

Maldon District Council draft response to the Department for Environment, Food and Rural Affairs (DEFRA) Net Gain Consultation Proposals

Please note, it is not proposed that the Council make a response to all the consultation questions.

Consultation Question	Draft Maldon District Council Response
1. Should biodiversity net gain be mandated for all housing, commercial and other development within the scope of the Town and County Planning Act?	Biodiversity net gain is already a provision in the National Planning Policy Framework (NPPF) (para. 170(d)). It is not necessary to mandate this through legislation.
2. What other actions could government take to support the delivery of biodiversity net gain?	Clear practical guidance on net biodiversity gain and using the DEFRA metric could be just as effective. Clear definitions of what a biodiversity unit is, how it differs for different habitat types and how different habitat types are valued, are essential. Additional resources to Councils to aid delivery and financial incentives to landowners to deliver improvements outside of the planning system.
3. Should there be any specific exemptions to any mandatory biodiversity net gain requirement (planning policies on net gain would still apply) for the following types of development? And why? a) House extensions b) Small sites c) All brownfield sites d) d. Some brownfield sites (e.g. those listed on brownfield, or other, land registers)	a) House extensions should be exempt as their impact on biodiversity will be de minimis. b) Small sites, no, these should not be exempt. In Maldon District the majority of development sites are small (under 10 dwellings) and often in rural / semi-rural locations with potentially high biodiversity value. Therefore if small sites were exempt the loss of biodiversity caused by development would not be mitigated or compensated for. However, there is a concern that a new net gain requirement will affect the viability of small sites. What constitutes a small site needs to be defined. c) All brownfield sites – no, these should not be exempt. Brownfield sites can have considerable biodiversity value which should not be ignored – ‘open mosaic habitats on previously developed land’ is a habitat of principal importance (listed under s41 Natural Environment & Rural Communities Act 2006.). Brownfield sites are often in areas which could benefit the most from provision of green spaces. However, if the requirement / tariff is set too high

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	brownfield sites, which are often marginally viable, will not be re-developed. d) Some brownfield sites – no these should not be exempt. Brownfield sites can have considerable biodiversity value which should not be ignored - ‘open mosaic habitats on previously developed land’ is a habitat of principal importance (listed under s41 Natural Environment & Rural Communities Act 2006.). Brownfield sites are often in areas which could benefit the most from provision of green spaces. However, if the requirement/tariff is set too high brownfield sites, which are often marginally viable, will not be re-developed. In Maldon District the sites on the brownfield register already have planning permission, so would not fall within the remit of this proposal.
4. Are there any other sites that should be granted exemptions, and why? For example, commercial and industrial sites.	No. Commercial and industrial sites can be land hungry and often have significant potential for biodiversity gain, for example through tree planting in car parks, or boundary landscaping schemes. The scales of industrial or commercial schemes also offer the potential to provide significant areas of green roofs. This would be particularly important in areas where new commercial developments are being built on greenfield sites or brownfield sites to enhance connectivity.
5. As an alternative to an exemption, should any sites instead be subject to a simplified biodiversity assessment process?	Further details would be required on a simplified assessment process – any alternative must ensure that relevant biodiversity information is gathered and appropriate mitigation sought where necessary. The simplified process should not automatically lead to off-site provision, as is implied on page 25-26 of the consultation document. This could lead to local biodiversity loss without appropriate mitigation or compensatory schemes being implemented.
6. Do you agree that the DEFRA metric should allow for adjustments to reflect important local features such as local sites? Should the DEFRA metric consider local designations in a different way?	Yes, the DEFRA metric should reflect locally important features such as locally designated sites, ancient woodlands and veteran trees to ensure that locally important wildlife sites are recognised in the metric, as they are in Local Plan policies.

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7. Should local authorities be required to adopt a robust district level licensing approach for great crested newts, where relevant, by 2020?	No. The current approach: some local authorities have established district level partnerships which work well, whilst others have chosen to use alternative methods which have also proven effective. In Essex, authorities are awaiting the outcome of Natural England's survey work prior to considering which type of approach would work best (see Planning and Licensing Committee report 19 July 2018, Minute No. 292 refers).
8. For what species is it plausible to use district level or strategic approaches to improve conservation outcomes and streamline planning processes? Please provide evidence.	No comment.
9. Are there wider elements of environmental net gain that could be better incentivised? If so, please specify which, and any benefits that such incentives could provide.	• The energy efficiency of buildings can be incentivised through building regulations. • The quality of building materials can be improved through British Standards. These would provide national standards that would apply to all new build and would be implemented consistently across the construction sector. • Greater central government funding for small scale renewables. This would enable residents and communities to contribute towards increasing environmental net gain locally and reducing carbon emissions.
10. Is the DEFRA biodiversity metric an appropriate practical tool for measuring changes to biodiversity as a result of development?	It seems sensible to have a nationally designed metric that would enable calculations to be clear and transparent, to reduce disagreements at the local level about methodology and outcomes.
11. What improvements, if any, could we most usefully make to the DEFRA metric?	No comment.
12. Would a mandatory 10% increase in biodiversity units be the right level of gain to be required?	The 10% increase in biodiversity gain needs to be evidenced by DEFRA. The cost of +10% could vary significantly across the country, affecting viability considerably in different places. An alternative would be to use a similar approach to that used for water standards where you apply it if there is evidence to support it, and it is applied through the Local Plan. The cost would be tested as part of Whole Plan Viability to ensure there are no adverse impacts on development at a plan level.

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13. In clearly defined circumstances, should developers be allowed to pay through the tariff mechanism without fully exhausting on-site and local compensation opportunities?	No. The presumption that on-site provision takes priority is paramount. The net gain requirement could use the same approach as in the NPPF para. 62 for affordable housing: this is a well-established approach and in most cases on site is the preferred and accepted route. Further information would be required on the type of defined circumstances and where the contributions would be spent: All planning obligations must meet the three tests for planning obligations in the Community Infrastructure Levy Regulations 2010. The use of any financial contributions would need to be in the local area of the biodiversity loss in order to meet the three tests for planning obligations set out in Regulation 12292) of the Community Infrastructure Levy (CIL) Regulations 2010: 1. Obligations are necessary to make the development acceptable in planning terms; 2. Obligations are directly related to the development; 3. Obligations are fairly and reasonably related in scale and kind to the development.
14. Would this be an appropriate approach to directing the location of new habitat?	The scheme should prioritise on site habitat provision, followed by local provision. The net gain requirement could use the same approach as in the NPPF para. 62 for affordable housing: this is a well-established approach and in most cases on site is the preferred and accepted route.
15. How could biodiversity assessments be made more robust without adding to burdens for developers or planning authorities?	Requiring persons completing assessments to be a competent individual, qualified in a relevant discipline will add an element of quality control to assessments. Requiring biodiversity assessments to be written in Plain English, to ensure that they are easy to understand would assist developers, planning authorities and the public to understand the assessment and its implications.
16. Should a baseline map of broad habitats be developed?	Yes, this would be extremely helpful. Local authorities do not necessarily have access to the level of detail required on a district wide scale to assess loss/gain of biodiversity. However, it does not need to be a new standalone map. All Local Planning Authorities (LPAs), developers, landowners and communities have access to Magicmap which contains many relevant layers.

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	Adding to this would ensure the baseline line is consistent with existing data and available in an easy to understand format.
17. Should this be applied, as a minimum baseline, to: a) net gain calculations for all development? b) net gain calculations in cases of suspected intentional habitat degradation?	Yes to both. Setting a 'fixed temporal baseline' (see page 33 consultation document) that is applied to all net gain calculations will make the process more open and transparent.
18. What other measures might reduce the risk of incentivising intentional habitat degradation?	It would be difficult to prove that habitat loss had been intentional or as a result of legitimate land use decisions. Therefore in both cases, the baseline map of broad habitats could be used for the baseline data for the assessment in cases where habitat loss had occurred just prior to development. But local authorities must be confident that the baseline map is robust and up to date. The baseline map would need to be reviewed periodically to ensure that it is kept up to date.
19. How can the risks of penalising landowners making legitimate land use change decisions before deciding to sell their land for development be mitigated?	It would be difficult to prove that habitat loss had been intentional or as a result of legitimate land use decisions. Therefore in both cases, the baseline map of broad habitats could be used for the baseline data for the assessment in cases where habitat loss had occurred just prior to development.
20. The provision of compensatory habitats will need to be guided by habitat opportunity maps. At what scale should these maps be developed? a) Locally (e.g. local authority or National Character Area) b) b. Nationally (i.e. England) as a national framework to be refined, updated and amended locally	a) Locally at a local authority and county/regional level. This will ensure that compensatory habitats are provided locally to the development, consistent with the CIL Regulations. The risk of having habitat opportunity maps drawn up at a national scale is that at the local level the maps would be too generic to be of any help.
21. What other measures should be considered to identify biodiversity and natural capital priorities?	Some areas have county level Biodiversity Action Plans (BAP), such as the Essex BAP, and/or county/local Green Infrastructure Strategies which identify nationally or locally significant habitat and species, with associated action plans. These evidence base documents will also identify projects where compensatory provision and/or tariff can be delivered. Some areas have Biological Records Offices / Centres, such as the Kent and Medway Biological Records Centre that collates habitat and species

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	records at a county level, providing an easily accessible resource for developers and local authorities.
22. Would mandating net gain through the planning system be enough to stimulate the growth of a market for biodiversity units?	If the scheme followed the established principal of delivering planning obligations on site, the proposed tariff scheme is unlikely to generate sufficient cash to stimulate the growth of a market for biodiversity units.
23. What further measures would help to ensure that the market provides: a) Sufficient biodiversity units for development? b) b. Cost-effective biodiversity units?	Clear guidance is needed on what a biodiversity unit is, its dimensions for different habitat types and whether different habitats have different values. Clear costings based on actual examples are required. There needs to be a national registry and mapping system to ensure that biodiversity units are not used for more than one development. Clear guidance on what can / cannot count toward the net gain requirement.
24. Should there be a minimum duration for the maintenance of created or enhanced habitats?	Yes. As this will apply to housing and other forms of development, which are permanent land uses, the maintenance of created or enhanced habitats should also be permanent. Provision should be maintained in perpetuity. This approach is consistent with that taken to the maintenance of other forms of green infrastructure, and Natural England's guidance on such matters.
25. If so, what should the minimum duration be? a) Less than 25 years b) 25 to 30 years c) Longer than 25-30 years d) Permanent	d) As this will apply to housing and other forms of development, which is are permanent land uses, the maintenance of created or enhanced habitats should also be permanent. Provision should be maintained in perpetuity. This approach is consistent with that taken to the maintenance of other forms of green infrastructure, and Natural England's guidance on such matters.
26. Would conservation covenants be useful for securing long term benefits from biodiversity net gain or reducing process and legal costs?	For on-site provision, many authorities, including Maldon District Council, have established through the Section 106 process procedures to ensure maintenance and monitoring of greenspace and landscaping in perpetuity, which can be applied to habitat creation and maintenance. Conservation covenants may be appropriate for off-site provision.
27. What safeguards might be needed in the implementation of conservation covenants?	No comment.

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28. Does this proposed range for tariff costs fit with the principles set out in this section?	Without knowing how much each biodiversity unit costs to create and maintain, and whether different habitat types have different unit values and creation costs it is impossible to comment on whether the tariff level would be appropriate to provide the expected biodiversity gain. It is not clear how the DEFRA proposed tariff range of £9,000 - £15,000 is calculated. Tariff costs should be set locally to reflect local costs and local evidence – these will vary across the country. However, it would appear that the proposed tariff range could be significantly larger than CIL. The level of tariff must be subject to robust viability testing. The NPPF requires that all costs associated with development are identified in a Local Plan and tested through Whole Plan Viability. Any tariff should follow the same process and be introduced through Local Plans and review. The National Planning Policy Guidance (NPPG) on planning obligations states that ‘Policies for seeking planning obligations should be set out in a Local Plan, neighbourhood plan and where applicable in the London Plan to enable fair and open testing of the policy at examination,’ (Paragraph: 003 Reference ID: 23b-003-20150326) and ‘planning obligations must be fully justified and evidenced’ (Paragraph: 004 Reference ID: 23b-004-20150326).
29. Would this proposed range for tariff costs provide opportunities for cost-effective habitat banks and compensation providers to compete?	Without knowing how much each biodiversity unit costs to create and maintain, and whether different habitat types have different unit values and creation costs it is impossible to comment on whether the tariff level would be appropriate to provide the expected biodiversity gain. It is not clear how the DEFRA proposed tariff range of £9,000-£15,000 is calculated. Tariff costs should be set locally to reflect local costs and local evidence – these will vary across the country. If land purchase is required for habitat creation, how will the tariff rate account for differing land values across the country?

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30. Do you agree with the proposed principles for setting the tariff rate, as set out in this section? Please suggest any other factors that should be taken in to account.	The priority should always be on-site provision, followed by local off site compensation, and only if the opportunities for these have been exhausted should a tariff payment be permitted. It would appear that the proposed tariff range could be significantly larger than CIL. The level of tariff must be subject to robust viability testing.
31. How should the tariff revenue be collected? a) Locally (e.g. through a local authority) b) Nationally (e.g. through Natural England or another national body) c) Other, please specify	a) The tariff could be collected locally by the LPA granting planning permission. However there is a risk that if collected by each LPA for their area, the administration costs will be out of proportion to the amount collected. An alternative option would be collection by an accountable body across a number of local authorities. This would enable economies of scale to be achieved in the administrative function, but still ensure that biodiversity gain was kept relatively locally.
32. How should the tariff revenue be spent? a) Locally (e.g. through a local authority) b) Nationally (e.g. through Natural England or another national body) c) Through a blended model, allowing spending at both levels d) Other, please specify	The revenue must be ring fenced for biodiversity gain and spent locally. The creation of new habitat would need to be in the local area of the biodiversity loss in order to meet the three tests for planning obligations set out in Regulation 12292) of the CIL Regulations 2010: 1. Obligations are necessary to make the development acceptable in planning terms; 2. Obligations are directly related to the development; 3. Obligations are fairly and reasonably related in scale and kind to the development. Remote habitat creation would not pass the three tests – it would not solve the reduction of biodiversity / habitats on site; it would not be directly related to the development, and; the creation of habitat elsewhere may not be of the same kind of habitat lost to the development. Habitat creation in Northumberland, for example, would not compensate for the type of biodiversity loss in Essex. If the tariff is paid ‘upon receipt of planning permission’ (page 26 of the consultation document), can the developer reclaim the money if the development does not go ahead? If the required biodiversity units are not delivered within a set period of time, can the developer reclaim the money?

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33. If tariff revenue is collected and spent nationally, should spending prioritise areas which have contributed the most through biodiversity net gain tariff payments?	No. This will not be a fair and equitable system. It is likely that most development will take place in certain parts of the country, therefore those will be the areas that would be prioritised for most tariff payments. Those areas should get the funding generated by those developments only - Money raised locally should be spent locally. Otherwise areas with lower levels of development will be penalised with the areas needing resourcing just as much as those areas experiencing high levels of growth. Creating habitat in one area of the country will not compensate for habitat loss in another.
34. What further measures will help to prevent burdens on local authorities increasing?	The tariff level should include an amount for administration costs, such as that provided for in the CIL regulations (Reg. 61). The Government should provide New Burdens Funding or similar to each LPA to ensure that the costs of introducing the tariff, such as mapping and/or training staff and/or gaining ecological and/or other specialist advice is addressed.
35. How could the proposals be refined to manage any negative impacts on the scale and delivery of other developer contributions (e.g. through Section 106 or Community Infrastructure Levy payments)?	Developer contributions are levied to pay for necessary impact mitigation (e.g. Recreational Avoidance Mitigation Strategy (RAMS)), infrastructure provision and community facilities arising from the development itself, for example affordable housing, schools, highways, open space, etc. The NPPF requires that all costs associated with development are identified in a Local Plan and tested through Whole Plan Viability. Any tariff should follow the same process and be introduced through Local Plans and review. The NPPG on planning obligations states that 'Policies for seeking planning obligations should be set out in a Local Plan, neighbourhood plan and where applicable in the London Plan to enable fair and open testing of the policy at examination,' (Paragraph: 003 Reference ID: 23b-003-20150326) and 'planning obligations must be fully justified and evidenced' (Paragraph: 004 Reference ID: 23b-004-20150326). Biodiversity net gain could be included within CIL – Reg. 59c deals with the application of CIL, Reg. 14 relates to setting the rate for CIL and Reg. 61 covers administration costs.

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36. Would you, as a planning authority stakeholder, prefer any net gain tariff revenue to be paid through: a) local authority administration? b) a nationally managed funding scheme (which could then reinvest in local habitat schemes best aligned with national strategic environmental priorities)?	a) Local Authority administration. A nationally managed scheme would not necessarily compensate for local biodiversity loss.
37. How could the proposed net gain process be improved for developers?	The scheme should be as simple and transparent as possible. It needs to be fully formed from the outset (i.e. not needing regular amendments), practical and fully tested for viability.
38. What other steps, considerations or processes in environmental planning could be integrated within a net gain approach?	No comment.
39. Would any particular types of development (e.g. commercial, industrial, public sector, local infrastructure) be disproportionately affected by a mandatory biodiversity net gain requirement?	The level of tariff proposed would potentially affect the viability for most types of development. There should be flexibility within the scheme, as there is with planning obligations and CIL to allow for 'exceptional circumstances' to ensure that development remains viable. Tariff costs should be set locally to reflect local costs and local evidence – these will vary across the country. The NPPF requires that all costs associated with development are identified in a Local Plan and tested through Whole Plan Viability. Any tariff should follow the same process and be introduced through Local Plans and review. The NPPG on planning obligations states that 'Policies for seeking planning obligations should be set out in a Local Plan, neighbourhood plan and where applicable in the London Plan to enable fair and open testing of the policy at examination,' (Paragraph: 003 Reference ID: 23b-003-20150326) and 'planning obligations must be fully justified and evidenced' (Paragraph: 004 Reference ID: 23b-004-20150326).

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40. Do you agree that the proposal for staggered transitional arrangements would help to ensure smooth implementation of biodiversity net gain policy?	Transitional arrangements would be necessary to enable both local authorities and developers to become familiar with the requirements of the scheme and the DEFRA metric. If the net gain scheme is introduced through Local Plans and Local Plan reviews to enable Whole Plan Viability to be adequately assessed, the timing of the introduction should be phased to take into account the different stages Local Plans are at across the country. Such as that used for the implementation of the revised NPPF. The requirement should not be implemented until the baseline data and the metric refresh are completed.
41. Would the existing dispute resolution process provide the best way to overcome any disagreement over whether net gain is achieved?	No. Waiting until the end of the planning application process and appealing to the Planning Inspectorate (PINS) would result in un-necessary costs being accrued by both developers and LPAs.
42. Would an additional arbitration or approval process be necessary? If so, please specify why.	There should be a mechanism to allow for disputes relating to net gain to be resolved either before an application is submitted, for example, after the pre-app stage, or before the LPA determines a planning application. In this second scenario, the decision making 'clock' would need to be stopped to allow the dispute to be resolved by a third party, in order not to penalise LPAs on their planning application decision making targets.
43. Are there any issues or measures, other than those outlined, that we should take into account when considering how to monitor biodiversity net gain?	No comment.
44. Should local authorities be required to provide information about habitat losses and gains?	No. Many local authorities do not hold the level of base line data required for biodiversity monitoring, nor have in-house ecologists who would be able to monitor the quality of biodiversity provision. Once the baseline map is in place then authorities potentially could monitor gains and losses, subject to appropriate monitoring processes being put in place. But additional resources such as New Burdens Funding would be required to establish these systems.
45. What technological or other innovative mechanisms could facilitate the delivery and monitoring of biodiversity net gain?	No comment.