



EPS Licensing Focus Group Workshops -The Studios Birmingham

9th and 10th February 2010

On the 9th and 10th February 2010, Natural England ran two stakeholder EPS Focus Group events in Birmingham and hosted a different group of invited developers and ecologists on each day. This was part of our ongoing plan to address the concerns about EPS licensing following the recent Hampton Implementation Review of Natural England's Wildlife Management & Licensing processes.

We encouraged attendees to share their experiences of EPS licensing and suggest ways of improving the process and the service. We also worked with the groups to identify key issues and to put forward solutions. We do not have the power to amend planning legislation or the process and we cannot amend species legislation although we explained that we do work with Defra where possible to influence this. However, our key objective is to develop a licensing process that is streamlined and places the least burden on both those using it and those operating it and which is compliant with species protection legislation.

The two days were considered to be a great success by all those involved with consensus amongst participants that the days had been both productive and informative. This document contains a summary of the discussions which records thoughts on what works well with Natural England licensing and what works less well. The document also includes solutions and ideas put forward by the attendees on how the system could be improved

As the next step in addressing the issues raised, we organised a staff workshop for the 17th March 2010 attended by the majority of staff involved in EPS licensing work. We held the workshop to listen to the views of our team and to work together to find ways to help drive forward improvements to the EPS licensing process. We will keep customers informed of our progress.

Summary of Discussions

1. The day commenced with an exercise to gather positive experiences from attendees.

POSITIVE EXPERIENCES - *What works well with Natural England licensing.*

- Contributors pleased that the licensing system exists and it's something which people believe in.
- Natural England staff that are both knowledgeable and helpful.
- Forms and Guidance which offers comprehensive advice as to what is required and which employs helpful language and terminology. In particular the 'How to Get a Licence' document and the 'reasonably likely or reasonably unlikely to cause an offence' definition in terms of what would constitute licensable works.
- The change to make Developers the licensee rather than the Consultant Ecologists.
- Removal of the LPA Consultation Document.
- A designated Wildlife Adviser and Senior Licensing Officer for each application.
- Natural England Website which is easy to use.
- Being able to submit an electronic copy of the application on CD

2. The next stage considered areas of the licensing process and service that were of concern to attendees.

AREAS FOR IMPROVEMENT - *Areas of Concern.*

MINDED TO REFUSE PROCESS

- No communication between Wildlife Advisers or Senior Licensing Officers until the 'minded to refuse' letter is received and therefore, no opportunity to deal with minor issues by e-mail or telephone during the assessment process.
- Having to wait until the 'minded to refuse' letter is received which causes considerable delays to the developer. Particularly if it takes Natural England another 30 working days to assess the resubmission.
- The 'minded to refuse' letter which can cause considerable reputational damage to a consultant ecologist with their client. (Both the style/wording and the timing (i.e. developer receives the letter at same time as consultant, leaving the latter no time to prepare the client) seem to cause problems)

FORMS, ADVICE & GUIDANCE

- No opportunity to gain pre-application advice from Natural England licensing staff.
- Lack of flexibility in the guidance and advice issued by Natural England.
- Fragmented guidance which needs collating together and also updating. Particular reference to the mitigation guidelines.
- Insufficient notification for consultants when guidance or the application process is changed.

- Inconsistency between different industries and approach to protected species e.g. agriculture/forestry and development.
- Repetitive information requests on application forms.
- GCN Method Statement Excel Spreadsheet format not user friendly. Adequate for more straightforward applications but not for more complex cases.
- The Reasoned Statement is too detailed and repetitive to complete, especially for smaller projects.

TIMESCALES – NEW APPLICATIONS, MODIFICATIONS AND RESUBMISSIONS.

- Licensing timescales for new applications, modifications and resubmissions can cause considerable delays to developments.
- Resubmitting the entire Method Statement when a modification is required is too burdensome and this process should be simplified.

PLANNING AND THE PURPOSE/NSA TEST

- The Reasoned Statement is difficult for the consultant ecologist to complete and it is also challenging to convey to the developer that they should take ownership of this document.
- The perception that local planning authorities have already concluded that there is a 'need' for a development and that there is no satisfactory alternative when planning permission is granted so there is no need for Natural England to assess these points as well.
- It is not clear how Natural England assess what is of overriding public interest.

PROPORTIONALITY

- Being unable to rely on a 'risk-based approach' in relation to certain sites due to the fear of prosecution.
- The cost of a mitigation scheme not being proportionate to the numbers of EPS found.
- The cost of putting a licence application together could be more effectively deployed on conservation projects and wildlife enhancement/management for direct gains.
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MONITORING

- Lack of reviews by Natural England to determine whether mitigation has been successful post development.
- Lack of enforcement undertaken by Natural England e.g. compliance visits.

INCONSISTENCY

- Inconsistency with regards to licensing decisions. Two similar applications receiving conflicting licensing decisions from Natural England for reasons which are not always clear. Undermines the professional status of a consultant ecologist with their clients and consumes a lot of time for all parties.

3. As part of the process in identifying concerns we also sought ideas for solutions.

SOLUTION/IDEAS PROPOSED BY FOCUS GROUP:

Please note that these are suggestions made by attendees of the EPS Focus Group and whilst Natural England will consider all proposals put forward, there will inevitably be budget or resource constraints which will restrict what Natural England is able to implement and therefore, we can offer no guarantees at this stage.

Minded to Refuse Process

- More dialogue between Ecological Consultants and Wildlife Advisers/Senior Licensing Officers to discuss and clarify issues, as well as forming stronger working relationships.
- Early feedback from Natural England staff on licence applications would be extremely helpful.
- The opportunity to deal with minor issues during the assessment process instead of waiting for the 'minded to refuse' letter.

Forms, Advice & Guidance

- External funding for a Wildlife Adviser to engage with the process at an early stage to deal with uncertainty and risk. This could possibly reduce the risk of minor issues causing delays.
- Natural England revised guidance on disturbance is currently being considered by Defra and this may assist with undertaking a risk based approach to licensing.
- Natural England could notify consultant ecologists by e-mail when guidance is updated on the website.
- Updating of the Mitigation Guidelines for Bats and Great Crested Newts is a top priority for Natural England.

Timescales – New Applications, Modifications and Resubmissions

- 'Fast track' application process. Developers would be willing to pay for this process.
- A 'two tier' application process with a light touch approach for straightforward or low impact cases.
- Invite draft applications for initial comment from advisers. This would be outside the normal application process and therefore less constrained by target deadlines. This would also save time when assessing the final application and less chance of being minded to refuse.
- Separate the application process so that the OPI and NSA tests are assessed independently

- **Planning and the Purpose/No Satisfactory Alternative Test**

- A more integrated approach between Natural England and Local Planning Authorities when it comes to assessing the Purpose and No Satisfactory Alternative tests.
- Natural England could produce clearer guidance on what constitutes 'overriding public interest' for a development to aid applicants in preparing information for the purpose test. Separate the application process so that the OPI and NSA tests are assessed independently of the FCS test. This would encourage greater flexibility in the licensing process and should result in an overall reduction in the processing times for applications.

- Where there are issues to be clarified with the method statement, share the FCS assessment with the consultant in advance of the other 'tests' being assessed.

Proportionality

- 'General' or 'Class or Organisation' Licences which cover individuals and organisations who follow a 'code of practice' rather than issuing site-specific licences for low risk situations.

Monitoring

- Increased licence duration to cover post-monitoring works where this is required.