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# Strategic Planning & Environment Overview and Scrutiny Committee

<b>Report for:</b>	Strategic Planning & Environment Overview and Scrutiny Committee
<b>Title of report:</b>	Biodiversity Net Gain within Planning
<b>Date:</b>	10 <sup>th</sup> January 2023
<b>Report on behalf of:</b>	Councillor Alan Anderson, Portfolio Holder for Place
<b>Part:</b>	I
<b>If Part II, reason:</b>	N/A
<b>Appendices:</b>	Appendix A Community Impact Assessment
<b>Background papers:</b>	<ol style="list-style-type: none"><li>1. Dacorum Core Strategy (adopted September 2013)</li><li>2. Dacorum Borough Council Climate and Ecological Emergency Strategy September 2022</li><li>3. Chilterns Beechwoods Special Area of Conservation Mitigation Strategy</li></ol>
<b>Glossary of acronyms and any other abbreviations used in this report:</b>	<p>BNG: Biodiversity Net Gain</p> <p>Defra: Department for Environment, Food &amp; Rural Affairs</p> <p>LPA: Local Planning Authority</p> <p>SANG: Suitable Alternative Natural Greenspace</p> <p>SPD: Supplementary Planning Document</p> <p>TCPA: Town &amp; Country Planning Act</p>

## Report Author / Responsible Officer

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<b>Corporate Priorities</b>	<p>A clean, safe and enjoyable environment</p> <p>Building strong and vibrant communities</p> <p>Ensuring economic growth and prosperity</p> <p>Climate and ecological emergency</p>
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<b>Wards affected</b>	ALL
<b>Purpose of the report:</b>	<ol style="list-style-type: none"> <li>1. To update members on the expected legislative requirements for biodiversity net gain.</li> <li>2. To seek SPAE views on the opportunities available within planning to increase biodiversity to inform future policy development.</li> </ol>
<b>Recommendation (s) to the decision maker (s):</b>	<ol style="list-style-type: none"> <li>1. The report is noted.</li> </ol>
<b>Period for post policy/project review:</b>	

## 1 Introduction/Background:

- 1.1. Biodiversity net gain (BNG) is an approach to development that leaves biodiversity in a measurably better state than in which it was found. It aims to halt the current loss of biodiversity resulting from development and help restore ecological networks to enable nature to recover.
- 1.2. In November 2021 the Environment Act gained Royal Assent and will subsequently amend the Town & Country Planning Act (TCPA) to make biodiversity net gain mandatory, expected from the end of 2023. The main provisions of the requirement will be as follows:
  - a minimum of 10% gain will be required;
  - gain to be calculated using an nationally approved biodiversity metric;
  - LPA approval of a biodiversity net gain management and monitoring plan required;
  - net gain may be delivered on-site, off-site or via statutory biodiversity credits; and
  - habitat must be secured for at least 30 years via obligations or a conservation covenant.
- 1.3. The requirement will apply to all development, with a limited number of exemptions expected such as householder applications.
- 1.4. It is expected that LPA's will only be able to approve a planning application once the following steps are complete:
  - Biodiversity metric calculation submitted and show a minimum of 10% net gain between pre-development and post-development values;
  - Biodiversity gain plan is completed and meets statutory requirements;
  - Any claimed gains (both on-site and off-site) are appropriately secured and allocated, including the point in the development process that these gains are to be delivered; and
  - Description of management and monitoring arrangements provided.

A pre-commencement condition will then apply to discharge the biodiversity net gain plan at determination.
- 1.5. The Act also introduced Local Nature Recovery Strategies to be prepared for all areas of England. These will establish priorities and map proposals for specific actions to drive nature's recovery and provide wider environmental benefits. The areas covered will be set by Defra, with Hertfordshire County Council expecting to prepare a Local Nature Recovery Strategy in 2023. The biodiversity metric for calculating net gain places a higher value on habitat units delivered at preferred locations within the nature recovery network, helping to target offsite BNG to areas where it will deliver the most benefit.

- 1.6. Locally, the Council's Climate and Ecological Emergency Strategy launched in September 2022. 'Support the borough in improving biodiversity' is one of the five key objectives. The 'Improving biodiversity' theme underpins a range of activities taking place across the Borough, both directly by Council services, and through supporting the work of stakeholders and local communities. The Strategy proposes introducing a Biodiversity Net Gain Supplementary Planning Document (SPD).
- 1.7. Saved Local Plan policy on biodiversity can currently be found in the Dacorum Core Strategy (adopted September 2013), which sets a clear strategic policy framework through Policy CS26 Green Infrastructure.
- 1.8. Once the TCPA is amended to include the requirement for biodiversity net gain, there is no need for the delivery of 10% to be included within Local Plan policy. However, the Council could consider developing measures within planning and planning policy to maximise the benefit arising from the legislation to the Borough. The opportunities available are set out within section 2 for this Committee to consider.

## **2 Key opportunities:**

### **Plan policy**

- 2.1 LPAs can set a net gain target higher than 10% either at a local or site level. Once the 10% BNG requirement becomes mandatory there is no scope for LPAs to allow a reduction on viability or other grounds.
- 2.2 Any higher target would need to be made clear at an early stage in the planning or development process and careful consideration would be needed to the feasibility and achievability of net gain above 10%. Some local authorities are viability testing a higher requirement of 20% for their future policy. Officers will monitor whether these progress to formal adoption and delivery on-site.
- 2.3 A more flexible approach would be to use Local Plan policy to encourage applicants to deliver above the 10% requirement, linking this with delivering biodiversity targets set within local strategies. The Council could consider this approach for greenfield sites or those located near to important ecological networks.
- 2.4 Local policy can also be used to identify any specific local priorities and strategies that developers should consider when delivering biodiversity net gain, aiming to direct offsite delivery to locations of strategic significance. Within Dacorum, the Herts Ecological Network Map is one such strategy that could be used to identify priority areas for biodiversity improvement up until the Hertfordshire Local Nature Recovery Strategy is available.
- 2.5 Local Plan documents can also be used to set an appropriate number of biodiversity units to be delivered on sites where the biodiversity baseline is negligible. This may arise on a small site or on one where there is no existing biodiversity value such as on previously developed land.
- 2.6 This option could be taken forward through the next phase of work on the new Dacorum Local Plan for brownfield sites within urban areas that have recently been designated.

### **Biodiversity gain delivery**

- 2.7 Once the number of habitat units for a development are calculated, developers have three mechanisms for delivery that follow a spatial hierarchy.
  - (i) Delivery on-site – the preferred option;

- (ii) Delivery off-site through habitat creation/enhancement including via habitat banks, with public and private landowners – here local enhancements are preferred before alternative sites are considered; and
- (iii) Purchase of National Statutory Credits that will support the delivery of large-scale habitat projects. These are intended as the last resort where BNG cannot be delivered on-site or off-site.

2.8 Under the guidance released to date, once biodiversity net gain becomes mandatory a developer would not be able to make a compensatory financial payment to the LPA in lieu of securing the required habitat units via one or a combination of these three methods.

2.9 Any off-site land used for the purposes of achieving BNG will need to be registered on the digital Biodiversity Gain Sites Register, currently being developed by Natural England. This national register will help users record and verify off-site habitats they are creating, and will enable the gains to be verified by Government and the LPA. Landowners can start to create habitat units now, in advance of BNG becoming mandatory. These are referred to as habitat banks.

2.10 Land on the register must be secured for the required habitat units via a conservation covenant or planning obligation and be maintained for a minimum of 30 years.

2.11 Local authorities will be able to offer their own land for biodiversity gain, with habitat units available for developers to purchase if they are unable to deliver the required units on site. Local authorities can also act as a local broker, this would involve selling habitat units on behalf of a third party landowner. Developers cannot be directed to purchase local authority habitat units in preference to other ecologically equivalent suppliers.

2.12 Much of Council owned open space is already in active use for recreation, play, formal sports or general amenity, limiting scope for sites to provide habitat units to a development and be entered onto the register as they would need to be maintained and managed solely as habitat units for a minimum of 30 years.

2.13 In recent years Clean, Safe and Green has created more wildflower-rich and biodiverse grassland across the Borough and this winter will be continuing with year three of a five-year tree planting programme. These local biodiversity initiatives are a key element of the Council's Climate and Ecological Emergency agenda, but would not meet the requirements of biodiversity net gain.

2.14 Officers are not currently aware of any Council owned land that could be enhanced and managed as habitat units. Further investigation through the Local Plan making process and the Council's Climate and Ecological Emergency work, may identify potential sites where habitat units could be created and made available for developers to purchase. It is expected that this process would be co-ordinated through the Climate and Ecological Emergency programme.

2.15 Discussions will also take place with Hertfordshire County Council on their approach to creating habitat units on their landholdings.

2.16 Further guidance is also expected from Defra on how biodiversity net gain will work alongside Suitable Alternative Natural Greenspace (SANG). Currently, it is considered that sites identified as SANG can also deliver biodiversity net gain provided that 'additionality' can be proven. As the Council continues to develop its approach towards SANG delivery to support the Chilterns Beechwoods Special Area of Conservation Mitigation Strategy, opportunities for identifying and evaluating BNG habitat units on SANG sites could be progressed.

2.17 Any sites taken forward on Council owned land for biodiversity net gain would need an assessment of the baseline biodiversity value by an ecologist, preparation and delivery of a net gain management plan and ongoing management, maintenance and monitoring for 30 years. The associated costs would be recovered by developers purchasing the associated habitat units from the Council, however some upfront costs would need to be initially covered.

## **Planning processes**

2.18 Development management will need to be ready to receive and determine planning applications and check that the associated biodiversity gain plans are legally compliant when net gain becomes mandatory. While officers have experience of sites delivering biodiversity improvements, the new systems needed will be much more rigorous and will require systems and processes to be developed in advance.

2.19 The processes required include:

- Application – checking of pre-development biodiversity value and proposed approach to on-site delivery, plus any proposed off-site biodiversity enhancements. A pre-commencement condition will be applied at determination to discharge a biodiversity net gain plan.
- Pre-commencement – submission and approval of biodiversity gain plan. Any off-site habitat units will need to be secured through a conservation covenant or planning obligation and registered prior to final approval of the biodiversity gain plan.
- Commencement and management – ongoing management, monitoring, reporting and appropriate enforcement of biodiversity gains for the agreed maintenance period.

2.20 Similarly, the Council will also need to be prepared to comply with new duties on authorities regarding BNG reporting. Biodiversity net gain obligations will be secured via a S106 legal agreement for each development meeting the criteria. It will be the responsibility of the developer to identify and fund the future management and monitoring of the enhanced habitat for a 30 year period. The Council or its appointed agent will be required to ensure that measures are being implemented in an appropriate way and that the BNG monitoring reports received from the developer are an accurate reflection of BNG progress on site. An appropriate fee will be charged by the Council to the developer to cover these costs. The Council will have duties to report on BNG delivery under the Environment Act. Further information on reporting requirements is expected to be set out in the forthcoming Defra consultation and secondary legislation.

## **3 Options and alternatives considered**

3.1 The development of a biodiversity net gain SPD has been considered. If adopted prior to BNG becoming mandatory it would bring forward the requirement on development to deliver a measurable net gain and could be used to set out the Council's processes. During this interim period the Council would also have more flexibility in how biodiversity was delivered through the SPD.

3.2 However, it is uncertain how much of the content of a local biodiversity net gain SPD would remain valid after 2023 as information on the documentation and process to support the Environment Act has yet to be released via secondary legislation. As a result, the benefits that an early adoption of an SPD would deliver are likely to be limited and preparation of the SPD could be abortive work.

3.3 Officers therefore recommend that Planning do not progress with an SPD and instead focus resources on developing a biodiversity approach through the new Local Plan and preparing the Planning Service for BNG becoming mandatory later in 2023, to reduce the risk of applications being delayed.

- 3.4 Setting local requirements for particular allocated sites and naming strategies that measures should support in future Plan policy would be a much stronger and enforceable position for the Council, compared to SPDs that are material consideration in planning decisions and cannot supersede development plan policy.
- 3.5 The Environment Act is a complex legal document, and a Dacorum developer guidance note would help agents to submit the correct information to reduce the risk of a delay to applications at validation and/or commencement.
- 3.6 There are also types of habitats within the biodiversity metric where a Hertfordshire specific definition would result in a better result for local biodiversity. This particularly relates to 'other neutral grassland' where a local definition would avoid these units being classified as 'modified grassland', which has a much lower biodiversity value in the metric.
- 3.7 A biodiversity advice note would provide additional technical advice and information to developers on local expectations for biodiversity delivery. This could be used to clarify the Council's process and considerations when assessing proposals for biodiversity net gain.

#### **4 Consultation**

- 4.1 Discussion on approaches to biodiversity net gain has taken place with the Council's Development Management, Clean, Safe and Green and Climate Change and Sustainability sections.

#### **5 Financial and value for money implications:**

- 5.1 Once the delivery of 10% biodiversity net gain becomes mandatory, Development Management will require additional ecological advice to assess biodiversity net gain plans. It is expected this would be provided by Herts Ecology via a service level agreement.
- 5.2 It will be the responsibility of the developer to identify and fund the future management and monitoring of the enhanced habitat for a 30 year period, which will be secured through the S106 agreement. Monitoring proposals should be submitted within a biodiversity gain plan at application.

#### **6 Legal implications**

- 6.1 The delivery of 10% biodiversity net gain by development will be a legal requirement under the TCPA.
- 6.2 Local authorities will also have responsibilities under the Environment Act to report on BNG delivery. A specific BNG report must be published setting out the authority's actions to comply with the BNG duty alongside quantitative data for the gain delivered. The initial report must be completed within 3 years of the Act coming into force.
- 6.3 More legal resources are likely to be required as all developments meeting the criteria will require a full S106 agreement.

#### **7 Risk implications:**

7.1 Biodiversity net gain is a new requirement that the Council will need to be prepared for from the day it becomes mandatory. Systems and processes will be needed in advance to ensure applications can continue to be processed and assessed.

## **8 Equalities, Community Impact and Human Rights:**

8.1 A Community Impact Assessment is annexed to this report as Appendix A. The types of positive outcomes to be delivered by biodiversity include:

- More access to natural green spaces within the Borough's communities;
- Positive social, physical and mental health and wellbeing impacts for people of all ages and abilities.

8.2 Human rights – There are no Human Rights implications arising from this report.

## **9 Sustainability implications (including climate change, health and wellbeing, community safety)**

9.1 Improving biodiversity is a key objective of the Council's Climate and Ecological Emergency Strategy.

## **10 Council infrastructure (including Health and Safety, HR/OD, assets and other resources)**

10.1 None arising from this report.

## **11 Conclusions:**

11.1 Through biodiversity net gain development will have a positive ecological impact, delivering improvements through habitat creation or enhancement.

11.2 There is a considerable amount of preparation required by the Council as LPA to be ready to determine applications against the requirement once it becomes mandatory. This will need to be developed during the course of 2023 in liaison with Hertfordshire County Council's LEADS (landscape, ecology, archaeology, and design sustainability) service.

11.3 Emerging Plan Policy can help secure biodiversity benefits to the Borough by requiring development to take into account local strategies, identifying sites where a net gain percentage above 10% would deliver the greatest value and setting a required number of habitat units for sites where the metric calculates that the existing biodiversity is negligible.

11.4 A search for sites with the potential to provide habitat units on Council-owned land, or that of its partners, could offer a local solution to developers unable to deliver 10% BNG onsite.

11.5 An advice note on the Council's processes and local habitat specifications would aid the application process for developers.

11.6 Given the resources required to deliver 11.2-11.5 above, the timescale for the implementation of mandatory net gain and further detail on implementation requirements that is expected to be issued by secondary legislation, a local SPD will not be developed at this stage.

