

Report to the Cabinet

Report reference: C-041-2011/12
Date of meeting: 5 December 2011



Portfolio: Safer and Greener

Subject: Biological Records in Essex (BRIE) Service Level Agreement and funding

Responsible Officer: Abigail Oldham (01992 788203)

Democratic Services Officer: Gary Woodhall (01992 564470).

Recommendations/Decisions Required:

- (1) That the District Council enters into a Service Level Agreement with the Essex Wildlife Trust (EWT) to support the development and setting up of a Biological Records Centre in Essex. This will include the receipt of habitat and species data for use in local authority decision making; and**
- (2) That The New Burdens (Habitats Regulations Assessment and Climate Change Planning Policy Statement) Grant Determination is ring-fenced for Countrycare for use in this purpose (£24,000) and the remaining £26,505 to be used for other protected species and habitat related consultation, advice or support in respect of BRIE or other planning application issues.**

Executive Summary:

Natural England is committed to the establishment of a national network of LRCs in each county. The main purposes of these centres are:

- (a) to research, collate, validate and disseminate information and advice on biodiversity; and
- (b) to help local authorities with their statutory obligations with regard to conserving biodiversity.

Essex is the only county without a fully functioning centre, and has the poorest availability of information on Biodiversity Action Plan (BAP) habitats and species, in the Eastern region.

When determining planning applications in accordance with the Local Plan and the presumption in favour of sustainable development, local authorities should aim to conserve and enhance biodiversity through avoidance, mitigation and compensation. NC4 of the Local Plan states: "Development proposals will be expected to make adequate provision for the protection, enhancement and suitable management of established habitats of local significance for wildlife. Such provision may be more stringent when there are known protected species either on the site or likely to be affected by the development". BRIE would provide specialist advice or information on priority species to help the Council meet these obligations.

The proposed name for the Records Centre for this county is Biological Records in Essex (BRIE). Organisations involved in its establishment include Essex County Council, the Essex Field Club, the Environment Agency, Natural England, Museums in Essex and Essex Wildlife Trust. Once established, BRIE intends to be run as an independent, not-for-profit company, initially funded and supported by the key project partners. District and Borough Councils, and Unitary Authorities in Essex are all being asked to contribute to the development and establishment costs. It is envisaged that BRIE will then become self-supporting using an appropriate charging regime.

Reasons for Proposed Decision:

There are many organisations and individuals across the county that collect, hold and manage biological data. The aim of establishing a Local Records Centre (LRC) is to bring all these records together so that they can be checked and verified and made easily and more efficiently available to those requiring the information. This particularly includes planning authorities in dealing with applications for development or other land use changes.

Other Options for Action:

- **No data.** Therefore no evidence. This would be a low cost option, but in the medium to long term could be expensive if a decision is challenged, particularly if the information is available but has not been used.
- **Collect data.** Expensive if done on a case by case basis, cost effective if the onus is on consultants to provide data along with planning applications. However, this could be costly in terms of time spent on an application, especially if it is referred back to the developer for surveys once an application has already been submitted.
- **Use existing data from other sources.** There are many data providers in Essex, and it is possible to go to these rather than a records centre for information. However this is time consuming and potentially costly as each data provider could charge separately. There is also a possibility that data will be duplicated, or that vital data may be missed because it is not known that the data supplier exists. The accuracy of the data may not be known, and in some cases data may not be intended for use in assessing planning applications (National Biodiversity Network (NBN) data for example).

Report:

Statutory Obligations

1. Section 40 of the Natural Environment and Rural Communities Act 2006 (NERC) requires every public body in the exercising of its functions to 'have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity'.

2. PPS9: Biodiversity and Geological Conservation (2005) and the related Circular (ODPM 06/2005) go into much more detail about the importance of biodiversity, and how local authorities should address this in dealing with planning applications. The Government is intending to replace all current guidance and circulars with a National Planning Policy Framework (NPPF) by early 2012, with the intention of reducing over 3,000 pages of such guidance to about 60. The draft NPPF contains the following paragraphs dealing with biodiversity obligations:

168. *Planning policies should:*

- *take account of the need to plan for biodiversity at a landscape-scale across local authority boundaries*
- *identify and map components of the local ecological networks, including: international, national and local sites of importance for biodiversity, and areas identified by local partnerships for habitat restoration or creation*
- *promote the preservation, restoration and re-creation of priority habitats, ecological networks and the recovery of priority species populations, linked to national and local targets¹³; and identify suitable indicators for monitoring biodiversity in the plan; and*
- *aim to prevent harm to geological conservation interests.*

169. *When determining planning applications in accordance with the Local Plan and the presumption in favour of sustainable development, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:*

- *if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused*
- *development proposals where the primary objective is to conserve or enhance biodiversity should be permitted*
- *opportunities to incorporate biodiversity in and around developments should be encouraged*
- *planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats, including ancient woodland and the loss of aged or veteran trees found outside ancient woodland, unless the need for, and benefits of, the development in that location clearly outweigh the loss*
- *the following wildlife sites should be given the same protection as European sites:*
 - *potential Special Protection Areas and possible Special Areas of Conservation*
 - *listed or proposed Ramsar sites¹⁴; and*
 - *sites identified, or required, as compensatory measures for adverse effects on European sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.*

170. *Development likely to have a significant effect on sites protected under the Birds and Habitats Directives would not be sustainable under the terms of the presumption in favour of sustainable development.*

3. The LRC should be able to advise on “landscape-scale” planning for biodiversity, as this is likely to cross local authority administrative boundaries, and also to provide specialised advice or information on priority species to help the Council to meet these obligations, and to fulfil the requirements of policy NC4 of the Local Plan which states: “Development proposals will be expected to make adequate provision for the protection, enhancement and suitable management of established habitats of local significance for wildlife. Such provision may be more stringent when there are known protected species either on the site or likely to be affected by the development”. The Local Plan and Alterations are currently being reviewed with the intention that the new draft plan is submitted to the Secretary of State by February

2013 and this will lead to an Examination in Public. The nature conservation/biodiversity policies will be updated to accord with:

- (a) the final version of the NPPF;
 - (b) the most recent survey of Local Wildlife Sites in the District; and
 - (c) the establishment of the County Biological Records Centre.
4. The information maintained by BRIE should ensure that:
- (i) the strategic aims of the NPPF are met; and
 - (ii) the LoWS are reviewed on a more regular basis to ensure that policies on conservation and management continue to achieve their objectives.
5. Natural England no longer offers advice to Local Authorities on a case-by-case basis but gives general “standing advice” on protected species to guide LAs into correct decision making.

Current working practice

6. Biodiversity implications of planning applications are usually only considered if an ecological survey (Phase 1 or species specific) has already been carried out by a consultant. The method of survey is judged as to whether or not it is robust and recommendations are made - these may be for further surveys or suggestions for habitat enhancement opportunities.

7. Planning applications without ecological surveys are occasionally checked by the Countryside Manager but these are difficult to assess without appropriate data being available. An evaluation of the habitat and potential for protected species is made and advice is given on the application, but this is obviously with no definite evidence of the existence of such species.

How BRIE can help

8. EFDC Countrycare has been involved with the BRIE Steering Group since 2010. The initiative, led by the Essex Wildlife Trust, is committed to:

- Collate, store and disseminate data on species and habitats in a standardised format according to regional guidelines and codes of conduct
- Liaise with local and national recorders, planners, consultants and other records centres
- Provide the most cost effective means of obtaining reliable data to support a decision
- Provide information and guidance on the data itself, so that Local Authorities can assess the reliability of the information provided
- Provide information on data providers – ensuring that all existing information is available to subscribers
- Provide the opportunity to request other services if necessary, e.g. data interpretation services or training workshops

9. BRIE would supply EFDC with data on an annual basis and would come in the form of GIS layers that can be overlaid on EFDC Proprinter software. BRIE will allow planning officers to check planning applications to decide whether or not ecological surveys need to be carried out at an early stage. It will also inform decisions relating to ecological surveys when

they are supplied with planning applications.

10. BRIE would contribute as a form of replacement resource for the advice Natural England used to give to Local Authorities.

11. The current proposed cost is £4,000 for an SLA lasting one year. BRIE will consider offering a discount for SLAs lasting for longer than this. BRIE is a not-for-profit organisation and only charges for the costs of database maintenance, data extraction and formatting, rather than for the data itself.

12. It is recommended that The New Burdens (Habitats Regulations Assessments and Climate Change Planning Policy Statement) Grant Determination which has been running three years and is now finished, be used to support the BRIE programme. All three years' worth is in DDF - a total of £50,505. It is therefore recommended that £24,000 be allocated for 6 years' worth of BRIE.

13. The remainder would be used for other protected species and habitat related consultation, advice or support in respect of BRIE or other planning issues on an ad hoc basis.

Resource Implications:

The request is for a proportion of the existing New Burdens Grant (£24,000) to be used to support the BRIE programme for EFDC and the remaining £26,505 to be used for other protected species and habitat related consultation, advice or support in respect of BRIE or other planning issues on an ad hoc basis.

Legal and Governance Implications:

The Council has statutory obligations to consider protected species and habitats when making decisions on planning applications.

Safer, Cleaner and Greener Implications:

Not applicable.

Consultation Undertaken:

Dr Lorna Shaw – EWT

Background Papers:

Planning Policy Statement 9: Biodiversity and Geological Conservation (2005)
Draft National Planning Policy Framework

Impact Assessments:

Risk Management

Ensuring access to the best available data on biodiversity will significantly reduce the risk of making wrong decisions on planning applications. It will also allow Countrycare to more effectively manage and enhance biodiversity in the District with a reduced risk of missing out significant information.

Equality and Diversity

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications? No

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? N/A

What equality implications were identified through the Equality Impact Assessment process?
N/A

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
N/A

ATTACHED: APPENDIX 1: DRAFT SERVICE LEVEL AGREEMENT

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Service Level Agreement

1. This agreement is between:

Essex Wildlife Trust

The Joan Elliott Visitor Centre,
Abbotts Hall Farm,
Great Wigborough,
Essex,
CO6 7RZ.

And (“the organisation”):

(organisation name and address here)

Organisation OS license number *(where applicable, see 4.6)*

2. Purpose of the agreement:

To support the development of Biological Records In Essex (BRIE) towards the setting up of a fully functioning, county wide biological records centre. This will include the provision of habitat and species data to the organisation for use in local authority decision making.

Biological Records in Essex (BRIE) - a partnership of individuals and organisations working to co-ordinate and improve the data flow and availability of biological and geological information in Essex.

3. General terms and conditions:

- 3.1. This agreement covers the period from
- 3.2. The organisation will contribute funding of £ . This sum is to be paid on receipt of an invoice from Essex Wildlife Trust.
- 3.3. Essex Wildlife Trust will engage to provide data on species and habitats to the organisation in accordance with the data provision statement below.
- 3.4. Any data obtained by the organisation during the timescale of this agreement, for example from consultant’s reports, must be made available to BRIE free of charge wherever possible. This is to ensure that BRIE continues to improve and add to the developing Essex county database, and aid the sharing of data between planners, consultants and local groups.
- 3.5. As part of this agreement the organisation is invited to nominate a representative to sit on the BRIE Steering Group and receive regular updates on the progress of the developing Essex Records Centre.

4. Data Provision:

- 4.1. By the end of the agreement, Essex Wildlife Trust will aim to provide the organisation with data in accordance with the 2010 standard minimum service guidelines developed for local record centres (LRC's) in the East of England (see appendix 1). Where this is not possible, the organisation will be notified of any differences/omissions. New datasets will be provided as soon as possible after receipt.
- 4.2. Essex Wildlife Trust will provide a metadata statement to the organisation along with any data supplied. This will follow the format of the metadata template drafted for LRC's in the East of England (appendix 2).
- 4.3. Data provided will cover the geographical extent of the administrative area of the organisation. Data falling less than 1km outside of this area, but still within Essex will also be supplied where available to cover sites that overlap with the administrative boundary, river catchments and coastal sites adjacent to the area in question. Where administrative boundaries overlap with other counties in the East of England region Essex Wildlife Trust will liaise with other record centres in the region to provide data on request.
- 4.4. Data will be provided in the format requested by the organisation, and is valid for the term of the agreement. Species data will be provided at the resolution of 1km Ordnance Survey grid squares, although attribute information supplied with the data will provide a more accurate location where available. Designation information for protected species will be supplied along with the data.
- 4.5. Where data exists but is not available to Essex Wildlife Trust, the Trust will provide contact details of other organisations that may be able to supply records, where this information is available. These details will be provided in the metadata statement.
- 4.6. Data derived from Ordnance Survey MasterMap data (such as protected site boundaries) can only be provided to organisations that have a valid OS licence. The organisation must provide their OS license number if receiving this data from Essex Wildlife Trust.

5. Data Quality

- 5.1. Essex Wildlife Trust is currently in the early stages of setting up a fully functioning county wide Essex biological records centre, and as such data provided to the organisation should not be considered comprehensive, and may not be independently verified. Essex Wildlife Trust will continue to work to improve the quality and coverage of its data holdings, and to establish a system for checking data quality.
- 5.2. Essex Wildlife Trust will endeavour to provide further information on the validity or coverage of data on request.
- 5.3. It should be noted that the absence of records does not imply any species or habitat is absent from a given area. Nor does recorded presence imply current, continuing or breeding presence. Caution should therefore be exercised when interpreting the data provided, and where appropriate expert advice should be sought by the organisation.

6. Confidentiality

- 6.1. Data should not be sold or supplied to any other organisation without the prior written consent of Essex Wildlife Trust.
- 6.2. Recorder names will not be supplied along with the data for reasons of confidentiality; however Essex Wildlife Trust will endeavour to provide further information about the source of data on request if necessary.
- 6.3. The data supplied by Essex Wildlife Trust must not be made available for public viewing without the prior written consent of the Trust, as it may contain location details of sensitive species.

7. Termination

7.1. Either party may withdraw from this agreement by giving one month's notice in writing to the other, except in the case where either party is in breach of the Agreement in which case the other party may terminate by seven days notice in writing. In either event the fee payable by the organisation will be calculated pro rata at the date of withdrawal.

8. Signatures

Essex Wildlife Trust

Date

(Print name)

The organisation

Date

(Print name)