

# Case Report: *R v Bellway Homes*

The end of 2020 saw the English criminal court penalise a housing developer with the highest recorded penalty fine for a crime committed against wildlife. The decision should be welcomed by wildlife welfare advocates as an exemplary case of successful collaboration between environmental authorities, police and the crown prosecution service. However, the decision leaves an echoing concern; are fines a sufficient deterrent for deliberate acts of violence against wildlife?

## Factual background

Bellway Homes is a UK housing developer which was contracted to undertake demolition work at Artillery Place, Greenwich, South East London. The site was host to a roost of soprano pipistrelles, a species of small bat. Prior to carrying out the demolition work, the local planning authority had notified Bellway that it would need to apply for and receive a licence from Natural England, the environmental authority granting these licences. The local planning authority was acutely aware that soprano pipistrelles roost in deserted sites, and this was no exception. Bellway was informed that they would need to apply and receive a licence from Natural England in order to carry out the demolition work, as well as undertaking to take appropriate mitigation to compensate for any damage to the bats' habitat. Notwithstanding the fact that Bellway were aware that they needed to obtain a licence and carry out mitigation, they failed to do either and carried out the demolition work between 17 March – 18 August 2018 resulting in the destruction of the roost.

On 3 December 2018 the Royal Borough of Greenwich's planning department notified the police that Bellway Homes was going to carry out demolition work. After making enquiries with Natural England, it was confirmed that Bellway Homes did not apply for a licence for that specific development.

## Bats in the UK

Bats are a crucial keystone species and account

for a quarter of all species in the UK. Notwithstanding bats' importance the first official IUCN Red List for British Mammals, produced by the Mammal Society for Natural England, Natural Resources Wales, Scottish Natural Heritage (NatureScot) and the Joint Nature Conservation Committee, shows that four of the 11 mammal species native to Britain classified as being at imminent risk of extinction are in fact bats.

Populations of pipistrelles have particularly declined in the last few decades due to the modernisation of our society including changes to agricultural practices reducing their food supply along with the species' reliance on desolate buildings for roosting, making them vulnerable to the growing trend of building renovation and demolition works. This is particularly harmful where toxic remedial timber treatment chemicals are used. The destruction of the bats' roosts has a significant impact on this species as they are long lived, slow-breeding mammals who take a long time to recover from population decline.

As bats typically emerge after hibernation between March and April, their breeding season begins in June and continues over the summer. This means that the roost destruction by Bellway continued into the bats' breeding season preventing the ability for that community of bats to reproduce thus restricting their population growth of a species already in decline.

## The Law surrounding bats

Bats receive protection from two pieces of English legislation. The first, the Wildlife and Countryside Act 1981 (the WCA) lists bats as a "protected animal" under schedule 5 meaning bats receive protection under section 9 WCA. Section 9(1) provides that a person who intentionally kills, injures or takes any wild bat shall be guilty of a criminal offence. Section 9(4) provides protection to bats' habitat by criminalising intentional or reckless damage or destruction to a structure bats are using for shelter or protection and the disturbance of any bat occupying such a structure. Notwithstanding the prohibition of section 9, section 16(3) means that any actions which would otherwise contravene section 9 shall not do so where a person acts in accordance with the terms of a licence granted to them by the

appropriate authority, as long as such actions pursue one (or more) sets of specific sections.

The second piece of legislation protecting bats is the Conservation of Habitats and Species Regulations 2017 (as amended from time to time, the CHSR) which is the piece of legislation which retains the UK's implementation of the Habitats Directive (92/34/EEC) from when the UK remained part of the European Union. The CHSR offers protection to bats as a "European protected species" as all species of bats are listed in schedule 2 CHSR. Regulation 43(1) means any person who deliberately captures, injures or kills any wild bat or damages or destroys a bat breeding site or resting place shall be commit a criminal offence.

As for the WCA, regulation 55 CHSR provides that a person won't be in contravention for breach of regulation 43 where that person obtains a licence from the relevant licensing body (Natural England in England) and carries out actions for specific stated purposes (which can include construction). Under the CHSR where a person is unable to avoid disturbing bats or their roosts, they are required to apply for a licence via completing form A13 (application form for a bat mitigation licence) and carry out certain mitigation measures. These may include:

- i) Altering work methods or timing to avoid bats;
- ii) Creating or improving roosts;
- iii) Creating or improving foraging or commuting habitat; and/or
- iv) Monitoring the roost sites after development.

Once Natural England have received the application, they may choose to grant the licence, refuse to grant or grant subject to the licensee complying with certain specific conditions. Once a licence is granted, provided the licensee acts in accordance with the terms of the licence, they will not be criminally liable for any damage or disturbance to the relevant bat population or its habitat.

## Outcome

Bellway was prosecuted for contravention of regulation 43 CHSR. Upon pleading guilty Wool-

wich Crown Court ordered Bellway to pay a fine of £600,000 in addition to £31,000 of legal costs. This fine is understood to be the largest fine ever issued by an English court in relation to a wildlife crime. This is a welcome recognition from the courts that a stricter and more punitive regime must be put in place for crimes against wildlife. Bellway subsequently stated that it intends to make a £20,000 donation to the Bat Conservation Trust in light of the case.

## Analysis

The case demonstrates that when environmental authorities work cooperatively with the police and the CPS, huge strides can be made in successfully holding persons and organisations to account for wildlife crimes which cause both loss of animal life, suffering and sometimes irreparable loss to biodiversity. As stressed by the Wildlife and Countryside Link in their report, *Wildlife Crime in 2019: a report on the scale of wildlife crime in England and Wales*, it is absolutely critical that environmental authorities and police wildlife crime units receive sufficient funding and training in order for successful collaborations like the Bellway case to become the norm in the face of wildlife crime.

Notwithstanding the successful collaboration between the various enforcement authorities, detection and lack of case evidence remain the principal barriers against successful prosecution of wildlife crime, as many instances of deliberate wildlife crime go unreported or even when brought before the police, are not pursued due to lack of evidence. It is noted that in the Bellway case that Bellway tried to remove the need for them to attain a licence to carry out the works in question, putting the authorities on notice of their actions. It is uncertain whether the offence would have been detected and therefore prosecuted had the authorities not received such notice.

Finally, whilst the size of the fine should be applauded, whether the mere fining of corporations is sufficient to deter commercial entities from deliberately damaging the environment is still questionable. £600,000 may be a large sum of money to smaller organisations, however it represents just 0.18% of Bellway's net operating profit for 2020. The fine pales in light of

such large profit, and with only fines threatening large corporations, there is a substantial risk that many organisations simply “price in” the costs of being convicted for wildlife habitat destruction into their operating model.

If wildlife advocates are convinced that fines are satisfactory, then larger sums should be available to and used by judges when sentencing. It is noted that the UK GDPR provides for maximum fines of £17.5 million or 4% of annual global (whichever is greater), for abuses of personal data committed by organisations, yet we choose not to afford the same punishment for destruction of our natural habitats. If fines are insufficient, there are custodial sentences available under both the WCA and the CHSR and decision-making level management at organisations should perhaps face the risk of penalty fines and, in severe cases, custodial sentences, where they knowingly commit wildlife crime under the guise of their corporations. This would act as a greater deterrent against corporate management supervising wildlife offences from behind the safety of the corporate veil, and could already be brought against company officers, as both the WCA and the CHSR provide that prosecution can be brought against such officers where wildlife crime is committed with the consent, convenience or due to the neglect of company directors.

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## Judicial review of wild bird culling in Wales

The High Court of England and Wales recently handed down its decision on Wild Justice’s judicial review of the Welsh Government’s lethal control regime of wild birds in *Wild Justice v Natural Resources Wales* [2021] EWHC 35 (Admin). Whilst Wild Justice were unsuccessful in their challenge, the decision nevertheless contains some positive silver linings for wildlife welfare advocates.

### Facts

Natural Resources Wales (NRW) is the Welsh public authority with delegated responsibility for various public functions, including the licensing of management activities in respect of wild birds pursuant to the Wildlife and Countryside Act 1981 (WCA). Section 1(1) WCA provides that, unless authorised by a relevant authority, it is a criminal offence for a person to intentionally kill, injure or take a wild bird or take, damage or destroy any wild bird nest or egg.

NRW had used its powers under section 16 WCA to issue several licences which amounted to a derogation to the protections of section 1. These licences permitted authorised persons (being certain land owners) to take or kill six species of wild bird as specified in the licence (namely carrion crow, magpie, jackdaw, feral pigeon, wood pigeon and Canada goose). Under section 16 WCA, activity under the licences had to be for a specified purpose. The stated purpose of the licences varied from protecting land, crops and property from serious risk of damage to conservation of other species wild birds. NRW stated the latter purpose was required to protect birds including curlew, as birds such as carrion crow can prey upon curlew eggs and chicks and there are thought to be less than 400 pairs of curlew left in Wales.

### Challenge

Wild Justice (WJ) brought judicial review challenging the issue of the three general licences on three separate grounds: