

2009-06 Duty of a Local Planning Authority – a “Copy and Paste” extract.  
Full Details can be found in “[R vs Cheshire East Borough Council](#)”

An important judgment was handed down by His Honour Judge Waksman QC sitting as a judge of the High Court at the start of June 2009 in the case of *R (on the application of Simon Woolley) v Cheshire East Borough Council*.

The judgment clarifies for the first time the legal duty of a Local Planning Authority (“LPA”) when determining a planning application for a development which may have an impact on European Protected Species (“EPS”), such as bats, great crested newts, dormice or otters.

The species protection provisions of the **Habitats Directive**, as implemented by the Conservation (Natural Habitats Etc.) Regulations 1994, contain three “derogation tests” which must be applied by Natural England (“NE”) when deciding whether to grant a licence to a person carrying out an activity which would harm an EPS.

For development activities this licence is normally obtained after planning permission has been obtained.

**The three tests are that:**

- (1) the activity to be licensed must be for imperative reasons of overriding public interest or for public health and safety;**
- (2) there must be no satisfactory alternative; and**
- (3) favourable conservation status of the species must be maintained.**

**This court judgment in *Woolley* makes it clear that, notwithstanding the licensing regime, the LPA must also address its mind to these three tests when deciding whether to grant planning permission for a development which could harm an EPS.**

**A LPA failing to do so would be in breach of Regulation 3(4) of the 1994 Regulations which requires all public bodies to have regard to the requirements of the Habitats Directive in the exercise of their functions.**