

### Test at the permission stage:

“...I cannot see why a planning permission (and, indeed, a full planning permission save only as to conditions necessary to secure any required mitigating measures) should not ordinarily be granted save only in cases where the planning committee conclude that the proposed development would both (a) be likely to offend article 12(1) and (b) be unlikely to be licensed pursuant to the derogation powers.”

- *R (Morge) v Hampshire County Council* [2011] 1 WLR 268 (SC), §29 (Lord Brown)

### Test expressly disapproved by Lord Brown at the permission stage

“28 Ward LJ dealt with this question in para 61 of his judgment:

‘...If the planning committee conclude that Natural England will not grant a licence it must refuse planning permission. If on the other hand it is likely that it will grant the licence then the planning committee may grant conditional planning permission. If it is uncertain whether or not a licence will be granted, then it must refuse planning permission.’

29 In my judgment this goes too far and puts too great a responsibility on the planning committee whose only obligation under regulation 3(4) is, I repeat, to “have regard to the requirements of the Habitats Directive so far as [those requirements] may be affected by” their decision whether or not to grant a planning permission.”

- *R (Morge) v Hampshire County Council* [2011] 1 WLR 268 (SC), §§28-29 (Lord Brown)

### Test at the licensing stage

Regulation 55 of the Conservation of Habitats and Species Regulations 2017

#### “55.— Licences for certain activities relating to animals or plants

(1) Subject to the provisions of this regulation, the relevant licensing body may grant a licence for the purposes specified in paragraph (2).

(2) The purposes are—

...

(e) preserving public health or public safety or other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment;

...

(9) The relevant licensing body must not grant a licence under this regulation unless it is satisfied—

(a) that there is no satisfactory alternative; and

(b) 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.”