



**REPORT of
DIRECTOR OF STRATEGY, PERFORMANCE AND GOVERNANCE**

**to
PLANNING AND LICENSING COMMITTEE
24 JANUARY 2019**

**DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS (DEFRA)
NET GAIN CONSULTATION PROPOSALS**

1. PURPOSE OF THE REPORT

- 1.1 The Department for Environment, Food and Rural Affairs (DEFRA) is consulting on proposals to mandate biodiversity net gain for development requiring planning permission. This report sets out a draft response (at **APPENDIX 1**) to the consultation, which closes on 10 February 2019.

2. RECOMMENDATIONS

- (i) That Committee's views are sought on the DEFRA Net Gain consultation proposals;
- (ii) That the draft response (**APPENDIX 1**) is revised to take into account views of the Committee and approved by Officers in Consultation with the Chairman of the Planning and Licensing Committee and submitted as the Council's formal response to the Consultation.

3. SUMMARY OF KEY ISSUES

- 3.1 The National Planning Policy Framework (NPPF) requires that '*planning policies and decisions should contribute to and enhance the natural and local environment by...minimising impacts on and providing net gains for biodiversity*' (paragraph 170d). The DEFRA Net Gain proposals provide a mechanism to achieve this. As voluntary / pilot schemes have not been effective, DEFRA propose to make the concept of biodiversity net gain mandatory through legislation.
- 3.2 The basic premise is that the biodiversity value of a site is assessed before the development scheme is designed, and the biodiversity value of the designed scheme is similarly assessed, and the difference between the two is either a net gain, neutral impact or a net loss of biodiversity. This is expressed in terms of 'biodiversity units'. Where a net loss is identified, the scheme should be redesigned to overcome the deficiency. In the scheme, net gain on site has the highest priority. Where this is not possible, additional 'biodiversity units' should be created in the locality to compensate for the loss. If this is not achievable, the consultation proposes that a tariff be charged to enable biodiversity units to be provided elsewhere. The diagram overleaf illustrates how the proposals could work.

How our proposals for biodiversity net gain work in practice

The scenarios show the broad mechanisms through which a residential development could achieve biodiversity net gain under the policy proposals.

The same principles could apply for wider development and construction.

SCENARIO A

The developer is able to avoid harm, mitigate and enhance on site.



SCENARIO B

The developer is unable to avoid, mitigate and compensate all impacts on site, but is able to secure local compensatory habitat creation.



SCENARIO C

The developer is unable to avoid, mitigate and compensate on site, and unable to find local compensatory habitat to invest in. The tariff is therefore used to fund cost-effective habitat creation projects according to local and national conservation and natural capital priorities.



- 3.3 DEFRA propose that the ‘DEFRA metric,’ a software programme that is currently being updated by Natural England, be used to calculate the biodiversity units for this process. Using a national metric will provide consistency across the country, setting

out clear and certain obligations, reducing the time spent in disputes over methodology. One national metric would also be easier to update and upgrade, thus improving the evidence base over time.

- 3.4 The proposals recognise that the biodiversity net gain will not necessarily result in like-for-like habitat replacement; it could be another type of habitat on site, nearby, or elsewhere in the country.
- 3.5 Providing biodiversity net gain on site should be encouraged, and the use of one national metric is a logical approach to provide transparency and consistency between developments. However, there are potential pitfalls with the off-site provision of compensatory habitats and the tariff elements of the proposals.
- 3.6 Where net gain for biodiversity cannot be delivered on site, it is possible to create or enhance other sites to achieve biodiversity net gain. The uncertainty of this approach is recognised in the consultation, as habitat creation or enhancement is not easy and the outcomes are uncertain. In addition, an adequate supply of high quality local compensatory habitat sites would be needed. Developers could source the required biodiversity units from another site the developer owns, directly from a landowner, via a land broker or a habitat bank. Habitat banks provide a market-based solution, whereby developer contributions can be combined towards larger scale green infrastructure, providing a simple process for developers and a commercial opportunity for land owners and brokers in conservation activity. It is suggested that mandating net gain will stimulate the establishment and growth of local habitat creation markets, which will trade biodiversity units.
- 3.7 Where on site net biodiversity gain or compensatory habitats are not deliverable, the consultation proposes that developers could pay a tariff. The tariff rate would be set above the cost of onsite provision or local biodiversity units to disincentivise developers from automatically going down the tariff route. This consultation asks whether this tariff should be collected locally (at the point of planning permission being granted) or nationally, and whether it should be spent locally, nationally or a mixture of both.
- 3.8 Legally, planning obligations have to relate directly to the development proposed and be necessary to make the development acceptable in planning terms, as well as being fairly and reasonably related in scale and kind to the development. It is arguable whether biodiversity tariffs collected from development in one location and spent to create habitat elsewhere would meet the legal tests for planning obligations (Reg. 122(2) Community Infrastructure Levy (CIL) Regulations).
- 3.9 There is concern regarding the level the tariff is set at. It needs to be high enough to deliver the necessary number and quality of biodiversity units, but not so high as to make development unviable. The proposals recognise this issue. Theoretically, if the scheme operates as expected, few developers would end up paying the tariff. However, mandatory net biodiversity gain would add to the list of planning obligations on development and may result in some sites not coming forward because of viability. Part of the consultation asks what types of development should be within the remit of the mandatory scheme.

4. CONCLUSION

- 4.1 DEFRA is proposing to introduce legislation to mandate net biodiversity gain in new developments. The Net Gain consultation seeks local authority and development industry input into setting out the parameters for a future scheme. Officers have drafted a response to the consultation (**APPENDIX 1**) for Members' consideration.

5. IMPACT ON CORPORATE GOALS

- 5.1 Mandatory net biodiversity gain could contribute towards the corporate goal of protecting and shaping the district. However, if the requirement was set too high, it could adversely impact goal of creating opportunities for economic growth and prosperity.

6. IMPLICATIONS

- (i) **Impact on Customers** – The achievement of net biodiversity gain will create better, greener places to live, improving the quality of life for residents. Introduction of mandatory biodiversity net gain will impact on developers either through changing how they design development, or through payment of a tariff where net gain cannot be achieved.
- (ii) **Impact on Equalities** – None.
- (iii) **Impact on Risk** – None.
- (iv) **Impact on Resources (financial)** – If the tariff is to be collected and spent locally this will place additional administrative and financial reporting burdens on the Council. Habitats data and mapping at the national and local scale will need to be significantly improved to create a robust baseline for assessing biodiversity gain over time. Ecologists will be required to monitor the on and off site biodiversity provision to ensure that it is delivered and maintained in the long term. These additional requirements will need resourcing.
- (v) **Impact on Resources (human)** – The application of the DEFRA metric will require staff training on the metric. The application of the net biodiversity net gain requirement will increase the processes involved in determining planning applications and development monitoring.
- (vi) **Impact on the Environment** – The achievement of net biodiversity gain on development will have a positive impact on the environment. Whether the net gain is delivered locally or not will depend on the final scheme.

Background Papers:

DEFRA Net Gain Consultation Proposals December 2018 available at <https://consult.defra.gov.uk/land-use/net-gain/> (located at the foot of the web page).

Enquiries to: Leonie Alpin, Planning Policy Officer, (Tel: 01621 876278).