

# **Report of the Director of Place to the meeting of Regeneration and Environment Overview and Scrutiny Committee to be held on 17<sup>th</sup> January 2023**

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## **Subject:**

**Biodiversity and Environment Act update**

## **Summary statement:**

**The Committee has previously considered issues around biodiversity policy (in 2019 and 2020). The 2020 report focused on elements emerging from the Environment Bill, focusing in particular on Biodiversity Net Gain. This report updates the Committee on developments since the Bill became law in 2021.**

## **EQUALITY & DIVERSITY:**

The public sector equality duty in s149 of the Equalities Act applies to the Council in the exercise of its functions. The duty is to “have due regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under [the 2010 Act], (b) advance equality of opportunity between persons who share relevant protected characteristics and persons who do not share it.”.

With regards to biodiversity, the proposals included within this report will contribute to the Council’s efforts to address the duty, in particular by providing equality of opportunity for people of all protected characteristics to experience and benefit from biodiversity.

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**Portfolio:**  
**Regeneration, Planning and Transport**

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**Overview & Scrutiny Area:**  
**Regeneration and Environment**



## 1. SUMMARY

- 1.1 The Committee has previously considered issues around biodiversity policy (in 2019 and 2020). The 2020 report focused on elements emerging from the Environment Bill, focusing in particular on Biodiversity Net Gain (BNG). This report updates the Committee on developments since the Bill became law in 2021.

## 2. BACKGROUND

- 2.1 The Committee received a report in March 2020 which outlined the progress through Parliament of the Environment Bill and subsequent consultation. The Bill contained proposals to introduce additional statutory obligations on Local Authorities, on top of the existing general biodiversity duty enshrined within the Natural Environment and Rural Communities (NERC) Act 2006. This general duty is as follows:

*“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”*

The Environment Bill strengthens this biodiversity duty and now requires public authorities to *“conserve and enhance”* biodiversity

- 2.2 The Environment Bill – as set out in the previous March 2020 report – included a mandatory obligation that a minimum of a 10% net gain in biodiversity must result from every planning approval. The detail of how this could be achieved is set out in that report. The other main biodiversity-related element of the Bill was the duty, imposed upon a “responsible authority”, to produce a Local Nature Recovery Strategy, setting out spatial strategies that will establish priorities and map proposals for specific actions to drive nature’s recovery and provide wider environmental benefits.
- 2.3 The Environment Bill passed through the parliamentary process and eventually received Royal Assent in November 2021, now referred to as the Environment Act 2021. Both the main biodiversity elements (biodiversity net gain and Local Nature Recovery Strategies) are retained and are set out in Part 6 of the Act.
- 2.4 Although detailed government guidance and regulation relating to the Act is still awaited, this report updates the Committee on work done to date to implement these provisions as far as practicable at this stage.

## 3. OTHER CONSIDERATIONS

- 3.1 **Biodiversity net gain:** The Act includes a requirement that any planning approval must be subject to a condition to secure a biodiversity net gain of at least 10%. This will become mandatory in November 2023 and effectively means that any planning application must include a calculation (using a standard DEFRA metric) that shows the pre-development biodiversity value of the site and the post-development biodiversity value (both expressed as “biodiversity units”). The post development value must, at present, be at least 10% higher than the pre-development value.

3.2 The post-development biodiversity value is:

- the total of the post-development biodiversity value of the on-site habitat (i.e. measures included in the proposal which retain or enhance on-site biodiversity)
- the biodiversity value, in relation to the development, of any registered off-site biodiversity gain allocated to the development (otherwise known as offsetting)
- the biodiversity value of any biodiversity credits purchased for the development

3.3 The current review of the Bradford District Local Plan presents an opportunity to reflect this requirement in a revised biodiversity policy. The current policy relating to biodiversity encourages development to enhance biodiversity, but does not require it, and does not explicitly make reference to net gains for biodiversity. Clearly, once BNG becomes mandatory this will be a legal requirement, but our local polices should also reflect that.

3.4 If developments cannot show that BNG has been achieved on-site to the required level, there is the option to offset the enhancement on nearby land in the control of the applicant, or to pay a contribution (based on the balance of biodiversity units required) to secure habitat enhancement on land elsewhere and provided by a third party “habitat bank”.

3.5 Since the last report, officers have worked in conjunction with the other 4 West Yorkshire Local Authorities, plus West Yorkshire Ecology and Natural England, on a West Yorkshire wide proposal to establish a local authority-led habitat bank. This would include land owned and managed by the local authorities so that they can provide the offset funded by the biodiversity unit payments. Currently the standard West Yorkshire cost of a biodiversity unit is £20,000 plus 25% (monitoring (10%), facilitation (10%) and strategic biodiversity projects (5%)). Costed into this unit value is the initial cost of the site habitat enhancement plus a 30-year maintenance requirement. The principle of setting up a West Yorkshire wide habitat bank has been approved at West Yorkshire Combined Authority Directors of Development and Heads of Planning levels. Work is also underway with the other West Yorkshire authorities to prepare a joint Supplementary Planning Document (SPD). This SPD will set out the local and sub-regional priorities for the delivery of BNG and descriptions of what constitutes best practice in the individual districts and across West Yorkshire. The SPD will also provide information on how BNG should contribute to the Local Nature Recovery Strategy.

3.6 A further significant piece of work relating to BNG has been completed since the last update report. This focused on understanding the resource implications of the new burdens imposed by the Environment Act and further detail is set out in Section 4 of this report.

3.7 In advance of the SPD mentioned in 3.5 above, the mandatory requirement for BNG and the adoption of the new Local Plan, officers have been working on an interim guidance note to help developers, agents, designers and ecologists understand their obligations in order to satisfy the requirements for delivering BNG within the Bradford District. The guidance note sets out the information that should

be provided with planning applications, provides details of the local approach to delivering BNG and how to determine the strategic significance of a site ahead of the preparation of Local Nature Recovery Strategies, and will be a material consideration in planning decisions.

3.8 **Local Nature Recovery Strategy (LNRS):** The Government have appointed West Yorkshire Combined Authority (WYCA) as the responsible authority to prepare and publish a Local Nature Recovery Strategy. Bradford, along with the other West Yorkshire local authorities, will feed into this process.

3.9 The Act sets out that a LNRS is to include:

- a statement of biodiversity priorities for the strategy area, and
- a local habitat map for the whole strategy area
- a statement of biodiversity priorities to include—
  - a description of the strategy area and its biodiversity,
  - a description of the opportunities for recovering or enhancing biodiversity, in terms of habitats and species, in the strategy area,
  - the priorities, in terms of habitats and species, for recovering or enhancing biodiversity (taking into account the contribution that recovering or enhancing biodiversity can also make to other environmental benefits), and
  - proposals as to potential measures relating to those priorities

3.10 Clearly, the work being undertaken across West Yorkshire on a habitat bank, to include Council-owned sites and any other third party land, will feed into and be guided by the development of the regional LNRS. This also applies to Species Action Plans that the Council developed as part of its Biodiversity Action Plan – covering, for example, bumblebee species and other pollinators. LNRS's will take account of such plans for the conservation and recovery of these species.

3.11 At present, the full guidance on how LNRS's are to be developed is awaited and so work has not fully commenced at WYCA on this. Council Officers will be fully engaged with this process and ensure that whatever is produced reflects the biodiversity aspirations of the Bradford District.

3.12 **South Pennine Moors Supplementary Planning Document:** A further key development since the last update report, but unrelated to the Environment Act, is the adoption in January 2022 of a Supplementary Planning Document (SPD) relating to protecting the South Pennine Moors in the Bradford District from the impacts of development.

3.13 Blocks of moorland in the north (Rombalds Moor) and west (Keighley Moor, Haworth Moor, Oxenhope Moor, Thornton Moor) of the District have international designation under the Habitats Regulations which protects them. These regulations require that any plan or project (including the Local Development Plan) demonstrate no harmful impacts emerging from that plan or project on the South Pennine Moors Special Protection Area (SPA) and Special Area of Conservation (SAC) – designations which all these moors in the District carry.

3.14 In order to comply with this legal requirement, the adopted Local Plan Core Strategy included policy SC8, which identified zones of influence around these

moorland areas, within which adverse impacts from development would potentially result, in the absence of the necessary avoidance or mitigation.

- 3.15 Zone A of the policy extends up to 400m from the moorland edge and protects the moors from “urban edge” impacts associated with development. Thus any net increase in dwellings within this zone is prohibited. Zone B (up to 2.5kms from the moors) protects land outside the SPA boundary, which provides essential foraging areas for the bird species for which the SPA is designated. This is known as “functionally linked supporting habitat”, The loss or degradation of these habitats, within 2.5km of the SPA, potentially represents a significant adverse effect on the designation features of the SPA (bird species).
- 3.16 Zone C of policy SC8 covers an area of 7km from the moorland edge, within which additional recreational pressure would result on the moors from housing development. This conclusion is based on comprehensive research (including multiple visitor surveys) about patterns of behaviour and the maximum distance travelled to visit the moors.
- 3.17 In order to give certainty to the Council, and developers, that the requirements of the Habitats Regulations are being addressed, the SPD sets out a tariff to be paid on every additional dwelling built within the 7km zone. The tariff would then be used to fund management measures designed to protect the moors from adverse impacts. These could include the provision or improvement of suitable alternative natural greenspaces (SANGs) – which would deflect and absorb pressure from the sensitive moorland areas; plus management measures on the moors themselves such as provision of wardens, path and other infrastructure improvements, information for visitors (including interpretation boards) etc. The full list of mitigation measures is outlined in the Appendix to the SPD document (see link below).
- 3.18 The SPD was adopted in January 2022 and collection of the tariff from relevant housing development is currently underway. The document itself can be accessed here:  
[https://www.bradford.gov.uk/Documents/South%20Pennine%20Moors%20SPD//South%20Pennine%20Moors%20SPA%20SAC%20Planning%20Framework%20SPD%20\(Adopted%20January%202022\).pdf](https://www.bradford.gov.uk/Documents/South%20Pennine%20Moors%20SPD//South%20Pennine%20Moors%20SPA%20SAC%20Planning%20Framework%20SPD%20(Adopted%20January%202022).pdf)
- 3.19 The governance and funding arrangements of these mitigation measures are currently being finalised. It is likely that a delivery officer will be employed who will report to a steering group to guide and monitor the implementation of these interventions.

#### **4. FINANCIAL & RESOURCE APPRAISAL**

- 4.1 The key finance and resource impacts of the issues set out in this report relate to the Council’s ability to fully implement the Biodiversity Net Gain requirement.
- 4.2 The financial impact assessment of the emerging Environment Bill, published by Government in October 2019, stated:

*“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.”*

A further policy statement from government dated January 2020 pledged:

*“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.”*

- 4.3 Clearly, these commitments were made pre-pandemic and further public funding issues have arisen since then. There is currently no clarity on whether this commitment to fully fund the new burdens will be honoured.
- 4.4 In an effort to provide further detail on this issue, the West Yorkshire Local Planning Authorities funded a scoping study last year by WSP consultants. This report can be circulated to Members on request. One of the key elements of this study was to ascertain what additional resources would be required to set up a West Yorkshire wide biodiversity net-gain system. The report concluded that there is a need for additional staff resource to implement the extra responsibilities – this includes additional ecological expertise/biodiversity officers; planning and monitoring resource, legal and enforcement input. Bradford currently employs one Biodiversity Officer, whose remit extends beyond BNG and covers input into general development management, advising on site management and the Council’s wider biodiversity duty and input into Council-led infrastructure projects.
- 4.5 Resourcing the additional burdens of the Environment Act across the Planning, Highways and Transportation Service remains a key consideration yet to be resolved. In essence, however, the facilitation of development through creation of a (local or West Yorkshire-wide) habitat bank or ad-hoc provision of offsetting sites offers the opportunity to direct private sector funding towards the enhancement of biodiversity on council-owned land and to enhance the greenspace resource of the district where public access and biodiversity priorities do not conflict. As well as meeting BNG requirements the habitat banks offers the chance to create new roles within the district for the implementation, monitoring and reporting of BNG

## **5. RISK MANAGEMENT AND GOVERNANCE ISSUES**

- 5.1 The main risk arising from the matters outlined in the report is a lack of adequate resource to fully engage with the new duties imposed by the Environment Act. This would expose the Council to legal challenge, reputational damage and loss of biodiversity resulting from failure to achieve a mandatory planning requirement.

## **6. LEGAL APPRAISAL**

- 6.1 The Environment Act has introduced a new mandatory requirement for biodiversity net gain in the planning system and consequently upon all Local Planning

Authorities, to ensure that all new developments increase biodiversity by a minimum of 10%, with this requirement coming into effect from late 2023. The aspiration for achieving biodiversity net gain is also set out in the National Planning Policy Framework. The Supplementary Planning Document to be put forward for adoption by the Council will explain how biodiversity net gain can be achieved in the West Yorkshire area.

The Environment Act has integrated the requirement to deliver biodiversity net gain by development into the planning system and sets out the following key components of mandatory biodiversity gain:

- Amendment of Town & Country Planning Act (TCPA).
- Requirement for a minimum 10% gain calculated using the Biodiversity Metric & approval of a biodiversity gain plan.
- Habitat is required to be secured for at least 30 years via planning obligations or conservation covenants.
- Delivered on-site, off-site or via a new government statutory biodiversity credits scheme (although this would be a last resort option); and
- The setting up of a national register for net gain delivery sites.

The biodiversity net gain requirements of the Act will become mandatory in November 2023, which has given local authorities a two-year transition window within which to implement net gain within the planning system. A supplementary planning document will aid this implementation. The Supplementary Planning Document will be prepared in accordance with the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended), which includes consultation requirements at Regulations 12 and 13.

## 7. OTHER IMPLICATIONS

### 7.1 SUSTAINABILITY IMPLICATIONS

The Council has produced a Sustainable Development Action Plan which includes specific actions relating to biodiversity and addresses the need for further action as a result of the declared climate emergency.

This plan acknowledges the opportunities within the District for the generation of renewable energy, flood alleviation and carbon sequestration measures and community engagement in environmental, biodiversity and local food initiatives

It includes other commitments to combat climate change through:

- **Flood management and natural flood** management - continue working with local communities and key public bodies such as the Environment Agency.
- **Tree planting and woodlands** - as part of the Council's ongoing contribution to the Northern Forest, an ambitious programme of tree planting and woodland creation is under way.
- **Peat bog protection and restoration** – re-wetting and sphagnum moss planting work to improve and restore important carbon sinks. A peat bog can store up to seven times the carbon of woodland.



- **Biodiversity duty/habitat network development** - Managing habitat change proactively alongside legal habitat protection and enforcement to ensure biodiversity and wildlife protection. Progress Bradford District Habitat Network – working to link key sites and corridors across and beyond the District.

In terms of the Council's role in development management, 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 30,672 new homes has been identified in the draft Bradford District Local Plan over the period 2020-2038 (equating to 1,704 dwellings per year) 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.

## **7.2 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.

## **7.3 COMMUNITY SAFETY IMPLICATIONS**

None

## **7.4 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"*

## **7.5 TRADE UNION**

None

## **7.6 WARD IMPLICATIONS**

All Wards will be subject to development and therefore net-gain benefits. A habitat bank for offsetting these benefits should include sites in all Wards across the District.

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

N/A

## **7.8 IMPLICATIONS FOR CORPORATE PARENTING**

None

## **7.9 ISSUES ARISING FROM PRIVACY IMPACT ASSESMENT**

None

## **8. NOT FOR PUBLICATION DOCUMENTS**

None

## **9. OPTIONS**

To note the progress set out in this report with regard to compliance with the general biodiversity duty and the requirements of the Environment Act 2021.

## **10. RECOMMENDATIONS**

Members note the progress made and support the general aims to protect and improve the Districts biodiversity