

APPLICATION FOR AN AUTHORISATION UNDER SECTION 33 OF THE ROAD TRAFFIC ACT 1988 TO CONDUCT A TRIAL OF MOTOR VEHICLES ON A PUBLIC RIGHT OF WAY

GUIDANCE NOTE: CONSERVATION OF WILDLIFE AND HERITAGE

Protected wildlife and habitats in Powys

Powys is home to numerous species and habitats that are protected under European and/or UK law. The legislation affords very strict protection to some species such as bats, great crested newts, otters and dormouse, for instance, which prohibits killing, injuring and disturbance of such species and damage or disturbance of the places where they live. In addition, certain rivers and areas of land are protected for their nature conservation value and it is illegal to cause damage to them.

Ancient monuments in Powys

Powys also hosts a large number of important archaeological sites, some of which are protected as Scheduled Ancient Monuments (SAMs). Unauthorised disturbance or reckless or deliberate damage of SAMs is illegal.

What this means for local authorities

The Conservation of Species and Habitats Regulations 2010 (as amended) and the Wildlife and Countryside Act 1981 (as amended) require local authorities to consult with Natural Resources Wales (NRW) where consent/permission/authorisation may be given for an activity affecting a site of European or UK nature conservation importance.

Where sites of European importance (Special Areas for Conservation or Special Protection Areas) are concerned local authorities must also specifically assess whether the proposed event is likely to have a significant effect on any of the protected features of a site. This is a legal requirement and the County Council will follow NRW's guidance issued for competent authorities undertaking such assessments.

Any negative impacts on a European or UK protected site's features must be avoided or reduced significantly through mitigation measures or it may not be possible to grant 's.33 authorisation' for an event. With motorised events using unsealed highways for example, that could mean alteration of the route or of the timing of the event, or use of appropriate materials on site to prevent damage to nearby habitat. **In the majority of cases, it is likely that applications for consent can be processed without the need for such assessment and consultation.**

In addition, all local authorities have a legal duty to have regard for the conservation of biodiversity (i.e. all wildlife) when exercising their functions. This means that the County Council may decide to alert event organisers to potential conflicts with wildlife where we are aware of them, e.g. where nesting birds or European Protected Species (EPS) are identified in the vicinity, and advise where further action or advice may be needed to ensure protected/important wildlife is safeguarded.

The Council is not required to consult or seek advice from Cadw (the Welsh Government's Historic Environment Division) in relation to issuing s.33 authorisation that may or may not affect a SAM or other archaeological site.

What this means for event organisers

Organisers will need to consult with NRW prior to submitting an application to the Council to confirm whether the event affects a protected site. If there is a reasonable possibility that protected sites may be impacted by the event, then measures should be put in place by event organisers to avoid or reduce harm to wildlife. The County Council is unable to issue authorisation for events where there is current threat of potential damage to a legally protected site arising from the authorised activity.

Evidence of NRW's consultation responses, including any advice or details of avoidance or mitigation measures designed to safeguard a site, must be provided to the County Council with your application. The County Council will consult NRW before issuing any consent that may result in damage to a protected site. Implementation of any appropriate avoidance or mitigation measures will be included as a condition of your s.33 authorisation.

Motorised events taking place on/within a Site of Special Scientific Interest (SSSI) must also obtain planning consent as required by planning law. Please be aware that you should plan your event and consult with NRW sufficiently in advance in order to obtain any necessary planning consent.

In a very small minority of cases, a public right of way that is crossed by an event's route may also lie in the vicinity of a European protected site. The County Council must, by law, conduct an evaluation of likely significant effects on that site's features based on an assessment of your original application for authorisation, including any accompanying supporting information detailing measures to avoid or reduce damage to the site. Failure to provide adequate information (e.g. NRW consultation responses and or identified mitigation measures) with the initial application or when requested subsequently will result in a delay in issuing a s.33 authorisation.

Where the proposed route for your event does not coincide with any public right of way you will not need to seek 's.33 authorisation' and so Powys County Council will not be required to seek opinion from NRW or conduct a formal assessment of impact on legally protected sites.

However, the protection afforded to species and habitats still remains and event organisers and individual landowners/occupiers have a responsibility to ensure that they comply with relevant wildlife legislation. This means, for example, that if you are aware of an important site, such as a SSSI or SAC, on or near your event route NRW should be consulted at the earliest opportunity. Any landowner or occupier who permits an activity which damages a SSSI on their land could be committing a criminal offence. Similarly, if protected species are reported from the vicinity of the trial route then expert ecological advice should be sought. A suitably qualified and experienced ecologist should, if required, be able to advise what actions should be taken to avoid harm to wildlife and assist any consultation with NRW (e.g. where EPS are affected).

In addition to wildlife considerations, you should also consult with the Clwyd-Powys Archaeological Trust (CPAT) regarding the proposed event route. CPAT are able to provide advice on SAMs on behalf of Cadw (the Welsh Government's Historic Environment Division) as well as a wide range of other archaeological features.

Clwyd-Powys Archaeological Trust
7a Church Street
Welshpool
Powys
SY21 7DL

Tel: 01938 553670
Fax: 01938 552179
Email: trust@cpat.org.uk
Website: www.cpat.org.uk

How can I find out whether protected species and/or habitats are present?

You may consult with Natural Resources Wales, ask the landowner or someone else may tell you that they are there. There may also be records held at Powys' local biological records centre (BIS) that record known protected species and legally protected sites. It is always advisable to check with BIS to see what records are available for the area. (Please note that an absence of records does not mean that species/habitats are absent, merely that they have not been recorded.) See below for details on how to obtain a species report from BIS.

How do I find a professional ecologist?

Powys County Council is unable to provide a list of recommended ecological consultants but the Chartered Institute of Ecology and Environmental Management (CIEEM) has a directory of professional ecologists on their website which you may find helpful, <http://www.cieem.net/members-directory>.

How do I contact the Natural Resources Wales?

Natural Resources Wales
First Floor
Ladywell House
Park Street
Newtown
Powys
SY16 1RD

Tel: 0300 065 3000 (Mon-Fri, 8am-6pm)

How do I obtain a species and habitats report from BIS?

The Biodiversity Information Service for Powys and the Brecon Beacons National Park (BIS) collates and stores species records and habitat data from across Powys. Individuals and organisations can obtain data reports for any specified area of Powys, including the Brecon Beacons National Park. Please note that BIS may charge for this service and they should be contacted directly for advice on fees. You will also need to ensure that someone suitably qualified and experienced is able to interpret the report's information and provide any necessary ecological advice.

How do I contact BIS?

Biodiversity Information Service for Powys and Brecon Beacons National Park
Unit 4 Royal Building
6 The Bulwark
Brecon
Powys
LD3 7LB

Tel: (01874) 610881
Fax: (01874) 624812
Email: info@b-i-s.org
Web: www.b-i-s.org

What information does BIS need from me?

BIS will require a 1:25,000 Ordnance Survey Map(s) 'Explorer Edition' marking clearly all parts of the of the proposed route that are *not* on a road dedicated for use by motor vehicles. Copies of original OS maps will only be accepted if they are of very good quality. Please note that route tracings are not acceptable.

What information do I need to request from BIS?

You will need a report with details of protected/important species and habitats within at least 500m of either side of all parts of the mapped route not using a metalled road. Depending on the length and course of the route it may be simpler and more cost-effective to define the outer limit of the event area and request details of protected/important species and habitats within a 500m buffer of this outer limit. The report should include the following:

- Priority species
- Mobile priority species
- Species of conservation concern
- Locally important species
- Semi-natural habitats
- Protected/important sites