Martineau Lane
Norwich
NR1 2DH

Customer Services
Hornbeam House
Crewe Business Park
Electra Way
Crewe
Cheshire
CW1 6GJ

T 0300 060 3900

BY EMAIL ONLY to [REDACTED]

Dear [REDACTED],

Clarification on the application of the Favourable Conservation Status (FCS) test

Thank you for your letter dated 22 October 2024 which was received by Natural England (NE) by e-mail.

You requested that Natural England (NE) provides further information for Norfolk County Council to better understand what type of evidence has been considered by NE when:

- i. assessing the current conservation status of barbastelle bats at both a local and a national level; and
- ii. subsequently applying the FCS test in light of mitigation and compensation measures proposed in connection with the Norwich Western Link project.

I will address the specific questions in the order they are raised in your letter. Given that the planning application is currently in the determination period, we will be highlighting our general approach to licensing casework rather than discussing the specifics of this case. As you are aware, case-specific advice has been provided to NCC's Infrastructure Delivery Team through our Discretionary Advice Service. Please note that we will not be responding to any interpretations, or conclusions, that you have drawn in relation to NE's planning consultation response.

The Habitats Directive

Directive 92/43/EEC "on the conservation of natural habitats and of wild fauna and flora" (the 'Habitats Directive') require Member States to take measures to conserve wild species (as well as habitats). These Directives underpin the UK wildlife legislation, so their provisions and the accompanying guidance published by the Commission are relevant to the application of Natural England's licensing and advisory responsibilities.

The European Commission guidance document on the strict protection of animal species of Community interest under the Habitats Directive (October 2021) ('Guidance Document') sets out guidance on the application of the provisions of the Directive. The primary objective of the Habitats Directive is the maintenance or restoration at favourable conservation status natural habitats and species of Community Interest. The application of the provisions of the directive should consider the precautionary principle and require a species-by-species approach.

The Conservation of Habitats and Species Regulations 2017, transpose the measures required by the Habitats Directive. The Regulations require that a competent authority, including a planning authority, must, in the exercise of any of their functions, have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions.

Assessment of Favourable Conservation Status

You have asked: ‘We would therefore be grateful if NE could clarify which key aspects of the FCS Definition are relevant to assessing the current conservation status of barbastelle at both local and national levels, and in general, how much weight NE attributes to this document when applying the FCS test to inform the view set out in the response.’

Favourable Conservation Status’ (FCS) describes the situation in which a habitat or species is thriving throughout its natural range and is expected to continue to thrive in the future. It includes all occurrences of a habitat or species, both those in the wider environment and those in protected sites. By using evidence and specialist expertise we can define what FCS looks like for habitat and species, and we can use this information to improve the work we do to conserve and recover nature. An FCS definition brings together data and expert opinion on status, trends and threats to species to help inform and assist our staff and partners in making evidence led decisions. If new evidence becomes available this will be considered alongside the published definition, with relevant updates made when required.

For those licensable species where FCS definitions are available, the information can provide useful context to understand a species’ current status, relative to NE’s assessment of its favourable state. In particular, it brings together the best available evidence from which to consider impacts of activities which could either promote, or harm, nature recovery. Not all species subject to licensing have published FCS definitions. In these cases, the best available evidence on status, trends and threats is taken into consideration when considering proposals.

Definitions vary in the degree of confidence in the favourable values, and this is acknowledged within the reports. The definitions are designed to provide favourable values at a country level to provide evidence on context to support local decision making. However, the information provided within a definition can also be directly useful/relevant at a local level. For example, some statements will provide specific advice on local scale metrics, there may be relevant information on range/distribution and or genetically isolated populations that can help to inform understanding at a scale below the national level.

FCS definitions summarise the ecological requirements of a species and provide a view on the future for the species and its conservation. They may highlight anthropogenic and non-anthropogenic threats that could affect a species’ population recovery.

For development activities, Natural England’s consideration of conservation status is relevant in its two distinct and separate roles:

- a) as a statutory consultee providing advice to planning authorities and,
- b) as the competent authority charged with determining applications for licences under the Habitats Regulations.

When determining licence applications, Natural England considers the three licensing tests¹ on a proportionate basis; thus, the justification/evidence required to satisfy the tests increases with the severity of the potential impact on the species, or population, concerned. It will be necessary to understand the likely scale of impact on a species’ population at both local and national levels both with and without mitigation/compensation. NE will consider all the available evidence when providing advice/determining licence applications with the precautionary principle in mind.

¹ <https://www.gov.uk/government/publications/european-protected-species-apply-for-a-mitigation-licence>

The FCS definition of a species is not considered in isolation, but can support decision making in the round. NE assess the evidence presented in an application, use knowledge and experience, published guidance and consult with colleagues with specialist skills, where required.

Data on local population

You have asked: ‘We respectfully request that NE reviews its response in the context of its treatment of FCS and clarifies its approach, taking into account both (a) the modelled position in the FCS Definition at the national level, and (b) the local position, informed by survey data supplied in support of the NWL planning application.’

NE consider the survey data/evidence provided on a case-by-case basis and consider the impact of the proposal at both local and national population scales. For further guidance on the application of spatial scale to the FCS test please see: [Spatial scale within the Favourable Conservation Status test for species licensing - Natural England New Licensing Policies \(Internal Guidance-Annex 1\)](#).

Survey data provided within a planning and/or licensing application is typically a snapshot in time. It may, or may not, encompass the extent of a ‘local population’. It may, or may not, demonstrate trends in populations, depending on the period over which the survey data has been collected from the area. It cannot be assumed that local populations are stable, or increasing, unless the data clearly supports this conclusion. It is also important to consider the implications of recent cumulative impacts and how a local species population may be responding to these.

If an area is of national importance for a species, then impacts on the local population are more likely to impact national status, irrespective of cumulative impacts from other projects/activities.

Application of the FCS test

You have asked: ‘Given the uncertainty surrounding information about barbastelle in the FCS Definition, we would be grateful if NE could clarify how it concluded that the NWL will be detrimental to the maintenance of the population of this species in their natural range.’

In respect to licensing, the relevant licensing body must not grant a licence unless it is satisfied that the action authorised **will not be** detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range. It is for the Applicant to demonstrate that the proposals will not be detrimental.

Derogations (licences) should not be granted if they worsen the already unfavourable conservation status of a population or prevent its restoration at a favourable conservation status. The net result of a derogation needs to be neutral or positive for the species involved. In accordance with the precautionary principle, where there remains uncertainty as to whether a derogation will be detrimental, the licensing authority must refrain from granting the licence.

You have asked: ‘We would be grateful if you could clarify how NE assesses short term, medium term and long-term mitigation measures in the context of the FCS test, the aim of which is to avoid circumstances that would prevent the maintenance of, or restoration to, FCS. Having greater clarity on this point will enable NCC and other future developers and project promoters (within Norwich and beyond) to better address this issue, particularly in relation to the barbastelle species, with a view to achieving economic growth in a manner that respects and facilitates the protection of important species and habitats.’

In line with the Guidance Document, it would typically be expected that (mitigation and) compensatory measures are in place and functional prior to the impacts. The reason for this is to ensure that there is no detriment to the population and to ensure that conservation status is maintained at all times during the project and beyond.

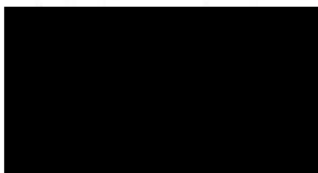
However, it is recognised that in certain circumstances, for practical reasons, a time lag between impact and functionality can be challenging to avoid. The acceptability of this approach will need to be considered on a case-by-case basis. It will depend on many factors including, for example, the species current conservation status, and potential impact of the delay on the population(s). These considerations will help determine whether the impacts will push the species into unfavourable status (if it is currently in favourable condition) or whether it will worsen an existing unfavourable condition.

Approach to impact assessment of individual bat species

NE takes a consistent approach when assessing the licensing tests for all European Protected Species. In some circumstances, mitigation and compensation measures could be acceptable for some species and not others. This is because different species could be impacted in different ways and react differently. We are led by the latest scientific evidence in this respect. Individual species will have varying conservation status' behaviours, ecological requirements, adaptability, presence in and use of the landscape and responses to impacts/mitigation and compensation.

I hope that this letter provides the clarity you were seeking and please do not hesitate to contact me should you require further information.

Yours sincerely



Deputy Director, Norfolk and Suffolk Area Team



Department
for Environment,
Food & Rural Affairs

Mary Creagh CBE MP
Parliamentary Under Secretary of State for Nature

Seacole Building
2 Marsham Street
London
SW1P 4DF

T: +44 [REDACTED]
E: correspondence.section@defra.gov.uk
W: gov.uk/defra

Cllr Kay Mason Billig
Leader
Norfolk County Council (NCC)

Our ref: PO2024/21858/MO

17 December 2024

Dear Cllr Billig,

Thank you for your letter of 14 November about the Norwich Western Link Project and Natural England. I am replying as the Minister responsible for this policy area and I apologise for the delay in doing so.

Natural England (NE) have regularly engaged with the developer and provided consistent advice regarding our concerns that the Norwich Western Link Road proposal would impact barbastelle bats, protected sites and a number of other environmental assets. Our advice regarding their first draft bat licence in July 2023 was a further information request as we did not have sufficient information to reach a satisfied decision. Our advice regarding their second draft licence application in March 24 was a 'not satisfied' response, due to the lack of information provided, despite working closely with the developer and their consultants in the intervening months.

This demonstrates that the publication of the Favourable Conservation Status (FCS) definition did not change our advice. The reason for this is that all but one of the pieces of evidence included in the FCS definition were already published and known to NE in June 2023 and this informed the advice we gave at that time. By Dec 2023, we were concerned that the developer and their consultants were not properly considering our concerns regarding impacts to bats, protected sites, air quality and soils and so to assist them we provided a summary of the outstanding and unresolved issues from our perspective. We have been consistent in the advice we have given regarding the fact we are unlikely to be able to grant a European Protected Species licence, which was the reason for our objection to the planning application in August 2024.

Since sending our objection letter, NE have continued to engage with both the planning department and the developer team at NCC.

Thank you once again for taking the time to contact us about this important issue.

[REDACTED]
MARY CREAGH CBE MP