

We found the following material relating to the Bat Protocol currently in force for Building 45 (P6) at the Rhydymwyn Valley Works site

NB duplications in email strings have been removed.

Advice from Welsh Government Legal Services (LS) has been withheld under LEGAL PROFESSIONAL PRIVILEGE (LPP) – see covering letter. However an email summarising that advice appears on page3/4 and there is a more formal document at the end of this section.

From: Official 1 (WG)
Sent: 19 June 2017 09:48
To: WG LS Environment Team
Cc: Official 2 WG
Subject: ADDITION RE: Building 45 WAC 1981 Section 10(5) defence

Dear LS,

I have just received the attached copy of opinion from NRW lawyers which may be relevant to my request for advice sent on 16th.

ATTACHMENT WITHELD UNDER LPP.

From: Official 1 WG
Sent: 16 June 2017 10:20
To: LS Environment Team
Cc: Official 2 WG
Subject: FW: Building 45 WAC 1981 Section 10(5) defence

Good morning LS,

Could you please advise us on the correctness of the position adopted by (external stakeholder) below. Whilst I feel his interpretation of WCA sec 10 seems credible, my understanding is that this would be overridden by the more stringent provisions of the Habs Directive as transposed in the Habs Regs 2010.

To my knowledge, the Habs Regs do not provide for the “incidental result- - “ defence offered by WCA 10(3)c.

Could you also advise on the extent to which we could disclose your advice (see Official 2)’s query below).

From: Official 2 WG
Sent: 14 June 2017 08:59
To: Official 1 WG
Cc:
Subject: FW: Building 45 WAC 1981 Section 10(5) defence

(Officer 1)

Could you ask legal services for a view, please

Note that we will not be able to share the view externally (I think) but check with LS on this

Thanks

(Officer 2)

From: Official 1 NRW
Sent: 13 June 2017 15:02
To: Official 1 DEFRA, official 2 WG
Cc: Official 2 NRW
Subject: FW: Building 45 WAC 1981 Section 10(5) defence

Hi

Further to the below, we (NRW) have looked once again at the legislation.

The material issue appears to be the interpretation of Section 10 (5) of the Wildlife and Countryside Act 1981 (as amended).

We have internally discussed the below and we can understand (external stakeholder)'s interpretation of the legislation. However, at this time our interpretation remains unchanged.

In these circumstances, what is Defra's and WG's interpretation of this legislation. Is there any documentation that would inform the interpretation of this legislation?

Many thanks

(official 1 NRW)

From: (External stakeholder)
Sent: 13 June 2017 00:08
To: Official 1 NRW
Subject: RE: Building 45 WAC 1981 Section 10(5) defence

Dear (Official 1 NRW),

Wildlife and Countryside Act 1981 Section 10(5) defence.

Many thanks for your response and your confirmation by phone that you have checked this with NRW's solicitor. I have looked through it very carefully and I am afraid that my interpretation of 10(5) is unchanged.

TEXT WITHHELD UNDER LPP

Best regards, (external Stakeholder)

From: Official 1 NRW
Sent: 12 June 2017 16:48
To: external stakeholder.
Subject: RE: Building 45 WAC 1981 Section 10(5) defence

Dear (external stakeholder)

Thank you very much for your emails and our subsequent telephone conversation in respect of legislation concerning bats under the Wildlife and Countryside Act 1981 (as amended). Our observations are as follows:

TEXT WITHHELD UNDER LPP

I trust this email will be of assistance to you

Yours sincerely

Official1 NRW

=====
From Official 1 WG 14 June2017

Also bearing in mind the building wasn't residential even when in use and there is no consideration of making it residential.

Official 1 WG

From: Official 1 DEFRA)
Sent: 14 June 2017 17:23
To: official 1 NRW
Cc: Official 2 Defra
Subject: RE: Building 45 WAC 1981 Section 10(5) defence

Our lawyers have suggested that NRW lawyers are best placed to advise on this but agree that it is difficult to see how an abandoned building or part of it can be considered to be a dwelling house or indeed have a living area.

Not sure if this helps.

Regards

Official 1 Defra)

From: Official 2 WG
Sent: 14 June 2017 08:59
To: various officials NRW, WG, DEFRA
Cc: official 2 NRW
Subject: RE: Building 45 WAC 1981 Section 10(5) defence

Thanks – we will ask our legal services team for a view on this

Best regards Official 2 WG

From: Official 2 WG
Sent: 18 July 2017 13:13
To: Official 1 NRW
Cc: Official 1 WG
Subject: RE: WCA 1981 - Explanatory Memorandum

Here is the WG view:

The WG view is that we do not consider that it was the intention of drafters (of the WCA 1981) to limit the application of the section 10(5) exception to dwelling houses only. This approach (i.e. to limiting the application of the section 10(5) exception to dwelling houses only) would raise questions relating to acts carried out in any other types of buildings. We consider it a much weaker argument to say that drafters would not have intended to provide a defence to acts carried out in any buildings other than dwelling houses. Therefore the WG view is that it would have been the intention of drafters to allow the section 10(5) defence to apply to any buildings as long as NRW

as the conservation body are appropriately notified, and are given a reasonable amount of time to advise.

If the bats were disturbed, then the defences under section 10(5) may be relied upon as they apply on a broader basis, than to dwelling houses only.

However, in addition to complying with the WCA, all applicable legislation would need to be complied with. Consideration should be given to ensure that the proposed tours of Building 45 would not constitute an offence under the Habitats Regulations 2010. The Habitats Regulations 2010 provide at Regulation 41(1)(b) that a person who deliberately disturbs wild animals, including bats, (as they are included in the list of European Protected Species of Animals in Schedule 2) will be guilty of an offence. The defences provided by Regulation 42 are not relevant given the particular circumstances of this case, and the defences do not extend as widely as the defences available under section 10 WCA 1981.

Regulation 53 of the Habitats Regulations 2010 provides that a licence may be granted in order to carry out certain activities relating to animals or plants.

Best regards

Official 2 WG

From: Official 2 WG
Sent: 17 July 2017 09:55
To: Official 1 NRW
Cc: Official 1 WG
Subject: WCA 1981 - Explanatory Memorandum

Official 1 NRW

I asked the library to look for the EM to the WCA 1981 and this is all they could find – so there's no EM I'm afraid to draw on

Also I spoke to our lawyers and they are unwilling to have a lawyer to lawyer tele conference

I'll summarise the legal advice that I've had later today and email over to you and then I think it's up to you to make a judgement on the different advice in conjunction with your lawyer

Note from Library:

I have had a look for the Explanatory Memorandum and have found several, but they are not published at the same time as the Act. It is the Explanatory Notes that would be published at the same time as the Act, but it was not until 1999 onwards that all Acts have Explanatory Notes (see link below). Since this Act was published in 1981 there isn't an Explanatory Note for it. I have given links to the Explanatory Memorandums below:

Explanatory Notes

<http://biallypr.pbworks.com/w/page/59882375/Explanatory%20Notes>

The Wildlife and Countryside Act 1981 (Variation of Schedule 9) (England and Wales) Order 2010 No 609:

<http://www.legislation.gov.uk/uksi/2010/609/memorandum/contents>

The DEFRA site has 4 relating to the Act:

<https://www.thenbs.com/PublicationIndex/documents?Pub=DEFRA&page=5>

Explanatory Memorandum to The Wildlife and Countryside Act 1981
(Variation of Schedule 5)(Wales) Order 2008

[http://www.assembly.wales/Laid%20Documents/SUB-LD7180-EM%20-%20The%20Wildlife%20and%20Countryside%20Act%201981%20\(Variation%20of%20Schedule%205\)%20\(Wales\)%20Order%202008%20-%20EXPLANATOR-21072008-93834/sub-ld7180-em-e-English.pdf](http://www.assembly.wales/Laid%20Documents/SUB-LD7180-EM%20-%20The%20Wildlife%20and%20Countryside%20Act%201981%20(Variation%20of%20Schedule%205)%20(Wales)%20Order%202008%20-%20EXPLANATOR-21072008-93834/sub-ld7180-em-e-English.pdf)

EXPLANATORY MEMORANDUM TO THE WILDLIFE AND COUNTRYSIDE ACT 1981 (VARIATION OF SCHEDULE 9)
(ENGLAND AND WALES) ORDER 2010 2010 No. 609

[http://www.assembly.wales/Laid%20Documents/SUB-LD7953-EM%20-%20The%20Wildlife%20and%20Countryside%20Act%201981%20\(Variation%20of%20Schedule%209\)%20\(England%20and%20Wales\)%20Order%202010%20-09032010-171227/sub-ld7953-em-e-Cymraeg.pdf](http://www.assembly.wales/Laid%20Documents/SUB-LD7953-EM%20-%20The%20Wildlife%20and%20Countryside%20Act%201981%20(Variation%20of%20Schedule%209)%20(England%20and%20Wales)%20Order%202010%20-09032010-171227/sub-ld7953-em-e-Cymraeg.pdf)

Official 2 WG

From: external stakeholder
Sent: 21 August 2017 11:45
To: official 1NRW
Cc: Official 2 DEFRA
Subject: RE: Building 45

Thank you for that clarification.

Best regards,
(external stakeholder)

From: Officer 1 NRW
Sent: 21 August 2017 11:22
To: external stakeholder
Subject: RE: Building 45

Hi (external stakeholder)

Thank you for your earlier telephone call.

Just to confirm NRW has received external advice from contract legal advisors and has been informed that WG solicitors have now looked into the issue.

No advice has appears to have been provided from Defra's legal advisors.

Thanks

Officer 1 NRW

From: external stakeholder
Sent: 21 August 2017 11:17
To: Officer 1 DEFRA
Cc:

Subject: Building 45

****,

I have spoken with ***** this morning. I am very pleased that following receipt of "external" legal advice (other than from external lawyer, who has not as I understand it commented any further) and further advice from DEFRA (though no advice from WG as yet), NRW has accepted and adopted the position that the 10(5) defence under the WAC does apply to Building 45 (and any other site, whether dwelling-house or not). This is a big step forward.

In my view, given that the 10(5) defence is now available, NRW could have approved the proposed limited summer tours under the 10(5) defence for the purpose of allowing me to observe (under my existing survey licence) the response of bats during those tours. However, they declined to do so and instead said in a letter of 10 August 2017 that they wanted the survey proposal to be submitted as a specific project licence request. I have submitted the proposal in this format and NRW is this week considering my project licence application. This is for our proposed survey of bats' response to example summer historic interest tours within building 45. I am hopeful this will be approved, but unfortunately this has all taken so long that this summer has pretty much gone already. Clearly some survey will be required next summer, even in the event that the proposal is approved in time to carry out any survey this year.

Best regards,

For info

From: *****
Sent: 21 August 2017 11:45
To: *****NRW
Cc: *****DEFRA
Subject: RE: Building 45

Thank you for that clarification.

Best regards,

From: Official 1 NRW
Sent: 21 August 2017 11:22
To:
Subject: RE: Building 45

Hi ****

Thank you for your earlier telephone call.

Just to confirm NRW has received external advice from contract legal advisors and has been informed that WG solicitors have now looked into the issue.

No advice has appears to have been provided from Defra's legal advisors.

Thanks

Hi All

Have you had a chance to receive feedback for Defra's or WG legal advisors in respect of defences under Section 10 of the Wildlife and Countryside Act 1981 (as amended)

Do your respective legal advisors concur with the below?

Thanks

Official 1 NRW

From: ****
Sent: 16 June 2017 08:14
To: ****NRW
Cc: ***** NRW
Subject: RE: Building 45 WAC 1981 Section 10(5) defence

LEGAL ADVICE WITHELD UNDER LPP

Kind regards

Official 1 NRW

From: **** NRW
Sent: 15 June 2017 09:55
To: **** WG, DEFRA, NRW
Cc: NRW
Subject: RE: Building 45 WAC 1981 Section 10(5) defence

Hi ****

Thank you for the below email. We very much appreciate your speedy reply

Are your lawyers be able to confirm whether they consider Section 10 (5) to be applicable to any structure or is it only apply dwelling houses

Thanks

From: Official 1 DEFRA
Sent: 14 June 2017 17:23
To: various WG NRW DEFRA
Cc: Officer 2 NRW
Subject: RE: Building 45 WAC 1981 Section 10(5) defence

Our lawyers have suggested that NRW lawyers are best placed to advise on this but agree that it is difficult to see how an abandoned building or part of it can be considered to be a dwelling house or indeed have a living area.

Not sure if this helps.

Regards ****

From: Officer 1 NRW

Sent: 10 August 2017 13:26

To: external stakeholder

Cc: Officer 2NRW

Subject: Re: Building 45 WAC 1981 Section 10(5) defence: is licence needed to do proposed surveys?

(external stakeholder) - thanks a lot for the proposal you sent to us on the 17th July. Our response is attached.

ATTACHMENT WITHHELD UNDER LPP

I'm out of the office until 30th August But (official 2 NRW) is back in next week.

Best Wishes

Official 1 NRW

From:external stakeholder

Sent: 17 July 2017 14:10

To: Official 1 NRW & Official1 DEFRA

Cc: Official 2 NRW & Official 2 DEFRA

Subject: Building 45 WAC 1981 Section 10(5) defence: is licence needed to do proposed surveys?

Dear (official 1 NRW and Official 1 Defra),

I need to prepare to make observations of the response of bats to 10 minute summer historic interest tours within Building 45 at Rhydymwyn Valley soon, or the summer will be over. That would delay progress for another year and delays tend to cost money. Already NRW's challenge to getting on with the proposed survey is adding to costs since the time spent on the present email is additional unexpected preparation time that will need to be added to survey costs, yet NRW and DEFRA have declared they have no funds for this publicly owned site.

My purpose as we have already discussed is to assess what disturbance and at what level may occur to bats in this very large building in the event of such tours being conducted. Your email below and that from **** to **** of 06/06/2017 proposes that I should apply for a licence under Regulation 53 of the Conservation of Habitats and Species Regulations 2010 (as amended). However, at this stage no development is proposed, I only want to assess the degree to which any disturbance may occur during a typical 10 minute tour. My survey proposal is attached.

Under the Habitat Regs, there would be a risk of committing an offence during the proposed surveys only if this caused the bats deliberate disturbance that was likely to

- (a) i) to impair their ability to survive, to breed or reproduce, or to rear or nurture their young, OR
- (a) ii) to impair their ability to hibernate or migrate, OR
- (b) to affect significantly the local distribution or abundance of that species

In my long experience of bat work it seems to me unlikely that the surveys I propose would cause any of the above effects, and in any case, as I would be observing the bats during the 10 minute tours whose effects I wish to assess, if disturbance effects appeared likely to approach such levels I would terminate the exercise.

Hence, I cannot see that the surveys I propose would be likely to cause offence under the Habitat Regulations and therefore I should not need to apply for any licence under those regulations in order to conduct those surveys. Remember that the persons participating in the trial tours would be a considerable distance away from the roost in the penthouse.

Therefore would you please advise DEFRA (and me) that in the opinion of NRW the level of bat disturbance as may potentially arise from the surveys I propose is unlikely to cause any offence under the Habitat Regulations.

That leaves the Wildlife and Countryside Act (WAC). Disturbance is not defined in that legislation and it seems appropriate that NRW should take the definition from the Habitat Regulations. In that case, if there is no disturbance offence under the Habitat Regulations, then there is also no disturbance under the WAC.

If NRW believes that the disturbance offence under the WAC would apply at a lower level than under Habitat Regulations, then as you know, I believe that the 10(3)(c) defence applies, though at present you do not believe that defence applies. Therefore it may be that you would require me to apply for a licence under the WAC. Please advise me under what section of the WAC you suggest I should apply for a licence. It seems to me that section 16(3)(a) scientific or educational purposes licence may apply if you do not allow that 10(3)(c) applies away from dwelling houses.

As I have previously pointed out, if you do not allow that 10(3)(c) applies as a defence away from dwelling houses then all such development that disturbs bats or damages or destroys their roosts will definitely be committing an offence under the WAC and the fact that a developer may have obtained a licence to give themselves legal protection for offences they may otherwise be committing under the Habitat Regulations in no way protects them regarding offences under the WAC. Please correct me if I have missed something here, but the WAC carries no other defence for developers of sites away from dwelling houses other than 10(3)(c).

Please advise me then what, if anything, I need to do to carry out my proposed surveys so far as the WAC is concerned beyond holding my existing bat survey licence, to avoid risk of committing an offence under that legislation.

Best regards,

(external stakeholder 1)

1. I have just received a telephone call from (external stakeholder).
2. (external stakeholder) acknowledges the recent letter from NRW in respect of bats at Rhydymwyn
3. I confirmed that NRW now accepts the relevance of Section 10 (5) of the Wildlife and Countryside Act 1981 (as amended). I confirmed that NRW's position was informed by consistent external NRW legal advisor and response from WG. I stated that Defra advice has to date not been received.
4. (external stakeholder) suggested that thresholds for disturbance thresholds are different in respect of the Wildlife and Countryside Act 1981 and the Conservation of Habitats and Species Regulations. I stated that disturbance under the Regulations applies to animals as opposed to an individual animal under the Act. PS subsequently discussed disturbance requirement under the Regs was focused, in respect of Rhydymwyn, activities that impair survival or reproduction.
5. (external stakeholder). reiterated his view that tours in B45 would not cause disturbance under Reg 41 (2). He indicated that he had spoken to people who concurred with his view. However, (external stakeholder 2) disagreed with (external stakeholder 1)'s view.
6. I confirmed that I would be looking at his licence this week.

7. (stakeholder1) subsequently discussed any surveillance in September. We subsequently discussed option of carrying out surveillance next September or waiting to next year.
8. (stakeholder 1) confirmed that cameras would not be used as part of evidence gathering.

Thanks (Official 1 NRW)

From Official 1 WG 13 July 2017
To Official 2 WG, Official 2 DEFRA.

It is not uncommon for activity to be considered acceptable under WCA 1981 whilst requiring a licence under HR 2010 (see para 5 of (Official 3)'s advice).

Throughout the history of this case, the option of licencing visitor activity under HR 2010 has always been available.

The sticking point has been justifying such a licence under the three tests – the IROPI test (Is there an “imperative reason of overriding public interest” for the activity?), the alternatives test (Could the aim be achieved in a different way?), and maintenance of conservation status (usually through provision of compensation).

The breeding space could be closed off/shielded from the proposed public visits, but that would a) compromise the historical integrity of the building (in the eyes of some) b) would cost money to do and c) would imply a commitment to maintain the building to public access standards and liabilities – Defra is committed to reducing its maintenance and public access commitments for WWII legacy sites and structures.

To my knowledge the historical society has yet to make the case in terms of the three tests, and seems reluctant to take that approach.

Official 1 WG

From: Official 2 WG
Sent: 13 July 2017 09:16
To: Officials 1 & 3 WG
Subject: RE: ADDITION RE: Building 45 WAC 1981 Section 10(5) defence

Many thanks

I think it would be worthwhile having a joint telephone conference with NRW lawyers who have come to a different view from yourselves. Would you be content with this?

Also I thought it would be helpful to dig out the original EM that accompanied the WCA 1981 when it was introduced to Parliament to see if this document sheds light on the intent of the drafters

Many thanks
Official 2 WG

From: Official 3 WG
Sent: 11 July 2017 12:31
To: Official 1 WG
Cc: Official 2 WG
Subject: RE: ADDITION RE: Building 45 WAC 1981 Section 10(5) defence

Hi (official 1 WG),

Please find attached my advice in relation to this query regarding the Rhydymwyn site.

If you have any further questions please don't hesitate to contact myself or a member of the team.

Many thanks

ATTACHMENT WITHHELD UNDER LPP

From: Official 1 WG

Sent: 29 June 2017 09:26

To: Official 3 WG

Cc: Official 2 WG

Subject: RE: ADDITION RE: Building 45 WAC 1981 Section 10(5) defence

Hi (official 3 WG)

The Rhydymwyn site is a relic of the 2nd world war when it was a chemical weapons storage depot and weapons research centre. Current uses are as a nature reserve plus WWII archaeological interest by the local historical society members.

By 2003 the buildings were empty shells and most were demolished. However the gatehouse and 3 other buildings were retained, the latter three because bats used them. The focus of bat interest was building 45 which had become a lesser horseshoe bat maternity roost (summer use, breeding in the tower and flying in the larger space below.)

The only 'use' is as a bat roost and this was the purpose for which building 45 was retained. This current 'use' requires minimising disturbance to bats.

North East Wales Wildlife Ltd (NEWW) manages the site for Defra which took over MoD legacy sites around the turn of the century. NEWW has an interpretation and activities centre in the old gatehouse. This is not an 'open access' site, access is still controlled and there are residual uncertainties about some legacy risks (Before military use, it had been a lead mining site back to roman times, and war materials were stored and later disposed of in the old mine workings). The control and limitation of human access is of value for nature conservation and contributes to the 'use'.

Building 45 was the focus of early British research on nuclear weapons during WW2. Because of this, the historical society wants to show this shell to visitors. Limited, managed access has been permitted in winter (when the bats are absent), but the society seems to want to exploit what they see as the higher tourism potential of summer visits. This proposal for an additional use is the subject of the discussions before us.



Building 45.

(official 1)

From: Official 2 WG
Sent: 27 June 2017 13:23
To: Official 1 WG
Subject: FW: ADDITION RE: Building 45 WAC 1981 Section 10(5) defence

Can you follow up please

Thanks

From: Official 4 **On Behalf Of** LS Environment Team
Sent: 27 June 2017 11:39
To: official 2 WG and LS Environment Team
Cc:
Subject: RE: ADDITION RE: Building 45 WAC 1981 Section 10(5) defence

,

Thanks for your email. I am considering your query and hope to get back to you with our advice by the end of this week if possible, if not, as soon as possible next week.

Could you please provide me with further information in relation to the following which may assist LS with this query.

- What type of building is Number 45 Rhydymwyn?
- What type of work/operations are carried out there?

If you have further questions please don't hesitate to contact me.

Kind regards Official 3 LS

From: Official 1 wg
Sent: 27 June 2017 09:53
To: LS Environment Team
Cc: Official 2 WG
Subject: RE: ADDITION RE: Building 45 WAC 1981 Section 10(5) defence

Dear LS Team

Would it be possible to receive any advice on this issue by the end of this week please

Many thanks

Official 1

From Official 1 WG

To Official 1 Defra & Official 2 WG

I am still not persuaded of the value to the 'visitor experience' of taking the public into the space (and therefore how modifications could be justified in terms of the IROPI and Alternatives tests).

It seems to be an empty concrete and brick box, I suggest the onus should be on RVHS to demonstrate why looking in from a doorway would be insufficient.

Looking in without entering is common in historic tourist attractions.



Official 1 WG

From: Officer 1 DEFRA

Sent: 12 April 2017 16:53

To: Officer 2 DEFRA

Cc: Officer 1 WG & Officer 1 NRW

Subject: FW: Bat Protocol - Summer 2017

Hi

Thank you for the earlier email in respect of this case.

How do we collectively wish to progress this case in view of the below? I have therefore copied our legal advisors and Defra's Species Specialists.

The below email makes reference to the acoustic barrier, which was discussed last year. To date we have not seen any proposals. The rubber matting represents a new proposal. Material issues concern the detail of this proposal including , but not necessarily limited to:

- Route and location within Building 45
- How will noise from other sources be addressed;
- Numbers and
- Lighting.

Any collective comments

From: external stakeholder 3
Sent: 07 April 2017 17:43
To: officials 1, 2 and 3 plus others Defra
Cc: many
Subject: Bat Protocol - Summer 2017

Official 2 defra,

This is the advice given to RVHS subsequent to your message below. I think it is very interesting and it appears that with a little effort it may not be necessary to totally close Building 45. We are awaiting second opinion but would welcome your comments.

Regards (external stakeholder 3)

(text from stakeholder 1 was removed- it is in the possession of the requestor and contains material subject to LLP)

From Officer 1 WG

To Officer 1 Defra

There was an interesting(!) case some years ago where bats were not in a living space but their urine was affecting the ceiling and dripping into the lounge.

Rather than get into a discussion about sec 10, WG issued a licence.

Officer 1 WG

To Officer 4 (WG-CADW),

Please find attached the latest authorised version of the bat protocol. It is due to be upgraded to refer to last year's additions to legislation in Wales.

The key point is that all the buildings on the site were scheduled for demolition in 2003, however, some were found to support bat activity and were retained in order to continue that function.

More recently, RVHS has sought to develop the historical interest of these buildings to the public, in particular building number 45 which in summer contains a very significant maternity roost of lesser horseshoe bats. Public access is acceptable in winter (when the bats are not there), however the interior of the building is an undivided shell so access in summer would disturb the maternity roost. There has been some discussion about dividing the space, but without conclusion.

There is no indication that bats use the tunnels. If they were to do so, it would be for winter hibernation when tourism interest would be low or non-existent.

In common with many military legacy sites it is a nature reserve (eg Greenham Common). Defra seems to favour this approach as it minimises disturbance and controls public access to any unknown legacy features such as unexploded ordinance. Rhydymwyn is considered 'safe' but our Radiation and Pollution colleagues suggest that appraisal be treated with caution.

Officer 1 WG Nature Policy

From: Officer 4 WG

Sent: 10 April 2017 17:17

To: Officer 1 WG

Subject: FW: DC/KS/00097/17 Due: 13/04/2017 Diary Briefing request Official opening of the Rhydymwyn tunnels

Importance: High

Hi

I am pulling together some briefing for the Cabinet Secretary's visit to Rhydymwyn, the DEFRA site in Flintshire. I wanted to get to the bottom of any Welsh Government funding to the site.

Cadw seems to recall that there may have been some funding or some involvement from your branch along the line.

Can you let me have details of grants or involvement if you have please? Not looking for reams, just brief information if possible, please.

If it is at all possible it would be helpful to have this for Weds, 12 April, please.

Thanks

To Officer 1 NRW
Hi, are you aware of the attached? (Countryfile Magazine)

Officer 1 WG

From Officer 1 NRW to officer 1 WG Tue 18/07/2017 09:35

For information
(A copy of the survey proposal commissioned by RVHS was attached to this email, it is in the possession of the requestor)

Officer 1 WG

Summary of WG LS Advice (by Officer 2)

The WG view is that we do not consider that it was the intention of drafters (of the WCA 1981) to limit the application of the section 10(5) exception to dwelling houses only. This approach (i.e. to limiting the application of the section 10(5) exception to dwelling houses only) would raise questions relating to acts carried out in any other types of buildings. We consider it a much weaker argument to say that drafters would not have intended to provide a defence to acts carried out in any buildings other than dwelling houses. Therefore the WG view is that it would have been the intention of drafters to allow the section 10(5) defence to apply to any buildings as long as NRW as the conservation body are appropriately notified, and are given a reasonable amount of time to advise.

If the bats were disturbed, then the defences under section 10(5) may be relied upon as they apply on a broader basis, than to dwelling houses only.

However, in addition to complying with the WCA, all applicable legislation would need to be complied with. Consideration should be given to ensure that the proposed tours of Building 45 would not constitute an offence under the Habitats Regulations 2010. The Habitats Regulations 2010 provide at Regulation 41(1)(b) that a person who deliberately disturbs wild animals, including bats, (as they are included in the list of European Protected Species of Animals in Schedule 2) will be guilty of an offence. The defences provided by Regulation 42 are not relevant given the particular circumstances of this case, and the defences do not extend as widely as the defences available under section 10 WCA 1981.

Regulation 53 of the Habitats Regulations 2010 provides that a licence may be granted in order to carry out certain activities relating to animals or plants.

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