



**Environment Scrutiny Committee**  
**Biodiversity Matters – Environment Act**  
**29<sup>th</sup> November 2023**

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<b>Cabinet Member:</b>	Cllr Carolyn Healy – Cabinet Member: Climate Action, Green Spaces, Heritage and Leisure
<b>Lead Director:</b>	James Dunn – Director: Prosperity and Investment
<b>Service Area:</b>	Development Management
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<b>Wards Affected:</b>	All wards
<b>Key Decision:</b>	Not Key Decision
<b>Forward Plan:</b>	Not Applicable
<b>Report considered by:</b>	Environment Scrutiny Committee – 29 <sup>th</sup> November 2023

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**1.0 Recommendations:**

- 1.1 It is recommended that Environment Scrutiny Committee note the proactive approach to delivering the new mandatory Biodiversity Net Gain, and note the challenges to date whilst awaiting national guidance.
- 1.2 It is recommended that Environment Scrutiny Committee review and endorse the approach taken in introducing and delivering Biodiversity matters contained within the Environment Act, and make recommendations as appropriate, for a further detailed consideration of Biodiversity Net Gain implementation and delivery in February 2024.

**2.0 Purpose of the report:**

- 2.1 To provide an overview of the new legislation relating to Biodiversity, the strategic and practical implementation, potential opportunities and monitoring. This provides a background paper for the full consideration by Scrutiny Committee on the 6<sup>th</sup> February 2024.

### 3.0 Background

3.1 The Environment Act 2021, introduced a number of new measures that acts as the UK's new framework for environmental protection, replacing previous European legislation. The Act enshrined environmental protection into law. The act covers a number of matters including waste & recycling, air pollution, water pollution and nature conservation, brings in four key changes with regard to nature conservation within England:

- i. Need for county-scale Local Nature Recovery Strategies (LNRS) which should be taken into account by LPAs.
- ii. Requirement for minimum 10% Biodiversity Net Gain (BNG) from most planning application based development.
- iii. Revises the Biodiversity Duty on public bodies within Natural Environment and Rural Communities (NERC) Act not only conserve but now enhance biodiversity through our functions and now also to periodically report on these.
- iv. Creation of the Office for Environmental Protection (OEP) whose statutory duties include enforcement actions against failure of public authorities to comply with environmental law.

It should be noted that BNG and the strengthened Biodiversity duty on the public bodies (points ii and iii) are important mechanisms to support the delivery of the LNRS (point i).

3.2 New burdens funding from government of up to £20k for TWC has been provided on an annual basis, to help prepare for their additional biodiversity duties; this comes from the (£6.16m central government pot). This has been drawn down to support necessary resources to deliver these new strategies.

#### Local Nature Recovery Strategy

3.3 As a system of spatial strategies, the Government has selected the Local Nature Recovery Strategy Areas, and Telford & Wrekin will work as a partner with Shropshire Council who will be the lead authority in the preparation, publication, review and republication for the strategy. The strategy will set out the areas:

- i. agreed priorities for nature's recovery;
- ii. map the most valuable existing areas for nature; and
- iii. map specific proposal for creating and improving habitat for nature and wider environmental goals.

3.4 The main purpose of the strategy is to identify locations to create or improve habitat most likely to provide the greatest benefit for nature and the wider environment. The strategy will not force the owners and managers of the land identified to make any changes. Instead, the government is encouraging action through proactive nature based solutions which could include opportunities for funding and investment. The approach will include partners, stakeholders, and the public to develop, produce and deliver the LNRS. The plan will help to direct central funding streams in addition to feeding into the Local Plan development, and informing BNG matters.

3.5 A LNRS steering group has formed, and met for the first time in September 23; the group includes:

- Shropshire Council (the Responsible Authority)
- Natural England (Supporting Authority)
- Telford and Wrekin Council (Supporting Authority)
- Country Land and Business Association
- Environment Agency
- Forestry Commission
- National Farmers Union
- Shropshire Hills AONB
- Shropshire Wildlife Trust

TWC are fully integrated into the steering group and will lead on the urban aspects of the strategy.

#### Biodiversity Net Gain

3.6 BNG is an approach to development and /or land management that aims to leave the natural environment in a measurably better state than it was before. The initial legislation within Environment Act 2021, amends the Town and Country Planning Act, and other additional Statutory Instruments are currently being prepared to guide and regulate the implementation. It does not change existing legal protections for important habitats and wildlife species. It maintains the mitigation hierarchy of avoid impacts first then mitigate and only compensate as a last resort.

3.7 BNG requires most non-householder planning applications which have more than a small impact to provide a legal minimum of 10% net gain in biodiversity; this is parallel to protected species and Local Plan requirements. It was announced on in September 23 that this will become a statutory requirement from January 2024, for all new planning applications of large developments, with non-exempt smaller ones from April 2024. However, some transitional arrangements are anticipated and guidance is expected in November 23.

3.8 The Biodiversity value is calculated via an official metric. The current version (4.0) will be replaced in November 23. These Values are based on a number of criteria primarily habitat type, condition and location with additional multipliers for onsite or offsite mitigation. Some rules are in place to ensure lower importance habitats are not used to replace those of more intrinsic value.

3.9 Any submitted planning applications will be required to demonstrate how they have arrived at their pre-development and post-development values and how any shortfalls will be offset either by buying units from landowners/suppliers or via a central Government Conservation Credit scheme. Units can be procured for projects across England with some geographic penalisation.

3.10 The Statutory Instrument and Natural England will provide guidance on the regulation of offsite units. Conservation Covenants are a mechanism for securing land being sold as offsite compensation. They are administered by Responsible Bodies. The process for becoming authorised as a Responsible Body has been

launched at the end of July. Local Authorities are encouraged to apply, and this is under review.

- 3.11 On and offsite units are required to be monitored and maintained to target condition for a minimum of 30 years. The procurement of offsite units are expected to be delivered via a market type system, therefore can be chosen by price rather than location. Onsite provision within developments will always remain the priority to deliver +10% biodiversity; and applicants will need to demonstrate this cannot be achieved onsite to justify any off site provision. It is recognised that some sites would struggle to meet the requirements due to physical constraints; therefore, officers are working to create a set of uplift projects that can be offered to developers as offsetting projects. This ability is part of the national BNG system and offsets, in theory can be provided anywhere in England. Therefore, offering these locally and competitive prices will help retain the benefits within the borough
- 3.12 Officers have been trialling the BNG measurement system (Biodiversity Metric) for over a year to demonstrate net neutral developments. Cross service delivery is essential and a working group has been established. A number of uplift sites have been selected by officers for initial and further investigation. Many of these have been baseline surveyed with other sites in the process.
- 3.13 Officers have identified a list of sites with potential to offer uplift projects. These are actively being assessed for current condition and suitability for improvements. To date 130ha of land has been surveyed for baseline habitats and conditions. Others are being programmed to be baselined and tested for suitability.
- 3.14 It is anticipated that the first of these pilot grassland uplift projects will be delivered in Winter 2023, via a contract which is currently undergoing procurement. Pilot projects for other habitats are anticipated to follow in due course. Some of these sites are likely to be taken from the meadow verge project being undertaken by Localities. This project is identifying areas of verge and open space which are currently being frequently mown, but have the potential to receive fewer cuts, thereby reducing financial and climate burdens. Pilot sites for BNG grassland uplift will be chosen where there is physical likelihood of success, ability to retain ecological condition for 30+ yrs and especially where there is wider ecological benefit.

#### Biodiversity Duty

- 3.15 The Environment Act places a duty on all public bodies (including public bodies, local authorities, statutory undertakers,) to:
1. Consider what can be done to conserve and enhance biodiversity.
  2. Agree policies and specific objectives based on this consideration.
  3. Act to deliver the policies and achieve the objectives.
- 3.16 The first consideration of what actions to be taken must be implemented before January 2024. Officers across the organisation have met in November to establish a working group “consider what action the authority can properly take, consistently with the proper exercise of its functions, to further the general biodiversity objective.” Guidance has not yet been provided on this by the Government,

however we will commence in a common sense understanding of the legal requirement.

- 3.17 This will be followed, as statutorily required, by forming a plan “as soon as practicable after the completion of the consideration”. These plans are then to be reviewed at least every 5 years.
- 3.19 TWC will then be required to publish reports periodically, setting out the delivery of the Biodiversity Duty. The first is due by 14<sup>th</sup> Jan 2026 and then in a cycle of 5yrs or less. These must summarise actions and plans relating to the duty and progress as well as additional BNG reporting.

#### **4.0 Summary of main proposals**

- 4.1 To provide an update to the Environment Scrutiny Committee on the recent legislation and changes relating to Bio-diversity Net Gain.

#### **5.0 Alternative Options**

- 5.1 There are no alternative options arising from this report.

#### **6.0 Key Risks**

- 6.1 There are no direct key risks arising from this report.

#### **7.0 Council Priorities**

- 7.1 Our natural environment is protected, and the Council is taking a leading role in tackling the climate emergency

#### **8.0 Financial Implications**

- 8.1 There are no direct financial implications arising from this report.

#### **9.0 Legal and HR Implications**

- 9.1 There are no direct legal and HR implications arising from this report.

#### **10.0 Ward Implications**

- 10.1 The changes in legislation will have a Borough wide implication.

#### **11.0 Health, Social and Economic Implications**

- 11.1 There are no direct health, social and economic implications arising from this report.

#### **12.0 Equality and Diversity Implications**

- 12.1 There are no direct equality and diversity implications arising from this report.

### **13.0 Climate Change and Environmental Implications**

13.1 There are no climate change and environmental implications arising from this report.

### **14.0 Background Papers**

None

### **15.0 Appendices**

None

### **16.0 Report Sign Off**

<b>Signed off by</b>	<b>Date sent</b>	<b>Date signed off</b>	<b>Initials</b>
Legal	20/11/2023	21/11/2023	EH