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Ecological Survey Requirements: Conflicts Between Local Validation Checklists and National Guidance

Carlos Abrahams MCIEEM

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Local Planning Authorities issue validation checklists to inform applicants of the information required to support planning applications. However, the requirements for ecological survey within these may vary between authorities and diverge from standard national guidance. As such, they provide a potential area of conflict for consultant ecologists and their clients.

Ecological survey requirements

Most ecologists would consider that the ecological survey requirements for development are fairly well established in guidance. Taxon- and habitat-specific methods are set out in publications like Collins (2016) and JNCC (2010); CIEEM provides guidance on Preliminary Ecological Assessment (CIEEM 2017); and www.gov.uk publishes Standing Advice from Natural England. These all indicate what type of survey should be undertaken in what circumstances, and describe (sometimes in considerable depth) how the surveys should be implemented. This can be particularly important if the surveys undertaken then go on to indicate the presence of protected species, and the methods used will be judged as part of a licensing application.

However, underlying this national guidance is a further layer of policy, where Local Planning Authorities (LPAs) set out the ecological survey requirements for the planning applications they receive. These expectations vary considerably between LPAs in terms of how they are set out and what they include. One common



Figure 1. Requirements for amphibian survey in relation to development vary widely between Local Planning Authorities.

approach has been adopted from a pilot draft guidance document produced by the Association of Local Government Ecologists (ALGE), together with consultees, in 2007 (ALGE 2007; available at <https://www.alge.org.uk/publications-and-reports/>). This has been implemented in its original form, or with local amendments, by a range of LPAs since that date. The draft guidance was intended to ensure that there was clarity for applicants about the information that needed to be submitted with a planning application. It also provided a consistent means by which LPAs could identify whether they had all the necessary information to enable a sound planning decision.

Under the National Planning Policy Framework, LPAs should take a proportionate approach to the information requested in support of planning applications. They should also actively maintain a local list of requirements to inform applicants. The ALGE 2007 guidance provided a template for Biodiversity and Geological Conservation Local Requirements, from which an LPA could produce its own customised version. The ALGE guidance and checklist pre-dated Natural England's Standing Advice from 2009-2013 (Natural England 2013). Prior to the Standing Advice being published, LPAs had to consult with Natural England on individual planning applications in relation to protected species.

Variation between local authorities

There is clearly a need for LPAs to inform applicants about the information that must be submitted in support of a planning application and, hence, the existence of local validation criteria for ecology makes some sense. Situations vary around the country, depending on landscape conditions, species distributions and other issues. However, the existence of widely varying requirements between LPAs can also create problems for consultants in terms of the approach they should take in different geographical areas, what advice they should give for proposed schemes on LPA boundaries, and how local approaches play out against national guidance.

To take one example, it is instructive to look at differing approaches for great crested newt survey between local authorities –

notwithstanding the recent moves towards district licensing in some areas. The survey guidance set out in the Great Crested Newt Mitigation Guidelines (English Nature 2001) and www.gov.uk Standing Advice states that surveys should be undertaken for development purposes if there is a pond within 500 metres of the development, even if it only holds water for some of the year (Figure 1). This approach is repeated without change by some LPAs in their validation checklists. The ALGE 2007 guidance, however, made a distinction in survey requirements between 'Major' or 'Minor' developments as set out in the Town and Country Planning Act. Major development in this context is mineral or waste development, ten or more houses, 1000 m² floorspace or 1 ha or more site area. The ALGE recommendation was that major development within 500 m of a pond should indicate the need for great crested newt survey, but for minor developments this distance could be reduced to 100 m. This was a significant alteration to the national survey guidance, which has since been included in local checklists by a number of LPAs, but has not been addressed or discussed in Standing Advice or elsewhere. Potentially adding to confusion, some LPAs have applied different distance thresholds of 500 m and 250 m, or use these when great crested newt records are present locally, but reduce them to 250 m and 100 m when there are no records in the desk study for the scheme. One LPA in southern England only requires surveys for great crested newts when development occurs within 50 m of a pond!

With this much variation between LPAs, there is clearly no level playing field for developments in different areas. There are also differences between the surveys required to gain planning permission from some LPAs and that needed to apply for a European Protected Species licence, should one be required. This situation, with areas of potential conflict between local validation requirements and national guidance and best practice, has arisen through the passage of time over the last ten years. Despite the requirement under the National Planning Policy Framework for LPAs to review and publish their local information requirements every two years, limited ecological expertise within most LPAs has meant that this has not been done

in many cases – and validation checklists have not been updated to reflect ongoing changes in policy, legislation, survey practice and national standing advice.

Outside of the validation checklist, some Authorities also produce supplementary guidance covering ecology survey requirements. For example, additional bat survey requirements have been set out for local authorities in Yorkshire. These largely refer to and replicate the national guidance produced by the Bat Conservation Trust (Collins 2016), but also go further in some areas, e.g. not normally accepting the use of heterodyne detectors for development-related surveys (although this recommendation is briefly mentioned in Collins (2016), it is buried in the appendices).

The current situation then, is that for some areas of the country and for some species more than others, there are significant differences between national and local survey requirements. Given the differences illustrated here between the two different geographical levels, what advice should a consultant give – that provided by the LPA, or that by central government and conservation organisations? And which approach would protect the client from prosecution, if they inadvertently committed an offence due to following a less robust survey protocol – such as carrying out development close to a great crested newt pond which had not been surveyed as a consequence of following less demanding LPA checklist requirements?

National guidance

My own personal approach is to apply the standard national guidance in determining the scope of ecological information requirements and survey methods for all schemes, irrespective of the local validation requirements and advice. The reasons for this are as follows:

1. The national guidance tends to be more up-to-date than local criteria, and has been developed alongside changes in policy, guidance and best practice.
2. The national guidance is often more robust than local requirements. This provides greater protection for clients, and hence also for consultant ecologists in terms of technical challenges to assessments and legal/financial



Figure 2. Surveys may need to support both planning requirements and the needs of protected species licensing. Here, bat roosts are being inspected and excluded following a number of detailed surveys and grant of a mitigation licence.

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liabilities. The downside is that the client might face costs in excess of those needed to simply satisfy local validation requirements – and therefore may not agree with this approach.

3. If protected species licensing is required, national standard methods will support this (Figure 2). If a reduced level of survey is undertaken for planning, then additional surveys would be required to support a licence application – potentially delaying implementation of the planning consent.
4. The fourth reason is highly pragmatic. There are 418 LPAs in the UK. If undertaking work around the country on a regular basis, then finding the current validation requirements for every area and following up the numerous supplementary documents, prior to even scoping and pricing a site survey, is an overly onerous task. It is much simpler and more efficient to just apply one set of guidance throughout the country.

5. Finally, in terms of consistency between similar projects and the level of associated ecological risk, it often makes more sense to apply national guidance allied with professional judgement. Should a ‘minor’ development comprising nine houses really indicate different survey requirements for great crested newts, compared to a ‘major’ development of ten houses?

Conclusions

Local validation checklists are a requirement under the NPPF and are here to stay. In my view they would perhaps be better if they made more reference to established guidance published elsewhere, such as that by CIEEM and Natural England’s Standing Advice (www.gov.uk). I think there is a role here for CIEEM and ALGE members to work together again to review the approach that has grown out of the 2007 pilot draft (ALGE 2007), and make any changes considered necessary. In the

meantime, I believe that communication with clients and the LPA is important, as always, in defining the scope of works to be undertaken, and explaining what work we are going to do and why. This will help to promote greater understanding of the differing roles and requirements of national and local guidance, and help steer a course between the two.

About the Author



Carlos Abrahams is Technical Director at Baker Consultants in Derbyshire and a Senior Lecturer on the CIEEM-accredited BSc at Nottingham Trent University.

Contact Carlos at:
c.abrahams@bakerconsultants.co.uk