



Borough of Telford and Wrekin

Environment Scrutiny Committee

Biodiversity Net Gain

6th February 2024

Cabinet Member:	Cllr Carolyn Healy, Cabinet Member for Climate Action, Green Spaces, Heritage & Leisure
Lead Director:	James Dunn, Director Prosperity & Investment
Service Area:	Development Management
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Wards Affected:	All Wards
Key Decision:	Not Key Decision
Forward Plan:	Not Applicable
Report considered by:	Environment Scrutiny Committee – 6 th February 2024

1.0 Recommendations for decision:

- 1.1 It is recommended that Environment Scrutiny Committee endorse the approach set out in delivering biodiversity net gain via the development process for local communities, including advising officers on their preferred options, which will be taken forward for further investigation including regarding viability.
- 1.2 It is recommended that Environment Scrutiny Committee notes the proactive approach to working with evolving legislation and guidance to facilitate sustainable development across the borough.

2.0 Purpose of Report

- 2.1 This report provides an update on the development of the Council's response to legislative and national guidance relevant to Biodiversity Net Gain (BNG) and identifies options for locally derived levels and interpretation to guide development.

2.2 This is relevant for planning policy, development planning and implementation, and use of the Corporate estate.

3.0 Background

3.1 Telford & Wrekin Council continues to deliver, and prepare for, significant development. The requirement for a minimum of 10% BNG, for 30 years, through development is required via the Environment Act 2021.

3.2 Draft Statutory Instruments (SIs) are being placed before parliament to bring BNG into force. There are six SI's which will work together to deliver the BNG Framework, and will become law when BNG is implemented; these are:

1	The Biodiversity Gain (Town and Country Planning) (Consequential Amendments) Regulations 2024	Consequential amendments to existing primary planning legislation, integrating the BNG framework, and defines a planning authority under Schedule 7A which sets out the BNG Framework.
2	The Biodiversity Gain Site Register (Financial Penalties and Fees) Regulations 2024	Allows for fees to be charged for applications, and allows Natural England to issue financial penalties where false / misleading information is provided
3	The Biodiversity Gain Site Register Regulations 2024	A requirement to hold a publicly-accessible BNG register, detailing all off site BNG commitments; established and operated by Natural England. Set the eligibility criteria which must be met for land to be registered; criteria will require improvement of habitats which must be made available to be allocated to a development as a biodiversity unit where planning permission is granted. The enhancements must be secure by a legal agreement for at least 30 years.
4	The Biodiversity Gain Requirements (Exemptions) Regulations 2024	A narrow list of exemptions, to ensure proportionality. Development which has received permission after the date of implementation, but meets one or more of the exemptions is not required to deliver 10% net gain.
5	The Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024	A list of habitats that are irreplaceable, and ensures the 10% BNG metric is not applied to these. Instead, bespoke compensation can be agreed with the LPA; however its impact will need to have strong justification as set out in national planning policy.

6	The Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024	Sets out how BNG framework works with planning applications; including the content and form of the BNG plan, the procedure for submission and approval of the plan, and who approves the plan. The regulations set out a statutory time period to determine the plan within 8 weeks, unless alternative time period is agreed by the developer and LPA, and set out the process for any appeal. The principle of phased development is covered to ensure that BNG is achieved over the whole development
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- 3.3 The SI's were made on 17th January 2024, being laid before parliament on the 19th January 2024, coming into force on the 12th February 2024. Therefore, from the 12th February BNG will be mandatory for all new planning applications for 'major' developments (of 10 dwellings and above, or commercial development above 1,000sqm). BNG for smaller sites (1-9 residential units / commercial floor spaces of less than 1,000sqm) will apply from the 2nd April 2024, providing an extended transition period. Certainty on the applications that are completely excluded from consideration for BNG have been given; this includes an exemption for householder applications and those which will only impact very small areas of non-priority habitat (25m² or 5 linear metres of hedgerow); Biodiversity Gain Sites – where the offsite project itself requires planning permission; small scale elf Build and custom housebuilding; and the remaining phases of the Highspeed railway transport network.
- 3.4 The LPA awaits the confirmed Planning Practice Guidance, which was published in draft in November 2023. In practice, the LPA will assess the baseline values of the site at the application stage, but the detailed consideration of BNG will be assessed through a planning condition, prior to the commencement of development. There will be an increased need for S106 to secure onsite & offsite delivery and the monitoring of BNG provision. This will include an increased monitoring and enforcement burden upon Councils to ensure compliance over the 30 year period. Officers are engaged with legal services, to ensure the Council is prepared for the launch of these new statutory requirements.
- 3.5 There are a number of opportunities for local interpretation to optimise the implementation of BNG to benefit local circumstance, via policy and published guidance. Most notable of these appear be the setting of a minimum level of BNG (above the statutory minimum) and the method and location that this is delivered via a biodiversity gain hierarchy.

Policy level of BNG

- 3.6 There is no requirement to repeat legislation in local policies, however LPA's are encouraged to develop locally specific BNG policies in the Local Plan, setting out local priorities and strategies; these can reflect on locally important habitats, Biodiversity Action Plans, Green Infrastructure Strategies, and the Local Nature Recovery Strategy (LNRS). The delivery of offsite BNG can then support these, and

determine the strategic significance score as part of the Biodiversity Metric. This in turn can help the delivery of the LNRS ensuring right habitats are provided in the right places. Furthermore, any local plan policies can form an overarching place making strategy enabling a holistic approach to cover other matters such as climate emergency, surface water drainage, play and recreation, active travel, health and wellbeing; and this can be reinforced by an overarching Green Infrastructure Strategy that directs other matters outside of the Local Plan.

- 3.7 The current draft Local Plan states the Council will require development to deliver in excess of 10% BNG to help deliver Telford & Wrekin's Forest Community ethos. Draft Policy NE3 seeks to secure and guide BNG delivery through development, by:
- specifying major developments should deliver more than 10% BNG;
 - whilst those that are not legally required to provide BNG, will be supported where the gain is proportionate to the development.
 - specifies the provision of BNG shall be locally appropriate and follow the Lawton Principles of delivering more, bigger better and joined up habitats;
 - that development proposals shall be supported by a BNG Plan that includes a 30 year habitat management plan; that any offsite financial conditions are secured through obligations /other legal mechanisms, and delivered in line with local /regional /national priorities directed by the LNRS; and
 - that the Council will expect offsite delivery within the borough; where this cannot be achieved this should be justified identifying the closest alternative to protect and enhance local ecology.
- 3.8 The policy sets out the expectations to deliver above 10%. Setting a figure above the 10% minimum BNG is supported by the draft national BNG guidance, and a growing number of LPAs across England have adopted Local Plans with BNG requirements above the statutory minimum. To date a number of LPA's have identified levels greater than 10% BNG ranging up to 20%. It is recommended that the Local Plan specifies a figure, once matters of viability are investigated, rather than leaving this open to interpretation.
- 3.9 Defra's technical documents to support the development of statutory BNG investigated setting values of 5%, 10% and 20%. This identified that it was hardest for developments to achieve net neutral, with there still being minimal impact on viability for most schemes at 20%. Defra concluded that generally 10% BNG was negligible for viability, if delivered onsite (<0.1-0.5% of land value for non-residential and c£69 per dwelling (brownfield) and c£172 per dwelling (for greenfield), noting these are West Midlands 2017 values). Furthermore, Defra calculated that setting the minimum BNG to 20% would increase these costs per dwelling by 19%. Extrapolating this estimate and using the same technique used in other Local Plan Viability Studies, would indicate the increase from the statutory minimum 10% to a policy minimum of 20% would cost, onsite, between £16.74 and £41.74 per dwelling in Oct 2023 (adjusted using Bank of England CPI inflation data from 2017 costs of £13.11 and £32.68). This initial estimate is considered an achievable target, however further work is required to confirm this is a reasonable and deliverable assumption.

- 3.10 Noting the growth areas identified within the consultation version of the draft Local Plan, the majority of land identified is intensively managed for agricultural purposes. This land use generally has low baseline levels of habitat units and therefore requires less volume of land onsite to meet the sites BNG requirements. Officers have reviewed these potential sites and found that the sites promotion factored in BNG to their design and viability to provide the minimum 10% BNG on site.
- 3.11 Specifying a figure within the policy in excess 10% BNG would assist the retention of important features within development and aid the delivery of allied policies including the Greening Factor. This is the cornerstone green infrastructure delivery policy within the Draft Local Plan, based on national best practice to benefit community health, wellbeing and resilience to increasing climate change and extinction pressures.

Biodiversity Gain Hierarchy

- 3.12 The draft SIs and guidance put forward a Biodiversity Gain Hierarchy, which is to be followed by LPAs. This hierarchy is separate from the established mitigation hierarchy within the National Planning Policy Framework. This states:
“The biodiversity gain hierarchy means the following actions in the following order of priority:
- *avoiding adverse effects of the development on onsite habitat with a habitat distinctiveness score, applied in the biodiversity metric, equal to or higher than six;*
 - *so far as those adverse effects cannot be avoided, mitigating those effects;*
 - *so far as those adverse effects cannot be mitigated, habitat enhancement of onsite habitat;*
 - *so far as there cannot be that enhancement, creation of onsite habitat;*
 - *so far as there cannot be that creation, the availability of registered offsite biodiversity gain;*
 - *so far as that offsite habitat enhancement cannot be secured, purchasing biodiversity credits.”*

Therefore, this requires protection and delivery onsite in preference to alternative options. However, it restricts this to a category of habitats. Since the release of this draft legislation, concerns were raised by professionals nationally, regarding their potential impact, which relates purely to their qualification for use for habitats with a distinctiveness of six or above. This habitat definition is generally regarded as exceptional, and thus setting a ‘high-bar’. The draft legislation however was amended in the made legislation which has reduced this to a score of 4 or above (Part 7A, The Biodiversity (T&CP) (M&A) (England) Regulations 2024). The LPA must take this into account when considering the biodiversity objective, and when determining whether to approve the Biodiversity Gain Plan. Subsequently applicants will be encouraged to consider the hierarchy from the outset, whether promoting sites or forming development proposals.

- 3.13 Offsite habitat works may be a convenient option for a developer who wishes to maximise development footprint, however they are typically more expensive to

deliver. They will be subject to market availability and pricing, and there will be options to source units out of the district or via the Governments Statutory Biodiversity Credit scheme (located anywhere nationally, through it is disincentivised by high tariffs set in the Governments Statutory Biodiversity Credit Prices). Therefore, they may not be of direct benefit to the borough's environment or residents.

Planning Process

- 3.14 The consideration of any planning applications, from the date of implementation will consider BNG matters, in accordance with legislation, planning policy and planning guidance. Baseline information will be required with the relevant application at the time of submission, and the LPA will therefore review the Local Validation Checklist accordingly.
- 3.15 In processing the application, the material submitted will be made publicly available for comment, and it is noted Natural England has not been made a statutory consultee for BNG matters; the decision rests with the LPA. The draft national guidance sets out that it would be inappropriate for a decision maker to refuse an application on the grounds that BNG will not be met, but to consider whether the matter can be reasonably conditioned, meeting the relevant tests. Therefore, planning applications will require appropriate conditions and S106 legal agreements to assess and deliver, and monitor the delivery of BNG. Funding should only be secured through the S106 legal agreement, and not a condition. Following the confirmation of the secondary legislation, the LPA will prepare and publish standard forms and templates to support the standardised delivery of BNG, including model agreements and clauses.
- 3.16 The failure to meet the requirements of any condition/ legal agreement will be a matter for the LPA to address using the range of planning enforcement powers which currently exists; taking responsibility to determine the action that may be necessary, in accordance with public interest and local enforcement policies. Therefore, once adopted the current planning enforcement policies, procedures and priorities will be reviewed to ensure effectiveness and robustness.
- 3.17 It is noted that legislation and guidance set out the requirement for general BNG conditions on planning applications, and that the condition cannot be varied or removed under section 73 of the Town and Country Planning Act 1990.

Delivery

- 3.18 To aid the delivery of offsite habitat works within the borough, it is considered that policy within the local plan should be explicit to direct the provision of offsite provision within the borough, and only in exceptional circumstances, where it is justified should it be provided elsewhere, but directing to the closest alternative provision.
- 3.19 As the Council as a landholder has a substantial area of land across the borough, which are safeguarded from development, there is potential for developers to purchase off site biodiversity units from the Council, and the Council will facilitate

the improvement of land and ensure the management of the areas for the minimum 30 year period. In facilitating the offsite purchase of these units, the Council will continue to compensate against the delivery of development in the borough. Furthermore, there is a potential to support the wider area, as a landholder potentially offering units to compensate against development outside of the borough; however there is a need to ensure the adequate supply of appropriate off site units within the borough, and work is required to understand the area of land available, and potential compensation required. To date officers have surveyed 130ha of baseline habits and conditions, testing for suitability. Officers are currently developing a strategy for selecting sites for this offsetting delivery.

Monitoring

- 3.20 The LPA will be required to monitor and report on the delivery of BNG, which will require software and resource. The LPA is a unique position as the service are currently working with a software developer for a new planning and building control platform that is expected to be live by the end of 2024. The system will be designed in accordance with the secondary legislation to hold data and prepare specific reports. It is intended to import and present the Biodiversity Metric; ensure that the habitat management and monitoring plans are available on the public file, holding any updated versions, and providing a clear audit trail; the system will keep track of what is due by when, prompting where required to help the LPA enforce. This limits the need and costs for further software, and avoids complications associated with another layer of software integration.
- 3.21 Monitoring activities will require officer time and will impact resource; the LPA will therefore specify within the legal agreement / conditions when reports are expected, and the fees for monitoring to cover this additional burden on the LPA. Such fees will be index linked against the Retail Price Index to ensure the fees are appropriate during the 30 Year monitoring period.

4.0 Summary of main proposals

- 4.1 The Draft Local Plan has set out policy directions of relevance to these two issues within NE1 Biodiversity and Geodiversity and NE3 Biodiversity Net Gain. Policy NE4 Greening Factor also looks to secure better provision of onsite green space to provide green infrastructure benefits to buffer the borough's environment and its residents from the pressures of environmental change.
- 4.2 Officers are recommending, subject to local viability advice, that in line with the Council's biodiversity duty and the UN's recognition of Telford as a Tree City of the World that we adopt a policy of minimum 20% BNG.
- 4.3 Officers are recommending, subject to local viability advice, that we create a local policy of the Biodiversity Gain Hierarchy with a lower trigger threshold of 4 (medium), which is more appropriate to local habitats within the borough.
- 4.4 Officers also recommend resource is directed into an overarching Green Infrastructure Strategy outside of the Local Plan process, which provides a holistic

approach across council services linking matters of biodiversity, climate emergency, surface water drainage, play and recreation, active travel, health and wellbeing.

5.0 Alternative Options

- 5.1 The Council adopts the minimum statutory levels of BNG quantity and control.
- 5.2 The Council adopts the minimum statutory levels of BNG quantity and control, however, negotiates for a higher standard on a case by case basis.
- 5.3 The Council develops and implements a formal bespoke graded system, above statutory minimums, dependant on scale and kind.
- 5.4 Green infrastructure delivery is led by the local plan process.

6.0 Key Risks

- 6.1 The Council accepts the lowest statutory levels of biodiversity provision, and this does not slow the decline in our biodiversity.
- 6.2 The Council loses a significant opportunity to make the borough more climate resilient, healthy, and pleasant place to live and work.

7.0 Council Priorities

- 7.1 Continued measures to improve the delivery of biodiverse developments supports all five of the Council Plan's priorities:
 - every child, young person and adult lives well in their community
 - everyone benefits from a thriving economy
 - all neighbourhoods are a great place to live
 - our natural environment is protected, and the Council is taking a leading role in tackling the climate emergency
 - a community-focussed, innovative council providing efficient, effective and quality services.

8.0 Financial Implications

- 8.1 Based on Defra's estimates (given above), the additional cost to development will be negligible. However there are implications to the Local Authority to implement and oversee BNG. The Government has therefore provided 'New Burdens Funding' to the sum of £20,000 for Telford and Wrekin on an annual basis to help prepare for the additional duties. Moving forward, subject to the details of the secondary legislation, the Council will change fees in accordance with existing legislation to determine planning applications and to discharge any planning conditions; the LPA will also secure funding for the delivery of offsite agreements, and monitor S106 legal agreements.

9.0 Legal and HR Implications

9.1 Under the Environment Act 2021, the Council has a legal duty to conserve and enhance biodiversity through its functions. The planning and delivery of actions to further this needs to be publicly reported.

10.0 Ward Implications

10.1 This report covers the whole Borough.

11.0 Health, Social and Economic Implications

11.1 Natural England reported in March 2022 that visiting a green and natural space differed by household income. It found that those “*with a household income of less than £15,000 were less likely to have visited a green and natural space in the last 14 days (49%, 2.3 visits per person) than those with a household income of £15,000 – 49,999 (60%, 2.8 visits per person) or more than £50,000 (69%, 3.5 visits per person).*”

11.2 They report that over 80% of people state that being in nature makes them happy.

11.3 Greener neighbourhoods encourage more people to walk and cycle in these areas, wider benefits in terms of health and wellbeing can be realised whilst promoting more sustainable behaviours.

11.4 Greener urban locations attract more investment and footfall.

12.0 Equality and Diversity Implications

12.1 The proposed actions would enable biodiversity to be retained within communities where people live and work. This will reduce inequality of access.

13.0 Climate Change and Environmental Implications

13.1 The proposed actions would help buffer the borough from the impacts of climate change and the extinction crisis.

13.2 Increased amounts of biodiverse landscaping reduces the impacts of heat and flood risk associated with climate change.

14.0 Background Papers

- 1 Environment Scrutiny Committee Biodiversity Matters – Environment Act 29th November 2023
- 2 Defra (2019) Biodiversity net gain and local nature recovery strategies Impact Assessment
- 3 Natural England (March 2023) The People and Nature Surveys for England: Monthly indicators for March 2022 (Official Statistics)

15.0 Appendices

NA

16.0 Report Sign Off

Signed off by	Date sent	Date signed off	Initials
Legal	31.01.24	01.02.24	EH
Director	19.01.24	29.01.24	JD

