

**North East Derbyshire District Council**

**Environment Scrutiny Committee**

**13 November 2023**

**Implications of The Environment Act and Biodiversity Net Gain Requirements**

**Report of the Assistant Director for Planning**

Classification: This report is public

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**PURPOSE / SUMMARY**

To inform Members of the implications of the Act for the Council and the District and how we are addressing the Biodiversity Net Gain Requirement.

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**RECOMMENDATIONS**

1. That Members note the contents of the report.

**IMPLICATIONS**

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**Finance and Risk:** Yes  No

**Details:**

On Behalf of the Section 151 Officer

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**Legal (including Data Protection):** Yes  No

**Details:**

On Behalf of the Solicitor to the Council

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**Staffing:** Yes  No

Details: Resources required to ensure that Council is meeting its obligations under the Environment Act in relation to developing policies and specific objectives for taking action to further the general biodiversity objective and to report on progress.

On behalf of the Head of Paid Service

## DECISION INFORMATION

<b>Decision Information</b>	
<b>Is the decision a Key Decision?</b> A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds:  <b>NEDDC:</b> <b>Revenue - £100,000 <input type="checkbox"/> Capital - £250,000 <input type="checkbox"/></b> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i>	No
<b>Is the decision subject to Call-In?</b> (Only Key Decisions are subject to Call-In)	No
<b>District Wards Significantly Affected</b>	District-wide implications.
<b>Consultation:</b> <b>Leader / Deputy Leader <input type="checkbox"/> Cabinet <input type="checkbox"/></b> <b>SMT <input type="checkbox"/> Relevant Service Manager <input type="checkbox"/></b> <b>Members <input type="checkbox"/> Public <input type="checkbox"/> Other <input type="checkbox"/></b>	not applicable  Details:

<b>Links to Council Plan (NED) priorities, including Climate Change, Equalities, and Economics and Health implications.</b>
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## REPORT DETAILS

### 1 **Background** *(reasons for bringing the report)*

- 1.1 The Environment Act of 2021 places specific requirements on developers and duties on Councils to ensure the delivery of biodiversity net gain. Previous legislation focussed on the conservation of biodiversity, the 2021 Act requires the demonstration of positive enhancement.

- 1.2 As of January 2023, public authorities (including Councils) have a duty to “*from time to time consider what action the authority can properly take, consistently with the proper exercise of its functions, to further the general biodiversity objective*”.
- 1.3 The legislation requires public bodies to take a strategic approach to determine policies and specific objectives for taking action to further the general biodiversity objective and to take action in light of these policies and objectives to further the general biodiversity objective.
- 1.4 The 2021 Act also amends the Natural Environment and Rural Communities Act 2006 by making it a Biodiversity Duty to ‘conserve and enhance’ in relation to the council’s wider functions (Section 102). This part of the Act came into force on 1<sup>st</sup> January 2023. Section 103 requires local authorities to publish biodiversity reports which summarise action taken to comply with the duty along with a summary of the authority’s plans for complying with the duty over a period of five years. As local planning authority it should also include a summary of the action taken on Biodiversity Net Gain (BNG.) The Secretary of State is expected to issue guidance to local authorities on how to comply with the duty within the next few weeks.
- 1.5 Proposals for larger new developments will be legally required to demonstrate a biodiversity net gain of 10% as a result of the scheme from January 2024. For smaller scale developments, the same requirement will apply from April 2024.
- 1.6 In order to reduce initial biodiversity loss as much as possible, the National Planning Policy Framework compels developers to adhere to a ‘mitigation hierarchy’ in their Biodiversity Net Gain delivery options. Biodiversity loss from developments must first be avoided as much as possible and then any impact should be appropriately mitigated on-site. When on-site mitigation is impossible or poses a threat to project viability, developers can purchase Biodiversity Units to compensate off-site.
- 1.7 This report outlines the actions we are taking as a District Council to comply with the above duties and to develop a robust strategy for aiding the delivery of Biodiversity Net Gain, with a particular focus on where this cannot be achieved on a development site.

## **2. Details of action that the Council is taking.**

- 2.1 The Council has a Service Level Agreement (SLA) with Derbyshire Wildlife Trust (DWT) who provide approximately 52 days per annum specialist support to the Council as Local Planning Authority.
- 2.2 Approximately half of this time is spent on the evaluation of Biodiversity Net Gain (BNG) assessments submitted with planning applications and supporting case officers to ensure that a deliverable net gain is secured. Information gathering on the potential biodiversity value of sites is also included, along with Local Wildlife Sites monitoring work are also services provided by the Wildlife Trust.

- 2.3 The current SLA costs the Council approximately £15,000 plus VAT, which officers consider to be an effective use of resources, in lieu of the employment of a full-time ecologist.
- 2.4 Officers are currently in discussions with DWT about expanding their remit to include an assessment of the biodiversity value of Council owned land that would not be suitable for development but may provide opportunities for ecological enhancement through funding secured from developments where sufficient on-site net gain cannot be achieved.
- 2.5 The Council is also in the early stages of a review of its Estate (Asset Management Strategy) and part of that review will include joint working between Planning and Streetscene to consider (with the specialist input of DWT) the contribution that Council land can make to the enhancement of biodiversity, as per the legal duty referred to in paragraph 1.2 above.
- 2.6 Funding for any additional work (which is also subject to DWT capacity) would come from the circa £53,000 grant money that the Council has recently received from DEFRA for work that the Council is undertaking to prepare for BNG becoming a mandatory requirement.
- 2.7 Derbyshire County Council (DCC) have recently been declared as the Responsible Authority for the delivery of the Derbyshire Local Nature Recovery Strategy (LNRS). Officers of this Council and the other Districts/Boroughs in Derbyshire are working with DCC to discharge their duties to agree priorities for nature's recovery, to map the most valuable existing areas for nature and to establish shared proposals for what action they should take to recover nature and where.
- 2.8 The LNRS work is in its very early stages, with the main focus currently on gathering evidence on the Nature Reserves that are on land that is owned by/under the control of the Council. As the Strategy develops, this will become another important resource for developments that need to contribute to off-site net gain in order to meet their legal obligations.
- 2.9 Further work is required to form a database of privately owned land in the District that could be suitable for achieving BNG (working with organisations such as the Environment Bank). This information will allow the Council to deal with planning applications that require off-site BNG expediently.
- 2.10 The evidence that will result from the LNRS work, the completion of the Council's Asset Management Strategy and the review of Council owned land by DWT will inform the Council's Local Plan review and development of a policy that includes a requirement to achieve BNG. This process will also consider the case for requiring a higher level of BNG over and above the 10% mandatory requirement.

2.11 The Council has successfully recruited to the post of Sustainability Officer and the post will be filled from late November 2023. The responsibilities of that post include reviewing, developing, maintaining and monitoring the Council's Climate Change Strategy (CCS) and Action Plan.

2.12 Theme 6 of the CCS relates to Biodiversity and lists the following priorities:

- Develop a wild planting policy for parks and public open space areas where appropriate;
- Review our open space maintenance programme.
- Investigate plant, tree and hedge planting initiatives for longer term biodiversity benefits; and
- Identify opportunities to work with partners on schemes to increase biodiversity.

2.13 Given the above, a key element of the Sustainability Officer's role will be undertaking the monitoring work that will inform the reporting duty referred to in paragraph 1.4 above and joint working with the Planning department will be key to ensuring that this responsibility is met.

### **3 Reasons for Recommendation**

3.1 To ensure that Members are aware of the actions that officers are taking to ensure that the Council is meeting its duties and proactively preparing for Biodiversity Net Gain becoming a mandatory requirement.

### **4 Alternative Options and Reasons for Rejection**

4.1 None relevant.

## **DOCUMENT INFORMATION**

<b>Appendix No</b>	<b>Title</b>
None	
<b>Background Papers</b> (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet you must provide copies of the background papers)	