ASSOCIATION OF
Local Government Ecologists

Update on Key National Issues Related to Biodiversity in Development Management and Spatial Planning

Mike Oxford

ALGE Project Officer

Update 1

Better Ecological Report Writing

Issues and Solutions

ALGE Survey 2016

Ecological Reports – Fit for Purpose?

Initial Findings

Online Survey of Local Authority Ecologists by the Association of Local Government Ecologists

May 2016

Summary Results

i. Huge variation in the quality of ecological reports

ii. Many ecological reports pay insufficient regard to the mitigation hierarchy

iii. PEAs are still submitted in support of planning applications with recommendations that further surveys and/or details of mitigation measures be provided at a later date

iv. Many EcIAs do not initially provide adequate information to determine the planning application

v. Many reports appear to follow good practice guidance but significant proportion deviate from such guidance

vi. A large proportion of ecological reports do not adequately describe the methods used to undertake surveys or to assess impacts

vii. A small proportion of reports include comprehensive interpretation of desk study data but a large proportion provide poor or no interpretation of such information

viii. Virtually no reference is made to limitations e.g. lack of resources, personal competence, inadequate time spent surveying etc

ix. As a generality, it appears that ecological reports from large consultancies appear to be better structured and formatted than those from smaller consultancies and in turn these are generally better than reports received from sole traders

x. There is huge variation in providing adequate information to enable recommendations to be easily secured through planning conditions.

xi. A large proportion of reports provide inadequate certainty over findings and/or recommendations.

xii. The three most notable problems encountered by LPA ecologists appear to be inadequate or missing ecological surveys, inadequate proposals for mitigation and compensation, and a disproportionate amount of time taken dealing with just one or two poor consultancies.

CIEEM Raising Standards Project

i. **Option 1** could work with ALGE and other stakeholders (e.g. Build UK) to review example reports and produce articles for the Institute's quarterly journal (*In Practice*)on common problems/mistakes.

ii. **Option 2** could develop an accreditation for consultants on ecological report writing.

iii. **Option 3** could run regular workshops on ecological report-writing via Member Networks.

- These could also be open to ALGE members and CIEEM could work collaboratively with ALGE to set the standard for how LPAs should scrutinise reports.
- CIEEM could also support ALGE members to help LPAs who are without a local authority ecologist, for example through:
  - the provision of checklists
  - guidance on different types of reports and their purpose
  - other tools to help planners decide if they have sufficient information in the ecology reports.

Good Practice Publications


CIEEM
Chartered Institute of Ecology and Environmental Management
Guidelines for Ecological Report Writing
First Edition - February 2015
Updated December 2015
BS 42020:2013

SOMETHING NEW … Low Impact EcIA

- A proportionate response for applications that have a lower impact on biodiversity
- An easier and more efficient means of dealing with these sorts of applications
- A standardised format to encourage submission of key information that is readily accessible to LPAs

Dorset Protocol

Planning for Biodiversity

Listen

Providing information and guidance on how to integrate planning and development while looking after our ecological assets in Dorset.

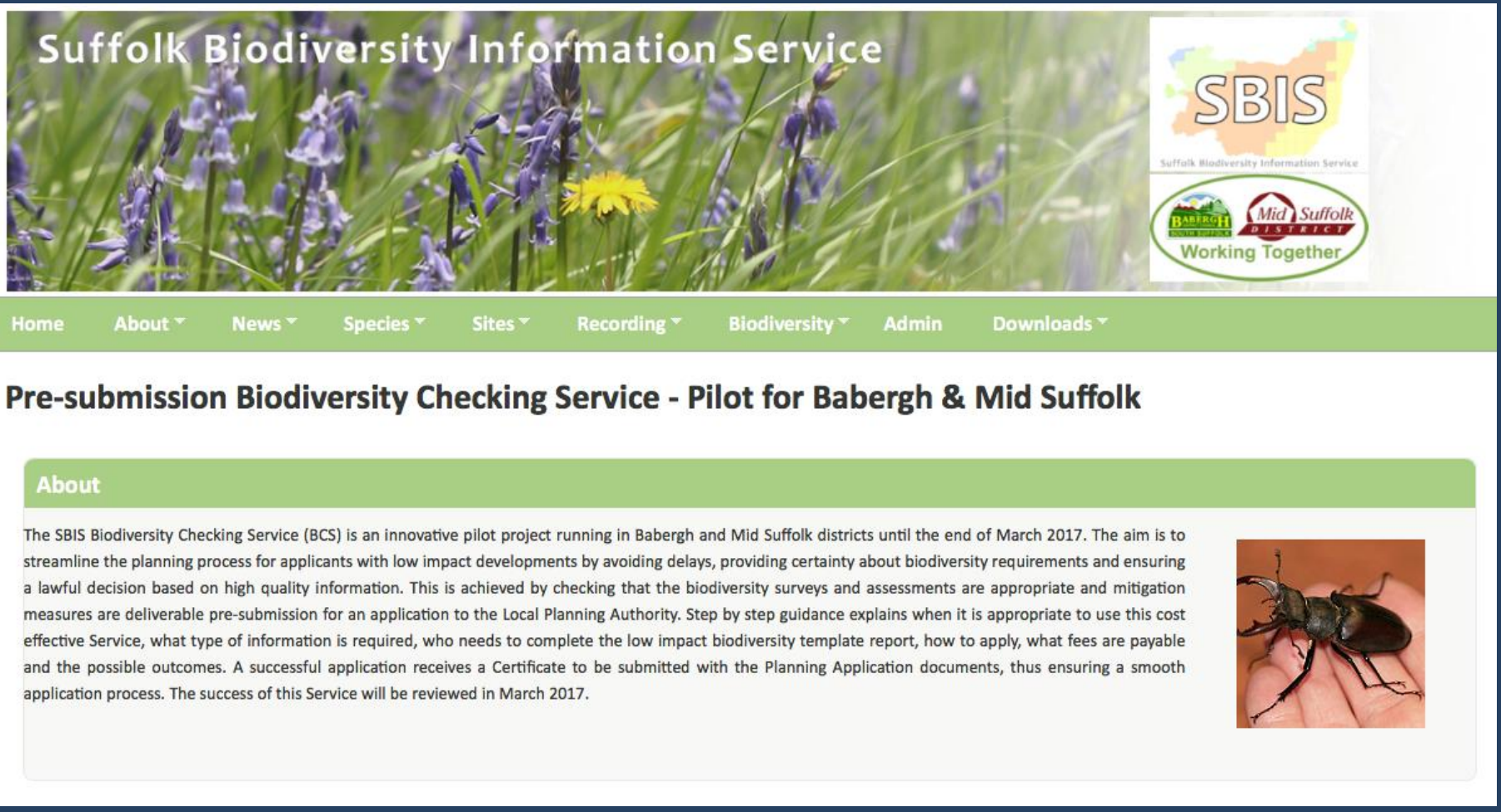
Planning applications

In order to comply with all relevant government legislation on biodiversity a Biodiversity Appraisal scheme has been set up in Dorset. You may need to have a bat and/or biodiversity survey carried out prior to applying for planning permission.

Advice notes and guidance sheets

A series of advice notes and guidance sheets are available on protected species (for example, bats, otters and badgers), non-native invasive species and habitats in Dorset, with best practice guidance.

Suffolk Biodiversity Checking Service



We Need a Definition for Low Impact ?

Low impact developments are defined as being where the development:

i. Does not meet the criteria that identifies development that is subject to environmental impact assessment under the EIA Regulations and;

ii. Does not affect adversely statutory or non-statutory designated nature conservation sites and;

iii. Is unlikely to affect adversely the local or national distribution or abundance of populations of '*species of principal importance for the conservation of biodiversity' or* local priority species and;

iv. Is unlikely to affect adversely the national or local distribution of '*habitats of principal importance for the conservation of biodiversity' or* local priority habitats.

Common Characteristics of Low Impact Development

i. High degree of certainty and confidence over the likelihood that all ecological impacts are understood;

ii. Adverse residual effects are limited to a clearly identifiable location and limited in geographical extent;

iii. The magnitude of the impact(s) can be quantified and expressed in absolute or relative terms e.g. area of habitat lost or number of bats present in a roost.

iv. The duration of adverse effects is limited to the short term (< X years);

v. Development activities causing an adverse impact are likely to be temporary and/or infrequent and therefore unlikely to cause on-going permanent effects or disturbance;

vi. Development activities are timed and/or phased so as to avoid impacts at critical life stages of any species affected or any other sensitive times of the year;

vii. Affected features are likely to achieve, over the short term, complete recovery to pre-impact conditions;

viii. Unlikely to be any significant cumulative effects that that have not been identified and addressed through mitigation and compensation;

ix. All residual effects have been identified and none are likely to be significant.

x. There will be no long lasting changes in the local distribution or abundance of populations of species;

xi. There will be no significant loss of habitat connectivity that would otherwise isolate important species from key resources in its surrounding landscape.

We recognise that identification of low impact relies upon professional judgement …

… so the definition has to operate within

‘specified parameters’

Figure 1 Sliding Scale of Impact

Low Impact	Moderate to High Impact

CIEEM Templates

CIEEM's Ecological Report Writing Guidelines (2015) currently have two appendices:

A. PEA Template

B. EcIA Template

C. Low Impact Template

CIEEM Ecological Report Writing Guidelines - Appendix C Template for 'Low Impact' EcIA Reports

ALGE and CIEEM strongly suggest that the following template be followed quite closely; for the simple reason that if *Low Impact EcIA Applications* are to be dealt with proportionately and efficiently by the LPA, with minimal delay through the decision-making process, it will greatly assist those reviewing the information to have something in a consistent and familiar format. This should ensure that they can quickly and easily establish that they have all necessary information to reach an informed and lawful decision, without having to go back to the applicant for clarification or further information.

Section	Content
C.i. Cover Page	Report title. Date of report. Name and contact details of principal author. Name of individual / organisation who commissioned the report (e.g. the client) Unique reference number so that the report can be referred to, including version number.
C.ii Quality Assurance	Details of QA protocol

C.1 Introduction and Summary (Planning Registration Check Sheet)	See Annex A for standard *Planning Registration Summary Check Sheet* recommended by CIEEM and ALGE.
	
	The Summary Check Sheet should include:
	• Name of applicant
	• Site name
	• Planning reference number (if known)
	• Site location (grid reference / post code)
	• Brief description of site
	• Brief description of proposed project using Trigger List Screening Categories (see Annex B)
	• Name of ecologist author of the report
	• Professional declaration that work has been undertaken in accordance with 'good practice'
	• Purpose of report, for example:
	  ○ To confirm presence or likely absence of roosting bats
	  ○ To identify likely impacts and to set out the mitigation measures required to ensure compliance with nature conservation legislation and policy
	  ○ To identify how mitigation measures will be secured (e.g. EPS licence or planning condition)
	• Summary and Recommendations, including:
	  ○ Date of ecological surveys
	  ○ Brief description of biodiversity features likely to be affected (if any)
	  ○ Is an EPS licence required and, if so, for what?
	  ○ Are planning conditions required to secure proposed mitigation and, if so, for what?
	• Applicant's signed declaration that they understand the findings in the Low Impact EcIA and that they will implement all measures set out in the Biodiversity Mitigation Method Statement.

C.2 Description of proposed development	Provide a brief description of the type and scale of development, using the *Trigger List Screening Categories* to describe the proposal (see Column 1 of Annex B) including: • New build – distinguish if single or multiple structures • Conversion and/or extensions (e.g. agricultural buildings and/or domestic dwellings) • Demolition • Other structures • Description of construction activities involved with reference to BS42020:2013 Annex G Inclusion of aerial photos may provide a very cost-effective means of providing a clear description of surrounding site context.
C3.1 Qualifications and experience of surveyors and author of EcIA	Provide details of: • membership of professional body (including length and grade of membership) • relevant experience and demonstration of competence to undertake work involved • protected species license(s) held, including reference numbers relevant to species identified in Section C.4
C.3.2 Summary of methodology used for desk studies	Provide a brief analysis and interpretation of the results obtained through the desk study and a brief explanation of how these have informed field survey and assessment of likely impacts. Include in an appendix to the main report, where relevant, the following: • State who has undertaken the data search • List the individuals or organisations or web sites that have been contacted/used to obtain relevant data • Describe the information that has been obtained (e.g. key species and/or habitats) • Describe the study area (likely to vary in relation to different resources) • State when data searches were carried out • List any ecological reports that have been reviewed, such as previous reports for the same site, or reports for adjacent sites Desk studies should be carried out in accordance with CIEEM Guidelines on Desk Studies (2016) Where a data search has not been carried out, or only carried out in part, this should be fully justified
C.3.3 Summary of methodology used for field surveys	For each field survey undertaken provide: • Brief description of methodology, including purpose and objectives • Names and qualifications of surveyors • Date(s) of surveys • Study area (shown on an appropriate map) • Weather conditions at time of survey(s) and time of day (if relevant) • Reference to relevant good practice guidance (e.g. for surveys) and • Explanation of any departures from recommended guidance (see BS42020; clause 6.3.7) • Limitations on results (see BS42020; clause 6.7) Note: The above data and detailed descriptions of survey methodologies can be provided in an appendix. Note: Where the field survey was an 'extended Phase 1 habitat survey' (or the equivalent in Ireland), it is important to explain what was done in addition to the standard Phase 1 habitat survey, such as an assessment of the likely value of the hedgerows for dormice, or identification of any buildings or trees suitable for use by roosting bats, etc.

Template → Proforma

A proforma that:

- Provides a standardised form that can be filled in easily by applicant's ecological consultants
- Makes applicant's responsibilities very clear
- Provides a common format for LPAs so that:
  - submission of crucial information can be confirmed
  - missing information can be quickly identified
  - need for conditions or EPS licenses is clear
  - simple mechanism to secure mitigation

Section 1
Biodiversity Summary Check Sheet

Name of Applicant:	**Planning Application Ref No:** (if available) **Site Name:**
Location: **Post Code/Grid Reference:**	**Brief Description of Site:**

Brief Description of Proposed Development: Refer to the *Validation Trigger List* (see Annex B of Appendix C of CIEEM's Ecological Report Writing Guidelines; 2015) to identify the type of development and features likely to be affected.

For instance: *Conversion of stone roof timbers greater than 20cm thick. Biodiversity feature and other breeding birds such as swallows.*

Project Description

Ecologist's Professi

Name of ecologist author responsible for this report:.....

Are full details for professional memberships, qualifications and experience provided Y ☐ N ☐

Consultant's Qualifications and Experience

I hereby confirm that:

i. The proposals in this report are based on all adequate and up to date and supported by adequate
ii. The methods appendices;
iii. Any departures clear, have been fully justified, and their implications for explicit in accordance with BS42020 Clauses 4.4, 6.3.6 to 6.3.9 an

Name of Ecologist:..... Signature Date:

Purpose of Report e.g.

- To confirm likely presence or absence of priority or protected species
- To set out the mitigation measures required to ensure compliance with nature conse islation and policy
- To identify how mitigation measures will be secured and delivered

Summary and Recommendations:

Summary of Recommendations e.g. need for conditions and EPS licenses

Date(s) of Ecological Survey(s) 1st .....

Brief description of .....

.....

.....

Is a Full *EPS licence* OR Y ☐ N ☐

If so, which and what f .....

Are planning conditions mitigation Y ☐ N ☐

If so, what for?

.....

Applicant's Declaration To be signed by the applicant or their gent

I hereby confirm that I have read and understand the findi ct *EcIA Report* and will implement in full the recommended measures gation Method Statement(s).

I understand that these m the appropriate statutory conservation body imposed by the local planning authority

Applicant's Signature

Applicant Name (pr	Agent Name (print)	Date (DD/MM/YYYY)
Signed:	Signed:	

Summary Check Sheet

Section 5.1
Likely Impact on Bats (without Mitigation)

Details of Existing Bat Root(s) to be Modified, Damaged or Destroyed in the Absence of Mitigation (see NOTE 1)

Species, Roost Type and Impacts

Species	Peak Count Highest no. indicated in the structure	Roost Type Affected	Location of Roost e.g. roof void, wall cavity, under roof tiles	Is CEF Maintained?	Impact
BLE	3	Day roost	At ridge beam in loft	No	Permanent destruction
Common pip	5	Day roost	Under roof tiles	Yes	Temporary damage
Common pip	2	Day roost	In timber/brickwork crevice	Yes	Disturbance only

NOTE: Impacts may be permanent or temporary and may result in modification (where CEF is maintained) and damage, destruction or disturbance.

Additional Details of Roof Void and Aspect

Roof Dimensions (e.g. length, height and width in metres) and aspect (e.g. N/S, E/W, NE/SW AND NW/SE)

Total Number of Roosts to be Modified, Damaged or Destroyed (see NOTE 2)		EPS Licence Required Y	N
No. to be **Modified** (e.g. repaired) while maintaining Continuing Ecological Functionality	0		N
No. to be **Damaged** but not destroyed	1	Y	
No. to be **Destroyed**	1	Y	
No. likely to be affected by **Disturbance** only	1		N
No. **Unaffected** by any activities	0		N

Details of Likely Disturbance to Bats (see NOTE 3)

Disturbance During Construction: Describe works likely to cause temporary disturbance to roosts (e.g. repair or replacement of roof tiles/slates, timbers, hanging tiles, soffits, fascia, and barge boards).

Such works should not result in a significant change to the size and shape of the roof, the type of materials used e.g. roof felt, or the location and form of any access points for bats).

Disturbance During Occupation: Describe activities likely to cause permanent disturbance to roosts once development is complete (e.g. installation of permanent external lighting on or near buildings with bat roosts).

If no licence is required, provide an explanation for how impacts (and likely wildlife offences) are to be avoided.

e.g. through implementation of measures provided in a BMMS and secured through planning conditions.

Likely Impacts On Bats

Section 5.2
Bats Mitigation / Compensation Details (see NOTE 4)

Timing Constraints for Works on Bat Roost(s) (Please specify calendar month)	
Disturbance to Existing Roost:	e.g. to be inserted
Completion of Temporary Works:	e.g. Yes, Schwegler 1FF to be installed prior to commencement of works
Completion of Permanent Works:	e.g. to be inserted

Working Methods During Construction

Summarise measures necessary to ensure that adverse impacts do not occur during the construction process and provide full details in the BMMS (see Section 12).

Proposed Mitigation and Compensation Features

Number of Roosts to be Provided		**Summary Details of Roosts to be Provided** Full details and locations to be provided in the BMMS or EPS Licence Application Provide ECOP, photos and plans where appropriate
In-situ Retention of Roost(s)	1	Provide - details of all re-roofing works for example, replacement of tile type, replacement of felt with breathable membrane, use of insect guards, timber treatment; also include addition or changes in insulation and any impact on temperature/humidity.
In-situ Retention of Existing Access Point(s)	0	Explain how roost entrances will be retained. Any enhancements to the roosts such as crevice provision should also be detailed.
Temporary Replacement Roosts	1	Provide details and location of bat boxes Diagrams of widely available standard bat box designs are not required, just refer to bat box name and reference number e.g. Schwegler 1FF in one of the trees on site
Modification of Existing Roost(s)	0	Provide - dimension details, scale drawings of the roost and access points, aspect, state exactly how the roosts will be modified.
Modification of Existing Access Point(s)	1	Explain how roost entrances will be modified and provide a scaled drawing of their design.
New Roost Creation	1	Provide - dimension details including aspect, access points, location details, materials to be used (e.g. brick, stone, timber, felt) and justify variation from the original roost.

Details of Aspect and Roost Dimensions in the New/Modified Roof

Are the roof aspect and dimensions of the modified and/or new roost(s) the same as roost(s) prior to modification, damage or destruction? Y ☐ N ☐

If no, provide further comments

Post-construction Measures

Necessary Post-construction Mitigation (e.g. During Occupation) Describe measures to avoid permanent disturbance to roosts once development is complete (e.g. dealing with installation of permanent external lighting on or near buildings with bat roosts).

Post-Construction Monitoring Provide details of any proposed monitoring that will be necessary (e.g. under EPS licence).

Bat Mitigation and Compensation

Section 6.2
Summary Mitigation & Enhancement Table

Summary of Mitigation Measures To Be Implemented (please tick relevant techniques)

Measures ticked below must be explained in one or more BMMSs using the template in S.12 NOTES Construction measures below are drawn from BS42020 Clause 10.5 A model condition that may be used for the purpose of securing mitigation measures is set out in Section 13 and is based on Annex D of BS42020:2013	**Means of Commitment and Delivery** To be secured through protected species licence or planning conditions	
	licence Y/N	condition(s) Y/N
Proposed Mitigation During Construction		
Siting of construction activities to avoid harm to important biodiversity features		
Erection of fences to protect sensitive biodiversity features from accidental damage/harm		
Undertaking works at an appropriate time of year to avoid harm (e.g. in accordance with published good practice (e.g. GCN Mitigation Guidelines)		
Erection of wildlife exclusion barriers/fences to deter individuals from working areas		
Erection of warning signs to provide key information for site workers about sensitive biodiversity features		
Capture and translocation of individuals (e.g. reptiles)		
Controlled (licensed) destruction of place of shelter or breeding site e.g. badger sett		
Provision of temporary shelters for resting and breeding (e.g. barn owl boxes)		
Clearance of bird breeding habitat (e.g. avoiding destruction / disturbance of occupied nests)		
Containment, control and removal of invasive non-native species (e.g. Japanese Knotweed)		
Biosecurity protocols or method statements to prevent the introduction or spread of invasive non-native species or pathogens		
Measures and inspections to ensure that wildlife does not become trapped in pipes, excavations and machinery		
Procedures and contingencies to avoid pollution incidents (e.g. from fuel spills)		
Temporary management of existing wildlife features during construction (e.g. hay cuts)		
Appointment of a ecologist to advise as necessary on site (e.g. an Ecological Clerk of Works) to provide oversight and to assist in the implementation of the above measures		
Other (to be specified)		
Proposed Mitigation for Occupation / Operation of Development		
Permanent replacement of place of shelter or breeding sites for important species		
Areas of retained or newly created habitats (e.g. wildlife flower rich grasslands, hedges, ponds, woodland and scrub, water features etc)		
Erection of bird and/or bat boxes (see **NOTE 5**)		
Other (to be specified)		
Add or delete from the above list of measures as appropriate		

Summary Mitigation and Enhancement Table

Section 10

Biodiversity Mitigation Method Statement(s) No. 1 / 2 / 3

This template describes in detail the mitigation measures highlighted in Sections 5.2, 6.2, 7 and 8 of the Low Impact EclA

This form below must be completed by a professional ecologist [1].

Upon grant of planning consent, the measures set out in this method statement will be secured through either planning condition(s) or appropriate measures will be secured through a protected species licence from the relevant statutory body.

Background

Give a brief description of the proposed activity/develop… g, demolition of buildings, construction of new buildings, ditch/culvert …

Purpose and objectiv…

Describe briefly the re… …s are required, what the intended outcome(s) will … …w the predicted impacts will be satisfactorily ad… …ssed e.g. habitat replacement OR modification of … …n Continued Ecological Functionality (CEF) OR installation of bird boxes to mitigate for …

Detailed design(s) and working meth… …ncluding:

- Design(s) to be us…
- Materials / produ…
- Actions to be take…

Include appropriate sca… …where these are helpful.

Make clear technical fea… …deliverability (e.g. commitment, land availabili… …esources)

Extent and/or location of proposed works Measures should be id… …ns and/or an Ecological Constraints and Opportunities Plan (ECOP) where a… …ated aerial photographs can also be used to provide helpful informati…

Timetable for implem… …itigation measures are aligned with … …hasing of building works

Persons responsible fo… …menting the works including:

- Works to be undertaken by an ecologist e.g. … …als (indicate whether ecologist must be licensed or whether work…
- Works to be unde… …ention of bat roost features, or modification of existing or provision of new … …d bricks/boxes.

Initial aftercare and lo… …maintenance (were relevant)

Disposal of wastes arising from works (where …

…on (N.B To be filled out by the applicant)

I hereby confirm that the measures set out in this Biodiversity Mitigation Method Statement will be implemented in full.

Applicant Name (print)	Or Agent Name (print)	Date (DD/MM/YYY)
Signed:	Signed:	

Important General Note:

If any contractor or member of staff is concerned ab… …wildlife or habitats not dealt with in the above method statement … …g the works, they must call the ecologist [… insert name …] [… insert …

[1] *Professional ecologist* … …ough relevant education, training and experience gained recognised qualifications and expertise in the fie… …ology and environmental management (BS42020:2013 Clause 3.24) and has relevant experience of the biodiversity features affected.

Purpose and Objectives

Detailed Design and Working Methods

Location

Timetable

Persons Responsible

Applicant's Signature

Why

What

How

Where

When

Who

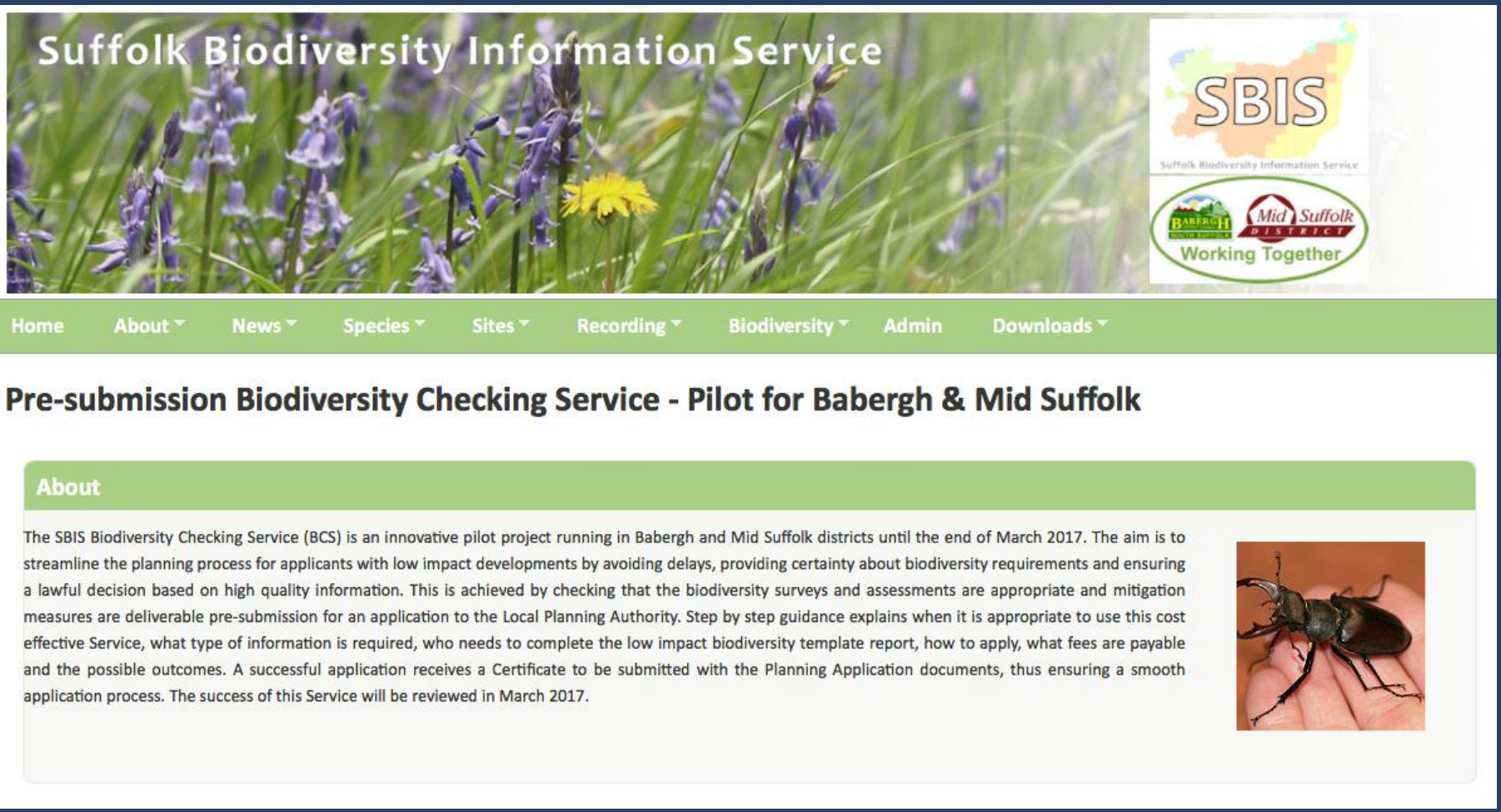
Section 11 Ecologist's Sign Off Sheet		
Checklist to be completed and signed off by the ecologist		
	Yes	**No**
1. Are the proposals in this report based on all necessary field surveys with data being adequate and up to date and supported by adequate /appropriate desk studies?	✓	✓
2. Does the application provide a summary of all species and habitats likely to be affected?	✓	✓
3. Does the application describe all likely impacts?	✓	✓
4. Does the application provide certainty and explain how proposed mitigation will address likely effects and how such proposed measures will be secured through planning conditions and/or appropriate licenses?	✓	✓
5. Has an explicit understanding of any limitations for the ecological work been provided in accordance with BS42020:2013 Clause 6.7 (including limitations associated with: survey methods, adequacy of equipment, reference to relevant desk top data, interpretation and analysis of results, competency of all ecological surveyors and personnel undertaking the impact assessment and design of mitigation)?	✓	✓
6. Does the application justify how the proposals are in accordance with relevant legislation and policy (where relevant)?	✓	✓
7. Does the application (via method statements) make clear where a derogation licence is required BEFORE commencement of any works on site OR prior to specific operations being undertaken (e.g. roof strip)?	✓	✓
8. Does the application identify any key timing issues (e.g. site vegetation clearance or roof removal) that may constrain the proposed timing of development in some way?	✓	✓
9. Has ecological work been undertaken in accordance with published good practice guidance? If not, see Q.10 below.	✓	✓
10. Has any deviation from standard survey requirements and published good practice guidance been made clear, fully justified, and their implications for subsequent conclusions and recommendations made explicit in accordance with BS42020 Clauses 4.4, 6.3.6 to 6.3.9 and 6.7 (see footnote[2] for further information)?	✓	✓
11. Do all surveyors hold appropriate species licenses (where relevant) and/or have adequate competencies to carry the work undertaken?	✓	✓
12. Does the application provide an indication of likely net losses and gains for biodiversity?	✓	✓
13. Is the EcIA adequate to inform the determination of the planning application?	✓	✓
14. Are there any other questions to include?		
I hereby confirm that the measures set out in this *Low Impact EcIA Report* provide a full assessment of likely impacts and a proportionate set of mitigation measures that will address adequately all likely adverse effects.		
Name of ecologist responsible for this report (please print)		
Signed	Date (DD/MM/YYYY)	

Footnote[2] Further information on robust justification for any deviation in methods used from those published in good practice guidance is provided in CIEEM (2016) *Pragmatism, Proportionality and Professional Judgement*. In Practice. Issue 91; page 57.

Ecological Consultant's Sign Off Sheet

LPA Ecologist's Sign Off Sheet

Pilot and Testing



The Low Impact Proforma doe NOT

- Refer to an approach based on any form of ‘worst case scenario’
- Encourage submission of information that is not supported by adequate survey
- Encourage ecological consultants to submit reports that are inconsistent with good practice

Update 2

Other CIEEM and ALGE Collaboration

LPA Ecologist Checklist

The start of future collaboration to help ALGE member's when checking applications

Other ALGE/CIEEM Collaboration

Chartered Institute of Ecology and Environmental Management

CIEEM

ASSOCIATION OF Local Government Ecologists

JOINT ADVICE NOTE
Submission of Ecological Reports in Accordance with Good Practice Standards

Where there are likely to be biodiversity issues associated with a proposed development, this authority will determine the planning application in accordance with Clauses 7, 8 and 9 of BS42020 *Biodiversity – Code of Practice for Planning and Development* (2013). In doing this provides applicants with a transparent process that is in accordance recognised professional standard.

In preparing your own s the requirements set out in Clauses 4, gical work undertaken to support a planning application these requirements. This in turn will minimise the risk of providing ins ological information to enable the authority to make a lawful determination of the application. Work undertaken in accordance with BS42020 should also significantly reduce levels of uncertainty for all concerned, avoid increased costs and/or the need to undertake further work, and - associated with these - delays in determining the application.

Likewise, where planning permission is granted, we will seek to secure the implementation of appropriate mitigation and enhancement measures in accordance with BS42 uses 10 and 11 and Annex D.

[… *delete the following paragraph if not re*
Ecological information subm ccordance with the autho

Also, ecolog ion should be prepared following the recomm in the Chartered Institute of Ecology and Environmenta *Guidelines for Ecological Report Writi* 15)[1]. Such reports should orm of an Ecological Impact Assessment (E *Preliminary Ecological Appraisals* (PEAs[2]) are not sufficient planning application (except under the exceptiona delines).

In accordance wi undertaken to inform and prepare any EclA should be und *Guidelines for Ecological Impact Assessment in the UK and Irelan*

Please note that failure to provide adequate ecological inform pplication being delayed through the validation and registr ed at the determination stage. Data searches [4]

BS42020

CIEEM Ecological Report Writing Guidelines

CIEEM PEA Guidelines

CIEEM EclA Guidelines

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[1] http://www.cieem guidelines-for-ecological-report-writing
[2] http://www.cieem.net/data/files/Resource_Library/Technical_Guidance_Series/GPEA/GPEA_April_2013.pdf
[3] http://www.cieem.net/data/files/Publications/EclA_Guidelines_Terrestrial_Freshwater_and_Coastal_Jan_2016.pdf
[4] http://www.cieem.net/data/files/Publications/Guidelines_for_Accessing_and_Using_Biodiversity_Data.pdf

Chartered Institute of Ecology and Environmental Management

ASSOCIATION OF Local Government Ecologists

PROFESSIONAL PRACTICE ADVICE NOTE

Permitted Development Rights and Biodiversity (England)

Class Q Agricultural Buildings to Residential
Town and Country Planning General Permitted Development Order (GPDO) 2015

Statutory Obligations

Section 40 of the Natural Environment and Rural Communities Act 2006 (NERC) requires all public bodies to have regard to biodiversity conservation when carrying out their functions.

In the exercise of their functions local planning authorities (LPAs) are also required to have regard to the requirements of Regulation 9 of The Conservation of Habitats and Species Regulations 2010 (as amended) (Habitats Regulations). Regulations 41 and 45 afford legal protection to European protected species.

The Secretary of State for Communities and Local Government stated in a letter to the Bat Conservation Trust on 10th June 2014 that:

> *"All development, including under permitted development rights, must comply with all relevant legislation and regulations. This includes EU regulations such as the Conservation of Species and Habitats Regulations 2010.*
>
> *We have been clear that those undertaking a change of use under permitted development rights must satisfy themselves that they comply with all other necessary planning requirements, building regulations and other legislation such as related to habitats and biodiversity and consider that this provides the necessary safeguards"*

Permitted Development and the Prior Approval Process

The Town and Country Planning (General Permitted Development) (England) Order 2015[1] has introduced a 'prior approval' process to help prevent 'unacceptable impacts' of development from occurring under Permitted Development rights.

The Government has made clear that the implications for protected species should be considered as 'impacts or risks'.

Determination in Accordance with the National Planning Policy Framework (NPPF)

Prior approval applications are required to be determined with regard to the requirements of the NPPF. This requires decisions to be taken with regard to protected species.

Class Q Development (agricultural to residential)

For Permitted Development under Class Q (agricultural buildings to residential) the criteria that the LPA must take into account are more wide-ranging than they are under certain other classes. In particular, these criteria include consideration as to *whether the location or siting of the building makes it impractical for any other reason or undesirable for the building to change from agricultural use to residential use* (e.g. Class C3).

This introduces, under Class Q, a range of other factors that may be considered before agricultural buildings are converted to residential use - not least of which is whether protected species, such as bats, are present and how they might be harmed or affected.

Consequently, where protected species are at risk of harm from the development, LPAs should require an application for prior approval that is accompanied by an assessment of the potential impact upon protected species and, where necessary, supported with proposals for appropriate mitigation. This means that ecological surveys may reasonably be requested and that pre-commencement conditions to secure necessary protection measures may be attached to a notice of prior approval under Class Q.

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[1] www.legislation.gov.uk/uksi/2015/596/contents/made

Appeal Decision in Support of this Advice Note

Inspector: Joanne Jones
Appeal Ref APP/L3245/W/15/3004467 Bridgenorth, Shropshire

In presenting her conclusions on this appeal, the Inspector stated:

"The application was refused by the Council because no ecological surveys had been provided to assess the likely impact of the proposal on protected species, which have a reasonable likelihood of being effected by the proposal. No surveys have been provided with the appeal documentation.

I am mindful that although protected species are not specifically referred to in the GPDO, Regulation 9 of 'The Conservation of Habitats and Species Regulations 2010' would still apply. This states that the "competent authority must exercise their functions which are relevant to nature conservation… so as to secure compliance with the requirements of the [Habitats] Directive". Accordingly, competent authorities must consider the Directives in making decisions relating to any of their planning functions.

Therefore, even though there is no 'reminder' in the GPDO, European protected species must still be taken into account. As I have been alerted to the Council's concerns about protected species, it is incumbent on me to consider whether there is a reasonable likelihood of protected species being present and affected by the development.

From what I saw on my site visit the appeal premises would offer a suitable habitat for bats and this position is supported by the comments made by the Council's Ecologist, whose professional opinion I afford significant weight. Bats are protected species and I cannot give approval without adequate evidence to be satisfied the Regulations won't be breached and subsequently being able to establish if works may be licensed.

In the light of the strict protection afforded to bats, and that survey information is missing, I am not satisfied that there would not be a material adverse effect on the protected species. As such, I conclude that the proposed works would fail to satisfy the requirements of paragraph Q.2(e). Accordingly, it would not be permitted development as set out under Class Q of the GPDO".

Resources available

There are a number of helpful resources available to LPAs and developers:

- ALGE and CIEEM members can provide advice and support in the prior approval process for developers and LPAs.
- ALGE (working with others) has produced an *Online Interactive Bat Protocol*[2] to assist LPAs and developers to embed consideration of bats into development.
- The British Standard BS42020:2013 provides a code of practice for planning and development[3].
- Information for developers and Local Planning Authorities on avoiding harm to protected areas and species during development work[4] is also available on the government webpages.
- Case studies and examples of embedding biodiversity safeguards into the planning process are available within the RSPB/CIEEM publication *Planning Naturally*, available on the CIEEM website.

The Chartered Institute of Ecology and Environmental Management (CIEEM) works to advance the understanding and standards of practice of ecological and environmental management for the benefit of the natural environment and society.

The Association of Local Government Ecologists (ALGE) represents the professional ecologists working in local government in the UK and, in partnership, supports and develops the nature conservation work of local authorities.

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[2] www.biodiversityplanningtoolkit.com/stylesheet.asp?file=211_interactive_bat_protocol
[3] www.bsigroup.com/LocalFiles/en-GB/biodiversity/BS-42020-Smart-Guide.pdf
[4] www.gov.uk/construction-near-protected-areas-and-wildlife

Update 3

Neighbourhod Planning Bill

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Pre-commenent Conditions

Neighbourhood Planning Bill seeks to introduce reform by inserting a new section 100ZA(5) into the Town and Country Planning Act 1990.

This would require LPAs to obtain agreement with the applicant over pre-commencement conditions.

Purpose is to stop LPAs imposing unecessary and unrealistic conditions on applicants

The Government's intention is not to restrict the ability of local authorities to propose pre-commencement conditions that are necessary – for example, conditions relating to archaeological and biodiversity/ecological matters

Error and Confusion

Section 11 of the Consultation states that wildlife surveys are specifically mentioned as suitable for coverage in pre-commencement conditions.

This is a very unfortunate choice of example.

Caese law and Government advice (e.g. Circular 06/2005 paragraph 99) makes clear that wildlife surveys should only be left to coverage by conditions in exceptional circumstances.

This is because the presence or otherwise of protected species, and the extent to which they may be affected by proposed development, should be established before planning permission is granted, otherwise all material considerations may not have been taken into addressed in making the decision.

Clause 9.2.4 of BS42020:2013 *Biodiversity: Code of Practice for Planning and Development* usefully sets out relevant circumstances when ecological surveys may be conditioned.

Lack of Evidence to Demonstrate Need for Proposed Changes

There is a the lack of evidence provided by the Government to demonstrate that the proposed new changes are actually necessary.

e.g. no evidenced that local planning authorities LPAs are regularly imposing constraints on development, that are not justified and which are consequently causing unnecessary delays in the delivery of development and increased costs.

Furthermore!

Concerns have been expressed in the Daily Telegraph, and subsequently by the Council for British Archaeology and Wildlife and Countryside Link, that the proposed reforms to pre-commencement conditions may have undesirable and unintended consequences.

Pre-commencement conditions are vital to secure the protection of biodiversity and for securing appropriate mitigation, compensation and enhancement measures.

Local authorities have statutory obligations to conserve biodiversity; for instance under:

- The Wildlife and Countryside Act 1981
- The Natural Environment And Rural Communities Act 2006
- The Habitat and Species Regulations 2010

However, in addition, local authorities also have a duty under S.17 of Crime and Disorder Act 1998 to prevent crime.

"Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area".

Taken together, the above statute provides local authorities with a clear mandate to do all that is within their power to prevent *wildlife crime*, as might occur through new development if certain development actions were not adequately controlled or restricted.

Use of pre-commencement planning conditions enable LPAs to anticipate and prevent actions that could otherwise lead to harm to the natural environment as well as resulting in police action against developers.

In other words, use of such conditions addresses the risk to both the environment and developers.

Necessary measures, controls and restrictions must be place before development commences, because adverse effects on protected habitats and species very often cannot be ‘undone’ once they have been damaged, destroyed or harmed.

- Pre-commencement conditions therefore ensure that preventative measures are in place before development starts on site.

In 2013 the British Standards Institution (BSI) published BS42020 *Biodiversity: A Code of Practice for Planning and Development*.

Annex D provides a set of model planning conditions for biodiversity (agreed with PINS in 2013).

The Planning Minister

assurances that the introduction of the proposals set out in Clause 7 are not intended to weaken environmental safeguards

will not restrict the ability of local planning authorities to propose pre-commencement conditions that are necessary for such reasons.

However there is currently no provisions within the Bill to ensure the new measures do not weaken environmental protection.

So … the Bill should set out that proposals for pre-commencement conditions do not apply to Biodiversity and to expressly confirm this in Parliament before the enactment of the Bill.

Update 4

BS42020:2013

Biodiversity: Code of Practice for Planning and Development

Key Elements of BS42020

- Mitigation hierarchy
- Proportionality
- Specifications for required standard of ecological surveys and reports
- Registration and validation (the benefit of validation requirements)
- Decision-making
  - issues to consider
  - Scrutiny
  - Consultation
  - Resolving outstanding issues
- Planning consent
  - Conditions
  - Obligations
  - EPS licences
- Compliance during construction (construction environment management plans)
- Long-term management
- Ecological Monitoring
- Annex D Model planning conditions to address biodiversity issues

Its getting traction … for instance:

- Ecological Constraints and Opportunities Plans (ECOPs)
- The model conditions are being used
- Appearing as a reference at conferences
- Its in the draft East Herts Local Plan
- Its referenced in new SPD to be published in S Devon

- Other?


Thanks for your ear ..... michaeloxford@btinternet.com