

Report of the Strategic Director for Place to the meeting of Regeneration and Environment Overview and Scrutiny Committee to be held on Wednesday 4th March 2020

BQ

Subject:

BIODIVERSITY SCRUTINY REVIEW: UPDATE ON BIODIVERSITY NET GAIN CONSULTATIONS

Summary statement:

The Regeneration and Environment Overview and Scrutiny Committee received a 12 month update report on a review of biodiversity in March 2019. The Committee requested an update in a further 12 months on the Government's consultation on Biodiversity Net Gain. The report provides this update.

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Overview & Scrutiny Area:
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1. SUMMARY

The Regeneration and Environment Overview and Scrutiny Committee received a 12 month update report on a review of biodiversity in March 2019 (which had been undertaken by the Environment and Waste Management Overview and Scrutiny Committee in 2018). The Committee requested an update in a further 12 months on the Government's consultation on Biodiversity Net Gain, secured through development. The report provides this update.

2. BACKGROUND

- 2.1 The Council, in common with other public authorities, has a legal duty with regard to biodiversity which is set out in the Natural Environment and Rural Communities Act (NERC) 2006. This states that:

“Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity”.

- 2.2 A review of biodiversity in the Bradford District undertaken by the Environment and Waste Management Overview and Scrutiny Committee in 2018, recognised that the Council has a key role through its planning function, to influence the conservation of biodiversity. This was further picked up by the Regeneration and Environment Overview and Scrutiny Committee in March last year, when it received a 12 month update report. In this report it was noted that the Government had invited comments on securing biodiversity “net gain” through the planning process, and had launched a national consultation exercise in December 2018. Officers reported that the Council had submitted comments as part of this consultation, and an update report on the outcome of this was consequently requested by the Committee. This report is that update.

- 2.3 By way of background, the principle of “net gain” is already set out in the National Planning Policy Framework (NPPF) – in paragraph 170:

‘Planning policies and decisions should contribute to and enhance the natural and local environment by:...

*d) minimising impacts on and providing **net gains for biodiversity**, including by establishing coherent ecological that are more resilient to current and future pressures;’*

At Paragraph 174:

‘To protect and enhance biodiversity and geodiversity, plans should:...

*b) promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable **net gains for biodiversity**.’*

At paragraph 175:

When determining planning applications, local planning authorities should apply the following principles:

*d) development whose primary objective is to conserve or enhance biodiversity be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable **net gains for biodiversity***

Such references in the NPPF afford the principle of biodiversity net-gain substantial weight and it is firmly established in policy. It is however, not a legal requirement. The consultation on net gain launched in December 2018, asked whether such a principle should become mandatory. This built on a commitment in the Government 25 Year Environment Plan published in 2018.

- 2.4 The consultation attracted almost 500 responses. Almost half came from planning authorities and conservation bodies but only 8% from developers. Fewer than 5% of developers thought that net gain should become mandatory compared to almost 70% of conservation bodies. The outcome of the consultation was, however, picked up in an Environment Bill, which included a commitment to apply a requirement for biodiversity net gain of 10% for developers through the planning system. This gain, it is proposed, will be measured using a “biodiversity metric” that has been developed by DEFRA. Part 6 of the Bill legislates for the creation of the net gain requirement, expands the duty on relevant authorities from conserving to “conserving and enhancing” biodiversity, and legislates for the creation of Local Nature Recovery Strategies to cover the whole of England.
- 2.5 The Environment Bill was announced in the Queen’s Speech on 14 October 2019. First Reading was on 15 October and a Second Reading on 28 October 2019. Shortly after the Second Reading the General Election was called, parliament dissolved and so there was no further progress. A commitment to a bill covering environmental matters was included in the post-election Queen’s Speech on 19th December 2019 and the Bill was re-introduced to Parliament on 30th January 2020 – so it appears that the Bill will become law sometime later this year.
- 2.6 It is useful therefore, to consider the provisions in relation to net gain which were included in the draft version which got through Second Reading – on the assumption that it will eventually proceed into law.
- 2.7 The main provisions are set out in Schedule 15 of the Bill, key amongst them being the insertion into the Town and Country Planning Act 1990, a “general condition of planning permission” that **every planning permission granted for the development of land in England shall be deemed to have been granted subject to the submission by the developer of a biodiversity net gain plan and its approval by the planning authority.**
- 2.8 The quantum of “net gain” is set at 10% as a minimum – so the post-development biodiversity value of a site must exceed its pre-development biodiversity value by at least 10%. This must be made clear in the biodiversity net gain plan and must be calculated using an agreed “biodiversity metric”, produced by DEFRA.

3. OTHER CONSIDERATIONS

- 3.1 The basic principle behind biodiversity net gain is that, once a development has taken place, it should demonstrably provide a higher level of biodiversity than the pre-development situation – by at least 10%.
- 3.2 The process requires the developer to accurately assess and quantify the pre-development biodiversity value of a site and then demonstrate, through a biodiversity net gain plan, how the increase in biodiversity is to be achieved.
- 3.3 The well-established “mitigation hierarchy” is expected to be applied, where it would be expected that developers would first seek to avoid impacts, then to minimise them, then take on-site measures to rehabilitate or restore biodiversity, before finally offsetting residual, unavoidable impacts.
- 3.4 So, as a last resort, If it is not possible for this increase in value to be achieved on-site, developers will be able to provide alternative, compensatory habitat elsewhere in the locality or, if that is not possible, they could enter an offsetting scheme whereby they pay into a fund which is used by third parties to create this “offset” habitat elsewhere. This process is illustrated in Appendix 1.
- 3.5 Clearly this has significant implications for the Council as planning authority, as there will be a need to ensure that such gain is secured through the development management process. The technical ecological resource (currently one Biodiversity Officer) will need to reflect the increased demand – as these officers will need to ensure, through their planning consultation responses, that the requirement for net gain is highlighted, that it has been correctly assessed by the developer, that the submitted net gain plan is adequate and will achieve the required increase in biodiversity value. In addition, once all of this is in place, the development will have to be monitored so that the Council can be sure that the gains are being achieved, either on-site or through off-setting. The financial and resource implications of this are explored further in Section 4.
- 3.6 Where net gain cannot be achieved on-site, or on nearby sites owned by the developer, there will need to be a structure in place whereby developers can offset their impacts by improving habitat elsewhere.
- 3.7 There are a number of models by which this could be achieved – from entirely in-house site acquisition and long-term management by the Council, to recruiting local farmers to manage their land to create the habitat (funded through an offsetting pot), to engaging third parties to provide and manage the offset habitat (possibly on a county-wide basis. A combination of all of these is also possible. These options need careful assessment as to which would be the best model for Bradford.
- 3.8 The off-setting option, it is proposed, would be funded through “biodiversity units” which would have an agreed tariff per unit, secured through Section 106 agreements (or similar legal undertaking). The tariff can then be used to buy the

necessary biodiversity units to ensure the net gain at another location, thus off-setting the biodiversity loss at the development site.

- 3.9 Finally, it is worth highlighting a further ramification of this proposal, in terms of its impact on the viability of developments. No doubt developers will cite viability as a barrier to achieving net gain and this is something the Council as planning authority will need to be mindful of. The expectation to achieve net gain however is already currently high – included as it is in National Planning Policy – and if it becomes mandatory in an Environment Act, the viability argument will not stand as a reason to avoid the achievement of biodiversity net gain.

4. FINANCIAL & RESOURCE APPRAISAL

- 4.1 The ongoing costs to local government of biodiversity net gain are estimated at £9.5m per year nationally, including transition costs of £4.8m per year for the first two years. The figures are contained in a DEFRA impact assessment. The Government produced a consultation response in July 2019, which stated: "The cost of new burdens placed on local authorities through biodiversity net gain will be assessed and funded."
- 4.2 The Royal Town Planning Institute said that biodiversity net gain "must be complemented with proper resourcing for planners, including access to ecological expertise. This will enable the profession to fulfil its leadership function"¹
- 4.3 With the Environment Bill working its way through Parliament, DEFRA published an Impact Assessment in October 2019. This assessment concluded that:

"the main resource that will be needed by LPAs to implement the policy effectively is access to sufficient expert ecological advice. At present this is provided through different models including in-house ecologists, shared services or buying in advice from other authorities, NGOs or consultancies. The level of advice available to planning departments is variable and LPAs report capacity is stretched."

- 4.4 It went on to estimate the required additional staff resource as follows:

It was highlighted that the resource required was best arranged by unitary and county authorities (i.e. upper-tier authorities). We estimate that each upper-tier authority would require on average:

- 0.65 FTE (range between 0.5 and 2 FTE) ecologists for set up, lasting one to three years*
- 0.65 FTE (range between 0.5 and 2 FTE) permanent ecologists, for monitoring after set up.*
- 0.65 FTE (range between 0.5 and 2 FTE) permanent ecologists to advise authorities*

Therefore, an upper-tier authority would require on average 1.3 FTE (1-4 FTE) ecologists in any given year. This totals to 197.6 FTE across 152 upper-tier authorities. Of this requirement, 22.8 FTE are needed for spatial planning, with

¹ RTPI response to Defra consultation on Biodiversity Net Gain (2019)

skills in coordination, engagement and evidence use.

We expect that additional resources would be required for upper-tier authorities with more planning applications and environmental assets. Our analysis scales the representative resource requirement of LPAs according to the amount of development taking place within those areas. We multiplied the FTE estimates by the current salary for a government ecologist (£37,096)² and then added 30% as an approximation of overhead costs.

For local government, our findings indicate that the initial annual costs total £9.5m throughout the first two years. Thereafter, costs are ongoing equalling £9.5m per year. Of these costs, £1.1m are associated with spatial planning.

No financial burden will be placed on the Council budget.

- 4.5 In a recent policy statement (dated 30th January 2020), the Government pledged:

Section 8 Delivering environmental ambition at the local level

“Government will fully fund all new burdens on local authorities arising from the Bill in order to make our ambition a reality. We are committed to working in partnership with local government, businesses and wider stakeholders on the implementation of these measures, to identify and secure the capacity and skills to deliver a cleaner, greener and healthier environment.”

- 4.6 It would appear therefore that the new resource and financial burdens to be placed on the Council as a result of the introduction of mandatory net-gain requirement, will be covered by additional Government funding (possibly through a grant application process – although this has yet to be clarified).
- 4.7 A full assessment of the financial and resource implications is required, but based on the DEFRA Impact Assessment quoted above, a busy Planning Authority like Bradford could need around an additional 3 or 4³ full-time officers to manage the process.
- 4.8 **Viability:** a “significant minority” of developers raised concerns in the Government consultation, regarding additional costs and viability on challenging sites. The DEFRA Impact Assessment considered this issue and used Ministry of Housing, Communities and Local Government data on land use values, to estimate the cost of net gain delivery as a percentage proportion (%) of industrial and commercial land values for around 70 towns in 38 different Local Enterprise Partnership (LEPs) areas.
- 4.9 The analysis shows that the majority of the costs across scenarios are expected to be less than 5% of land value, and that regions with higher costs (i.e. implying a

² This is DEFRA estimate. Bradford’s Biodiversity Officer is scale PO1 (@£32,500)

³ Based on the range being between 1 and 4 FTE – Bradford could be at the upper end of this range due to the number of planning applications dealt with per annum.

potential site specific viability issue) tend to be in the North. A similar conclusion was reached on residential development.

- 4.10 The Impact Assessment also indicates that it is likely that exemptions or flexibility will be allowed on “some targeted brownfield sites with viability issues”. The Assessment also indicates that a number of other development types will be exempt from the requirement for net-gain; namely permitted development and householder development including extensions.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

- 5.1 It would appear that the most significant risks in relation to net gain are not having the adequate staff resource and off-setting opportunities in place to ensure it is implemented successfully.
- 5.2 A consequence of that failure would be a reduction in ecological interest and biodiversity value within the District and the environmental, climatic, social and economic consequences of that.
- 5.3 The further consequence arising from that would be the legal and reputational ramifications of failing to achieve a mandatory planning requirement.
- 5.4 All of the above could be avoided by ensuring that adequate staff resources and procedures and systems are in place to successfully secure the net-gain. It may be the case that consideration needs to be given to operating on a more regional or county-wide basis, particularly in terms of off-setting opportunities and staff are already having discussion with colleagues in neighbouring authorities to scope this out.
- 5.5 If the off-setting element of net-gain were to be managed on a county-wide basis, there may be instances where the net-gain from a development in one local authority area is actually secured in another local authority area. This is something that would need to be accepted and agreed by all the participating authorities upfront.

6. LEGAL APPRAISAL

- 6.1 If, as seems likely, the Environment Bill becomes law, net-gain will become mandatory and the Council will need to ensure that all developments comply with the legal requirements.

7. OTHER IMPLICATIONS

7.1 EQUALITY & DIVERSITY

None

7.2 SUSTAINABILITY IMPLICATIONS

The coming years will see a requirement for the District to accommodate new development – for both housing and employment. In terms of housing alone, a requirement of 28, 951 new homes has been identified in the Bradford Core Strategy Partial Review (2019) over the next 17 years - plus all the necessary infrastructure which goes along with this. There are clear environmental benefits to ensuring that all this development results in a net-gain for biodiversity, thus helping to secure the District’s ecological value, its resilience to climate change, its quality of life and wider social and economic benefits.

As a general principle, based on the fact that net-gain is an expectation in current national planning policy, the Council has been requesting that developments demonstrate a net-gain prior to this becoming law. Some examples of recent successes are included at Appendix 2.

7.3 GREENHOUSE GAS EMISSIONS IMPACTS

As stated above, biodiversity plays a key role in combatting or ameliorating the impacts of greenhouse gases and climate change. It is widely accepted that trees, wetlands and other habitats can absorb and lock-up carbon from the atmosphere. It is clear that any gains in biodiversity across the District will only serve to enhance this positive effect.

7.4 COMMUNITY SAFETY IMPLICATIONS

N/A

7.5 HUMAN RIGHTS ACT

Protection, enhancement and access to biodiversity is a basic human right. This is usefully summed up by United Nations report “Biodiversity and Human Rights” (2017), which states:

“Biodiversity is necessary for ecosystem services that support the full enjoyment of a wide range of human rights, including the rights to life, health, food, water and culture. In order to protect human rights, States have a general obligation to protect ecosystems and biodiversity”

7.6 TRADE UNION

➤ N/A.

7.7 WARD IMPLICATIONS

N/A

**7.8 AREA COMMITTEE ACTION PLAN IMPLICATIONS
(for reports to Area Committees only)**

N/A

7.9 IMPLICATIONS FOR CORPORATE PARENTING

N/A

7.10 ISSUES ARISING FROM PRIVACY IMPACT ASSESMENT

N/A

8. NOT FOR PUBLICATION DOCUMENTS

None

9. OPTIONS

9.1 The Committee considers the report in general

9.2 The Committee request further action and/or updates on specific items

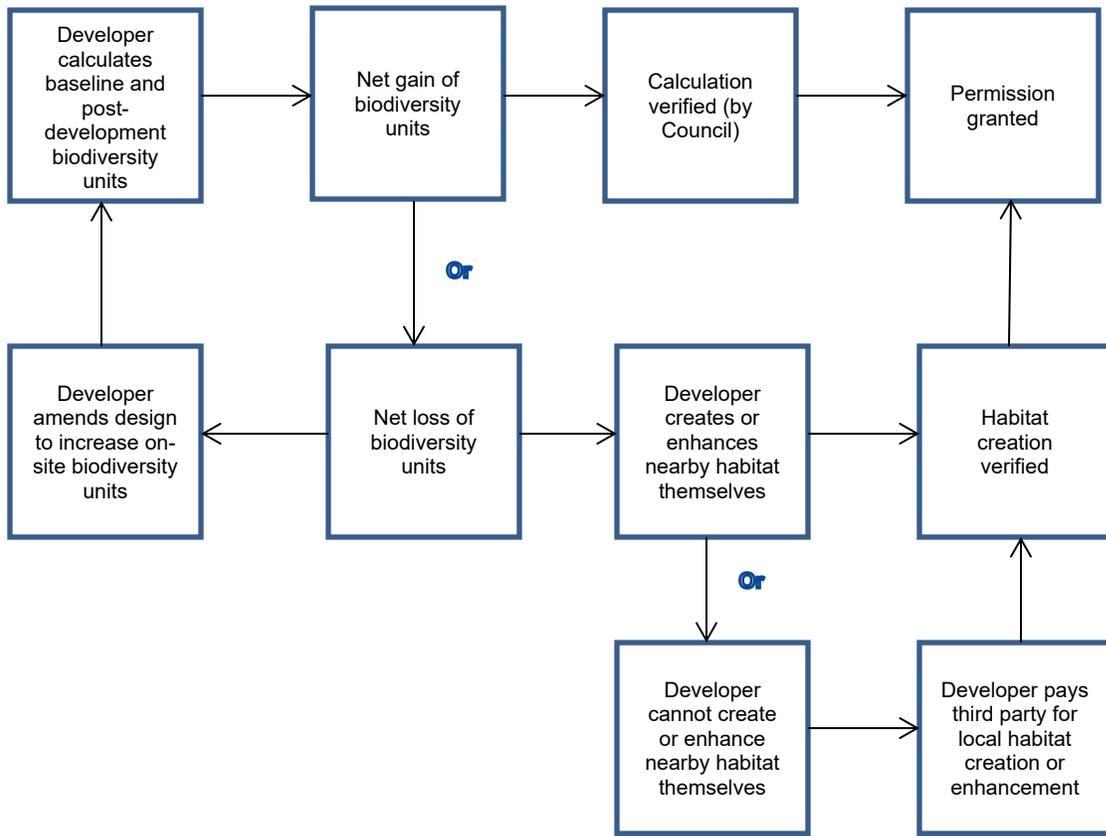
10. RECOMMENDATIONS

That the Committee considers the issues outlined in the report

11. APPENDICES

Appendix 1: Flowchart illustrating the net-gain process

Appendix 1: Mandatory biodiversity net-gain process



Appendix 2: Examples of recent development proposals which have shown a positive outcome for biodiversity:

Derry Hill Menston. The positive outcome here is that the developer has achieved net gain on site by significant habitat creation/management. This includes grasslands where they cannot build due to utility pipes. The net gain uplift was significant.

Moor Lane Menston (next door to the above). Again to achieve net gain the developer has undertaken a large amount of habitat restoration.

Petrol Filling Station, 244 New Line, Bradford: This application initially resulted in a minor net-loss of biodiversity. As the loss was only minor it was agreed that it would be appropriate to include additional features (an otter holt in the nearby beck and woodland management/ species roost boxes instead). So although not quite reaching a net gain, it resulted in more for wildlife on the restricted site than would have been the case without running the proposal through the metric..

Site of Station Sawmill in Denholme: the consultants were encouraged to secure a lot of habitat restoration in the plans to achieve net-gain .

We are also looking for net gain on all of our internal projects eg **Shipley / Canal Road transport scheme**