

# Report of the Strategic Director, Place to the meeting of Shipley Area Committee to be held on 8<sup>th</sup> November 2023

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## Subject:

**Biodiversity and The Environment Act 2021**

## Summary statement:

The continuing and worsening climate and biodiversity crises demand action and response across the authority to protect and find opportunities for the residents of the District. The Environment Act was given royal assent at the end of 2021 and has brought in several changes that affect the council:

- Updated Biodiversity Duty within the NERC Act 2006. Public bodies now required to Protect and Enhance biodiversity during their normal operations.
- Made Biodiversity Net Gain a condition of planning permissions for most Town and Country Planning Act Applications.
- Local Nature Recovery Strategy – In development with WYCA.

## EQUALITY & DIVERSITY:

Equality assessments - Please consider and comment on the equality impacts of any new, review, or removal of policies, practices, strategies, services or functions. In some instances this may require the completion of an equality impact assessment form. Full guidance is available on BradNet.

Equality objectives – if the work presented contributes to one of the Council's equality objectives a statement must be provided to explain what and how (more detail available in e report guide).

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David Shepherd  
Strategic Director of Place

## Portfolio:

**Regeneration, Planning and Transport**

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## Overview & Scrutiny Area:

**Regeneration and Environment**

## 1. SUMMARY

- 1.1 The continuing and worsening climate and biodiversity crises demand action and response across the authority to protect and find opportunities for the residents of the District.
- 1.2 The Environment Act was given royal assent at the end of 2021 and has brought in several changes that affect the council:
  - Updated Biodiversity Duty within the NERC Act 2006. Public bodies now required to Protect and Enhance biodiversity during their normal operations.
  - Made Biodiversity Net Gain a condition of planning permissions for most Town and Country Planning Act Applications.
  - Local Nature Recovery Strategy – In development with WYCA.
- 1.3 Natural England's Bradford & South Pennines Nature Recovery Project was launched earlier this year. The Project focusses habitat restoration and species recovery efforts on the South Pennines and Bradford.

## 2. BACKGROUND

- 2.1 The background is that the Environment Act 2021 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 Act strengthens this biodiversity duty and now requires public authorities to “conserve and enhance” biodiversity.

- 2.2 In addition to this strengthened duty – which requires biodiversity to be considered as part of the Council's operations and policies – a number of other provisions were written into the Act which the Council has responsibility for implementing or engaging with. The key Council responsibilities are:

- **Biodiversity Net-Gain:** A requirement for all planning approvals to secure at least 10% net-gain in biodiversity value and to maintain that for 30 years. This will become mandatory in January 2024 for major developments and will become mandatory for minor developments in April 2024.
- **Biodiversity Reports:** The Environment Act requires Local Authorities to complete the following reporting on compliance with the Biodiversity Duty must be completed:
  - First Consideration of actions to take for biodiversity completed by **1<sup>st</sup> January 2024**;
  - Reconsideration of actions must take place within 5 years but can be

more regularly.

- First full report is required no later than **1<sup>st</sup> January 2026**;
  - Subsequent reports required within 5 years.
  - Biodiversity Reports should include:
    - Summary of actions taken in compliance with the biodiversity duty.
    - Forward planning for compliance with the biodiversity duty.
    - Actions taken to comply with Biodiversity Net Gain obligations under Schedule 7A of the Town and Country Planning Act.
    - Details of the outcomes of Biodiversity Net Gain plans approved.
    - Future planning for Biodiversity Net Gain over the next five year period.
- **Local Nature Recovery Strategy:** Members, at the January 2023 meeting, specifically requested an update on the Local Nature Recovery Strategy provisions of the Environment Act. The following section therefore covers this aspect in more detail.

2.3 As noted above, production of a LNRS for West Yorkshire (WYLNRS) is the responsibility of West Yorkshire Combined Authority. Bradford Council plus the other West Yorkshire local authorities and the Peak District National Park Authority are classified as “supporting authorities” in this context. This is because they all have planning powers and will sit on the WYLNRS Steering Group along with Natural England, to assist in setting local priorities, supporting the development of the LNRS and ensuring that the process is genuinely collaborative.

2.4 The main outputs for LNRS’s include:

- a statement of biodiversity priorities for the strategy area
- 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.

The governance arrangements for the WYLNRS have recently been agreed and Bradford Council has signed up to them. In summary, Bradford Council, along with the other WY authorities will be represented on the Steering Group by a nominated officer (currently from Calderdale).

### 3. OTHER CONSIDERATIONS

3.1 **Biodiversity Duty:** Existing activity across the council that aligns with the new Biodiversity Duty includes;

- Reduced mowing to better meet the needs of people and nature.
- Development of Blue-Green infrastructure in the Top of Town and Transforming Cities Fund schemes in the city and elsewhere.
- Planted a tree for every child – the creation of new woodland, school trees and 40 school orchards (blossom for pollinators).
- Encouraging nature and play opportunities on the doorstep of new housing and commercial developments.
- New wildflower strips and meadow development.
- A shift to herbaceous planting in the city centre.
- The conversion of conifer plantation woodlands to semi-natural woodlands at St Ives.
- Ilkley Moor restoration.
- Reduced use of glyphosate.
- Measures to clean up the air we all breathe.
- Working with businesses and partners in the Bradford District Sustainable Development Partnership.

3.2 **Biodiversity net gain:** A further significant strand of the Environment Act, which places new responsibilities on the Council is the requirement for net-gain from development, managed through the planning system, which will become mandatory in January 2024.

Work to prepare for the requirements of the Environment Act includes:

- Updating of information and guidance for developers about biodiversity net-gain, including the local information requirements and validation requirements for applicants
- Internal process updates/changes to embed biodiversity net-gain requirements in automated planning processes (including GIS, Uniform, Idox)
- Discussions with planning colleagues regarding the ongoing monitoring and enforcement of on-site net-gains secured through planning conditions
- Continued work with land-managing services across the Council to establish a “habitat bank” which will include Council owned sites that can be offered for offsets for net-gain that cannot be secured on-site. This would provide an income stream for habitat improvements on Council land and its long term (30 years) maintenance.
- Continued consideration of resource implications of the additional burdens.

3.3 **Habitat Bank:** The Countryside/ Biodiversity Team has been working with the Parks teams, area managers and Estates Management to identify suitable council sites for setting up a Habitat Bank on council land. The aim of this Habitat Banks would include the provision of biodiversity units to developers who are required to offset their biodiversity losses. Currently there is a risk that development will be

hampered by a lack of commercially available biodiversity units.

- 3.4 Creation of a council habitat bank offering to sell biodiversity units on council owned land offers a significant financial opportunity for Bradford Council. Council assets can be the location for habitat enhancements that generate biodiversity units which can then be sold to developers. Early investment in habitat improvements on selected council land would mean biodiversity units are available to facilitate development and speed up the planning process with money available to be reinvested in further habitat enhancement.
- 3.5 The Biodiversity Team have set aside Natural England funding to pay for a Biodiversity Net Gain baseline assessment and Preliminary Ecological Appraisal of Northcliffe to identify where opportunities exist on the site for BNG offsetting moneys. A local ecologist has been contracted to prepare the baseline assessments and write a management plan for the whole park. We hope that local development will be facilitated by having a suitable offsetting habitat bank site in Shipley and that the value of the park for biodiversity, flood water management and public wellbeing will be improved through additional funding. Creation of a council habitat bank such as this would also mean council assets would generate revenue and pay for their own management while remaining in public ownership. Benefits of healthier habitats include public physical and mental health benefits, floodwater management and carbon sequestration, all of which are part of the district's natural capital resource and reduce financial risk to residents and businesses.
- 3.6 Whilst considerable work has been done in Bradford and West Yorkshire looking at the creation of a council habitat bank there are two significant blockages;
  - Difficulty in reaching agreement with Estates Management on use of council assets for this purpose, although they are currently reviewing assets for this purpose, it is not clear what other competing priorities exist, especially on agricultural land.
  - Legal uncertainty about the ability of councils to use Section 106 agreements to agree that the council itself will deliver agreed improvements. The alternative is to use Conservation Covenants however we are currently unaware of Responsible Bodies in the region. There have been discussions between the with WYCA have

Despite the above a 'match-making' website for council assets is in development. This would allow developers looking to buy biodiversity units to identify suitable council-owned sites and contact the managing section of the council to discuss the sale of biodiversity units. Any sales of units would then require the managing section of the council to legally agree that any enhancements and habitat improvements would be maintained for the required 30 years.

Two reports have been prepared, on the subject of BNG and Habitat Banking in West Yorkshire. The first was prepared by consultants WSP and looked at broad opportunities and challenges of BNG including resource requirements across council departments. The second, funded by Natural England and delivered by Yorkshire Wildlife Trust focussed on the possibility of using council assets for Habitat Banking.

- 3.7 **Conservation Covenants:** Conservation covenants are a new type of voluntary but legally binding agreement enabled through the Environment Act. They are designed to secure the long-term conservation of the natural or heritage features of the land covered by the agreement.

A Conservation covenant is an agreement between a landowner and a Responsible Body that ensures that agreed management prescriptions for ecological conservation are carried out by the owner of the land. Conservation covenants are attached to the land to which they relate so they are intended to ensure that agreed activity is carried out in the long term by whoever owns the land. They are designed to be used for securing Biodiversity Net Gain sites, where ecological impacts of development can be offset by on-going management of habitats for the required minimum 30 years.

It is likely that Conservation Covenants will be essential if the council wishes to sell biodiversity units on its own land. A Conservation Covenant must be registered as a land charge to ensure that the land is protected for nature conservation and habitat management prescriptions are linked with the land should it be sold.

It is expected that Natural England will become a Responsible Body but as yet we are unaware of any other potential Responsible Bodies who might be operating in the region. We are currently talking, with the other West Yorkshire Authorities, with WYCA to establish if they could become a Responsible Body to arrange Conservation Covenants for the five authorities.

It is likely that Responsible Bodies will be able to levy a fee for entering into a Conservation Covenant. This fee would cover monitoring and enforcement of Conservation Covenants and any other scheme-specific costs.

- 3.8 **Local Nature Recovery Project:** Natural England led projects focussing on habitat restoration and ecosystem service improvement for Bradford & the South Pennines. The Natural England Team are working across the district with various local groups and teams in the council including BD25 to provide funding through several funding streams. Among other things the NE project is looking to identify sites for a new National Nature Reserve in Bradford and the South Pennines.

- 3.9 **Other projects receiving funding as a result of the Bradford and South Pennines Nature Recovery Project:**

- Manningham Library – Nature Connected
- Improving Air Quality for Schools - Better Places Bradford
- Mini Eco-sculpture park in Bradford Moor – The Leap
- Testing Water Quality in Bradford's Becks – FoBB
- Testing Green Therapy for Health, Environment & Nature Recovery – Lynchfield Mount Hospital
- South Pennine Recreational Disturbance – For South Pennines to emulate the approach taken in Bradford

- Bradford Peregrine Trail – BUWG & Bradford Peregrines
- Safer Snickets – Streetspace
- Inclusive Nature Recovery – Greenville Trust, Get Out More
- Horton Community Farm Green Community Hub.

Landscape colleagues are also in discussions with NE to advance the Shipley Fields culvert removal on Bradford Beck.

#### 4. FINANCIAL & RESOURCE APPRAISAL

- 4.1 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.”*

- 4.2 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.”*

There is currently no clarity on whether this commitment to fully fund the new burdens will be honoured.

- 4.3 In an effort to provide further detail on this issue, the West Yorkshire Local Planning Authorities funded a scoping study in 2022 by WSP consultants. 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 and one Biodiversity Assistant, whose remits extend 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.
- 4.4 Resourcing the additional burdens of the Environment Act across the Planning, Highways and Transportation Service remains a key consideration yet to be resolved. To date, DEFRA has awarded local authorities two grant payments in 2022-23 and 2023-24 (of £43,467 each) specifically to facilitate the preparation for biodiversity net-gain. Whilst these grants are welcome, they are, so far, one-off payments and do not cover the ongoing revenue requirements to effectively implement these new responsibilities.
- 4.5 The Local Nature Recovery Strategy provides a framework for potential investment in biodiversity enhancement and creation works in the district. Whilst private habitat

banks are able to invest in works, to generate biodiversity units for sale to developers, if they target their investment to priority habitats in strategically significant locations identified in the LNRS, that work will create more biodiversity units which can then be sold to developers.

- 4.6 As discussed above, council assets across the district offer potential habitat enhancement sites for generation of biodiversity units for sale to developers. With council teams or local contractors undertaking the enhancement works a Habitat Bank also offers economic benefits and the possibility of increasing staff and skills within the council or benefitting local businesses. Whilst there is additional risk associated with taking on this role there are also numerous potential benefits for the people and businesses of the district.

## **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 Guidance 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.
- 6.2 The biodiversity net gain requirements of the Act will become mandatory in January 2024, which has given local authorities a two-year transition window within which to implement net gain within the planning system. A BNG Guidance Document will aid this implementation. The Guidance 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

7.1.1 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.

7.1.2 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 TACKLING THE CLIMATE EMERGENCY IMPLICATIONS

7.2.1 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**

7.3.1 None

### **7.4 HUMAN RIGHTS ACT**

7.4.1 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**

7.5.1 None

### **7.6 WARD IMPLICATIONS**

7.6.1 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 LOCALITY PLAN IMPLICATIONS**

7.7.1 Biodiversity is a Priority in the Shipley Area Locality Plan When planning for the locality the baseline biodiversity value of development sites should be a factor in site selection. It should also form part of planning when considering favoured suitable offsetting locations.

The LNRS should also be considered with the above as this strategy should identify where the best locations for habitat enhancement or creation are located with the area.

To be included in an amendment to the locality plan for Shipley, early survey and baseline BNG assessment, along with preparation of management plans and early implementation will mean Shipley residents see the benefits of Biodiversity improvements whilst Biodiversity Units will be immediately available to developers.

### **7.8 IMPLICATIONS FOR CHILDREN AND YOUNG PEOPLE**

7.8.1 None

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

7.9.1 None

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

8.1 None

## **9. OPTIONS**

9.1 None

## **10. RECOMMENDATIONS**

10.1 That Members welcome and support the content of this report.

10.2 That Members will support and promote Habitat Bank sites in Shipley, such as Northcliffe Park and others to offset biodiversity losses.

## **11. APPENDICES**

11.1 None

## **12. BACKGROUND DOCUMENTS**

12.1 Regeneration and Environment Overview and Scrutiny Committee 17 January – Biodiversity and Environment Act Update (**Document T**).