Association of Local Government Ecologists (ALGE) – written evidence (NER0048)

Association of Local Government Ecologists

The Association of Local Government Ecologists (ALGE) was established in 1994. It is the only association in the UK that provides support for professional officers with responsibility for biodiversity and nature conservation in Local Authorities and National Parks.

ALGE’s aims are to:

- Promote and develop good principles and practice for biodiversity, nature conservation, and sustainable development in local government, including National Parks, through its members;
- Maintain an active advice and support forum amongst its members for the exchange of information and ideas on biodiversity and nature conservation matters;
- Provide regular advice on biodiversity and nature conservation matters on behalf of members to government, local authority associations, chief officer societies and others;

ALGE has members throughout England and within all types of local authority, including county, district, unitary and metropolitan councils, as well as in National Parks.

ALGE also has members in Northern Ireland, Scotland and Wales.

All members of ALGE work as specialist professionals, often working alongside a multi-disciplinary team of landscape architects, archaeologists, countryside and public rights of way staff, and other planning colleagues. They may be the sole representative of the ecological profession in their authority, and may therefore often not have the benefit of direct professional support and advice from colleagues within their workplace on nature conservation and biodiversity matters. ALGE therefore provides a forum for exchange of experience and knowledge and offers support on various topical matters.

Rural advocacy and the Commission for Rural Communities

1. ALGE is not submitting any evidence in respect of the questions posed on rural matters.

Natural England

How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?
2. For many years, ALGE and Natural England (and previously English Nature) have enjoyed an extremely positive and constructive working relationship. However over the past two to three years we have been concerned at the organisation’s approach to its functions and the strategic direction it appears to be taking. Generally it would appear that collectively not enough is being done to conserve and enhance biodiversity, with State of Nature reports recording a decline in biodiversity on an annual basis.

3. ALGE considers that Natural England is not sufficiently arm’s length, too influenced by other government departments’ agendas that are not concerned with the natural environment. Consequently it is no longer the strong voice nor advocate for the natural environment and biodiversity that it once was.

4. ALGE is aware that the legal context around EPS protection, licensing and wildlife crime is complex and many aspects remain untested through the courts. It therefore does not necessarily follow (however much it is intended) that recent changes in Natural England policy towards European Protected Species is necessarily in accordance with the strict statutory requirements of the EU Habitats Directive or other domestic legislation. As an example, we note that there has been a fundamental change by Natural England and Defra since March 2010 in their interpretation of the EPS licensing tests; in particular, with regard to Imperative Over-riding Public Interest Test. In March 2010, it was Defra’s stated interpretation of this test that:

“Imperative reasons of overriding public interest may include a range of public interests, served not only by publicly funded or sponsored developments but also by private developments; for example the provision of housing in areas of clearly identified need or creation of employment in areas in need of economic regeneration. However, only public interests will meet the test and projects that are entirely in the interest of companies or individuals would generally not be considered justification for a derogation”. (Taken from paragraph 3 of Annex G Draft government circular: biodiversity and geological conservation – statutory obligations and their impact within the planning system Revised version of ODPM Circular 06/2005 Defra Circular 01/2005. Consultation March 2010)

Under the above 2010 interpretation, the ‘scenario’ for the extension of a domestic dwelling that might affect bats - as presented under Natural England’s proposed new EPS Policy - would apparently not meet the test of Over-riding Public Interest and consequently neither planning consent nor an EPS licence should be granted. Nor would there be any justification for a precautionary interpretation of the initial evidence and no reason for avoiding a delay in order to obtain all necessary survey information. Although ALGE have invited them to do so, Natural England have provided no justification or explanation for this significant policy change since 2010, although it would clearly be valuable for a formal new interpretation of the three tests to be published to support Natural England’s new proposed policies. In the absence of such explanation/justification, and however well intentioned, ALGE remains concerned about the legitimacy of Natural England’s re-interpretation of any legislation through new policies. ALGE would suggest that any change in policy that results in a totally different interpretation of primary and secondary legislation merits robust and transparent justification. To date, we do not have this.
5. ALGE also note that Natural England’s Standing Advice has been left un-amended and now conflicts with their new policies. ALGE have offered to assist in revising these to avoid confusion for local planning authorities.

6. Natural England does not have sufficient resources to effectively perform its functions, in particular its roles as advisor, statutory consultee and licencing organisation, as a result of the drastic budget cuts it has faced over the past six years. Insufficient resourcing has meant delays, criticism of services and, ultimately, loss of confidence in the way in which it is executing its duties. This reduction in resource has led to a greater reliance on outdated standing advice and guidance, which does not give ALGE confidence that Natural England’s planning function is being properly met. Staff losses has meant that there has been a notable loss of expertise within the organisation, not only affecting the way in which is it able to perform its functions but also, crucially, resulting in non-experts leading technical projects. The reduction in local team resource also means Natural England has a reduced ability to properly engage in, and support, action for biodiversity at a local level – this is very much missed as Natural England have previously been a key partner in such work.

7. Lack of capacity and resources at Natural England often means that others are having to fill the gap – either local authority officers or officers from other statutory agencies – as there is still the need for this expertise. A case in point is the Environment Agency, whose highly knowledgeable officers have assisted some local authorities with important incidents involving protected species or infringements of statutory legislation relating to land management issues, when in truth these should be the prime responsibility of Natural England to respond, intervene, investigate and resolve. The cuts to Natural England are placing huge burdens on others who are struggling to resource them.

8. Communication and stakeholder engagement is also limited. Although Natural England have published their strategy Conservation 21, our members are not clear on specifically what work is being taken forward and how they may engage with it. And where new approaches or policies have been introduced, for instance new licensing policies for European Protected Species, there has been limited information circulated and no clarity over how these should be implemented. ALGE’s involvement with Natural England over the past 12-24 months has occurred because we have proactively sought it out, rather than Natural England seeing the Association as a key stakeholder representing many local authorities across the country. When consultation does occur, it has felt that this has been a tick box exercise with a predetermined conclusion – we’ve not felt like our, and others, comments have been listened to or acted on; nor sufficiently explained as to why not.

9. Despite ALGE’s criticisms of Natural England, we are keen to state that Natural England is still very much needed; with biodiversity losses continuing we need a strong and sufficiently resourced body, that is respected and listened to, to champion nature in government and continue efforts to conserve, enhance and manage the natural environment. We would also like to note that there are some excellent individuals at the local level, doing valuable work under difficult circumstances and pressures.
Are any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?

10. ALGE refers to the comments previously made, which we feel need to be addressed if Natural England is to be an effective body for the purpose of conserving, enhancing and managing the natural environment.

11. Natural England’s role in championing the environment should be removed from politics. It should be the chief promoter that the natural environment is not a barrier to growth but rather should be seen as an asset, which has a key role to play in the economy of the country.

12. Assuming European protected species and habitats will be upheld after Brexit, Natural England should be central to the development of policy and management to continue their protection and enhancement. Translation of the European protection will only be effective if Natural England strongly champion that protected species and habitats are something valuable to be protected and conservation status enhanced and should not be viewed as an unnecessary burden on development.

13. Natural England should also be central to the development and delivery of new land management policy, replacing CAP, which must have biodiversity conservation and enhancement as its key driver.

14. In delivering new protection, policy and management post Brexit, Natural England must be sure to engage with those at the local level (and those with relevant experience and expertise) to ensure they are practical and successful in achieving their objectives. Consultation must be comprehensive and meaningful.

15. Natural England do not appear to be currently driving work on natural capital and biodiversity net gain, significant emerging biodiversity issues. Work on natural capital, which have the potential to radically alter the way society perceives biodiversity, and hence the value it places upon it, is currently be driven by the private sector. Whilst this input is to be welcomed, there needs to be strategic, national level, leadership to ensure that the benefits are available to the wider public, not simply to shareholders. The same can be said for net gain, which is being driven by the private sector and NGOs. For two key policy areas, Natural England should be assuming the lead strategic role.

Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective have Natural England – and other partners – been in promoting better access?

16. There has been good, albeit slow (and understandably, given landowner issues), progress on coastal route. Whilst Natural England have led and enabled this access, it is important to note that actually most of it is being delivered by local authorities.
Sustainability and biodiversity

Is the duty to ‘have regard’ to biodiversity, which is contained within the Act, well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty? What has been the practical impact of the 2006 duty? Is any modification to the duty required as a result of developments in our understanding of the value of ecosystems and biodiversity since 2006?

17. ALGE believes that most local authority bodies are aware of the Duty. However “have regard to” is too passive and vague to have any real impact or bring about any noticeable change. There is also little guidance currently available on what defines “have regard to”, with the previous comprehensive guidance released following the Act now seemingly withdrawn.

18. The lack of any reporting requirement and reward/penalty for implementing/not demonstrating the duty of regard means there is little incentive for any local authority, with limited resources, to implement this duty to any significant degree. It is a useful lever in respect of demonstrating to decision makers why biodiversity should be considered and be part of a local authority’s agenda, however there is no satisfactory reply to “what is the risk if we don’t” given there is currently no need to report. This lack of reporting also makes it difficult to determine if there has been impact as a result of the Act and its duty.

19. Whilst initially the duty was welcomed, in that it made local authorities consider better the impact of their functions on biodiversity, the early enthusiasm for the duty has seemingly waned. As previously mentioned, this is, in part, due to the lack of reporting requirements. But also, the extent to which local authorities are now able to fully discharge this duty has been affected by cuts in local authority spending. In the 2012 ALGE review of the impacts of spending cuts on biodiversity within local government, the majority of biodiversity work areas (which could be considered to be delivering the biodiversity duty) were reported to be facing a budget cut of at least a 60% - this included managing council land for biodiversity, planning advice and corporate biodiversity work. Unsurprisingly budget cuts also resulted in the loss of staff to support the fulfilment of the duty.

20. From previous research undertaken by ALGE, it is known that only one third of planning authorities in England have access to their own ‘in-house’ ecologist. A large number of planning authorities (c.65%) have no or only limited (i.e. part-time or shared with another authority) access to any ‘in-house’ ecological expertise. Our 2013 review of ecological capacity and competence in English planning authorities found that the majority (90%) of local authority planners lack ecological qualifications, have had very little training and consequently recognise that they have only basic levels of the ecological expertise required to discharge duties and national policy.

21. Given the current policy focus on ecosystem services and natural capital, a revision to “regard to biodiversity, ecosystems services and natural capital” should be considered or at least include reference to the latter to in associated guidance. It should also reflect the move from no net loss to net gain.
22. In 2009/10, ALGE contributed to a Defra commissioned *Review of the Biodiversity Duty contained in Section 40 of the NERC Act 2006* (Entec, 2010). Despite making a number of recommendations (summarised below), this work seemed to go no further. The recommendations identified a number of opportunities for improving awareness and implementation of the biodiversity duty, which should be considered by the Select Committee as part of the review of the NERC Act; these included:

- Encourage all local authorities and public bodies to: have a corporate biodiversity strategy (or equivalent); have a ‘Biodiversity Champion’ amongst their senior managers, who has responsibility for implementation of the duty; have access to ecological advice; produce management plans incorporating a biodiversity element for all their land and buildings; and have access to up to date biodiversity information for their land/buildings.
- Encourage all local authorities to: appoint a council member as a member-level ‘Biodiversity Champion’; be an active member of their local biodiversity partnership; maximise the extent of eligible council-owned land in higher level tiers of agri-environment schemes; employ sufficient suitably qualified ecologists to meet their responsibilities under the duty; and have access to up to date biodiversity information for their administrative area.
- Defra to: develop a framework for local authorities to review their implementation of the duty; provide an easily searchable website with information that supports different types of public authorities in implementing the duty; produce a series of short guidance booklets on the duty aimed at different types of public authorities; collate a list of public authorities in England and Wales; undertake a review of legal and ombudsmen’s cases relating to the duty; and investigate the best means of promoting the duty with community councils.

*How does the English duty to ‘have regard’ to biodiversity compare to the Scottish duty to ‘further’ biodiversity and the enhanced biodiversity duty introduced in Wales in 2016?*

23. The English duty is much weaker and has not had the same level of political support or promotion.

24. In Wales, the new duty’s requirement to enhance rather than consider and also report is considered a significant improvement and step forward. With the Welsh Government’s backing, it gives greater political support and has helped raised the profile of biodiversity within local authorities.

25. The use of “further” in the Scottish duty is a more proactive approach however experience from Scotland would suggest that the duty still doesn’t carry much weight. There is a requirement to report and whilst not onerous, there is no penalty for not reporting so it remains to be seen whether all comply.

26. However the inhibiting factor remains for all three duties, not matter how strongly worded and supported – that being lack of sufficient resources to fully implement the duty.
The changing context since 2006

Will the structures established by the Act be sufficient to ensure appropriate protection for nature and environmental standards following Brexit? Are any modifications or changes to the structures established by the Act required to address the implications of Brexit? Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?

27. Notwithstanding Brexit, a key change since 2006 has been a shift towards enabling development – it appears that biodiversity is even less valued now than it was in 2006, with a push for growth at seemingly any cost, despite annual reports of a decline in biodiversity. This is at odds with other policies such as net gain and the need to value natural capital; and fails to recognise that the natural environment is an integral part of growth and is instead seen as a barrier.

28. The reduction in grants to local authorities since 2011 has resulted in resources being diverted to statutory and, what are considered, core services – in many areas this does not include services concerned with ecology/biodiversity. This is a significant change in the landscape to which the NERC Act was first introduced. It means that the emphasis on local delivery, both via the NERC and the 2012 Natural Environment White Paper, is likely to result in biodiversity targets not being met (in particular net gain) as sufficient resources are not available.

29. Local Nature Partnerships should be given stronger weight and increased resources to deliver biodiversity net gain in conjunction with the Local Enterprise Partnerships. The focus and drive for the LNP has faltered in many areas because of a lack of funding and this needs to be rejuvenated to ensure biodiversity is a key component of economic initiatives. Specific funding for LNPs through Government would be a way of demonstrating the importance of biodiversity to the economy.

30. Any replacement legislation for the EU Directives must ensure strong provision for protected habitats and species and those charged with overseeing and ensuring this protection. The structures to enable this must include sufficient alternatives for enforcement and scrutiny, currently provided by the European Commission and the Court of Justice of the European Union.

This response has been collated by Elizabeth Milne, Chair of Association of Local Government Ecologists

11 September 2017