

# Update on biodiversity and nature recovery in Tandridge

## Planning Policy Committee Thursday, 16 November 2023

Report of: Chief Planning Officer

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Purpose: For decision

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Publication status: Open

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Wards affected: All

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### Executive summary:

- At the 21st Sept 2023 Planning Policy Committee meeting Members asked for an update on the progress with embedding mandatory Biodiversity Net Gain requirements into the Local Planning Authority to be brought to the November 2023 Committee.
  - This report addresses:
    - The current Government position with the introduction of mandatory Biodiversity Net Gain (mBNG)
    - An update in relation to staff costs for BNG administration and monitoring and the feasibility
    - Progress with investigating the feasibility and achievability of a higher BNG target in Tandridge District than the mandatory 10% requirement.
    - An update on progress with embedding mBNG requirements into the Local Planning Authority.
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**This report supports the Council's priority of:** Creating the homes, infrastructure and environment we need/Becoming a greener, more sustainable District

### Contact officers

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## **Recommendation to Committee:**

- A. That a further update report on the preparedness of the Local Planning Authority to deal with the introduction of mBNG be brought back to this Committee in January 2024.
- B. The Chief Planning Officer also be requested to bring a report back to this Committee in January 2024 setting out recommendations on whether or not the Council should seek to exceed the 10% mBNG requirement in Tandridge.
- C. That the feasibility, timing and cost of undertaking a district wide baseline habitat assessment and Habitat Bank study be investigated and a further report brought back to the March 2024 Planning Policy Committee.

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## **Reason for recommendation:**

The recommendations will help minimise the risk of the Council not being ready for the introduction of mBNG. It will also help with delivering the Council's ambitions to create a greener more sustainable District.

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## **Introduction and background**

### *Update on Government commitments to the introduction of mBNG*

- 1 At the 21 September 2023 Planning Policy Committee Members were updated on the preparedness of the Local Planning Authority to deal with the introduction of mBNG. The Council had been anticipating that the Government would be introducing the mandatory requirement for major sites in November 2023.
- 2 The Government had indicated that it would be introducing guidance and regulations in early autumn to support the introduction of mBNG in November 2023 but this had not been produced at the time of the September Planning Policy Committee.
- 3 The government subsequently announced<sup>1</sup> a revised timetable for mandatory BNG introduction as follows:
  - January 2024 for major development
  - April 2024 for small sites
  - 2025 for Nationally Significant Infrastructure Projects.

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<sup>1</sup> [Biodiversity Net Gain moves step closer with timetable set out - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/biodiversity-net-gain-moves-step-closer-with-timetable-set-out)

4. They also committed to publishing all guidance and the regulations by the end of November 2023. This will include:
  - the statutory biodiversity metric, critical for calculating the correct biodiversity gain
  - the draft biodiversity gain plan template, which will help developers prepare for what they will need to complete during the planning application stages
  - the Habitat Management and Monitoring Plan template, which will set out how the improved significant on-site and off-site habitats will be managed for the long term
  - a package of Biodiversity Net Gain guidance that sets out further advice for landowners, developers, and Local Planning Authorities around their role and responsibilities in delivering mandatory Biodiversity Net Gain
5. The government has also confirmed that Mandatory Biodiversity Net Gain will only apply to new applications for planning permission for major development made after the relevant date in January 2024. BNG will not be applied retrospectively.
6. At a recent meeting officials from the Department for Levelling Up, Housing & Communities (DLUHC) confirmed to the Council that the introduction of mandatory BNG remains an absolute priority for the Government. There is no indication to date that suggests that the Government could again revise the date for introducing mBNG in January 2024 but this will be closely monitored. The Government's publication of the Regulations and guidance in late November will be eagerly awaited.
7. Given the importance of biodiversity in Tandridge District, the Council is fully committed to introducing Biodiversity Net Gain requirements into the local planning processes. If the Government further delays the introduction of mBNG beyond the January 2024 timetable a report will be brought back to this Committee looking at whether it would be possible to establish policy mechanisms for introducing BNG requirements into the Tandridge situation.

#### *Progress towards implementation of mBNG*

##### Implementation Plan

8. Despite the absence of detailed guidance from the Government, work is in progress as far as possible at this stage to embed the policy, legal, development management, finance, monitoring, enforcement & reporting requirements of BNG into the Local Planning Authority. Part of this work has included the development of a BNG Implementation Plan which sets out the necessary tasks required across TDC to track progress and ensure compliance with mandatory BNG under The Environment Act 2021.

9. To date it has not been possible to establish staff costs associated with enforcement and monitoring of BNG requirements due to the lack of detail from Central Government on these matters.

#### Habitat Banking and baseline assessment

10. It is considered important that the district has an evidence base of current baseline habitats to facilitate the enforcement of the habitat degradation provisions of The Environment Act, as well as to allow a habitat bank feasibility study to be undertaken on TDC owned land. It will also be important to support the evidence base for any policies which exceed the 10% level of mBNG.
11. TDC recognises that the degradation/ removal of habitats on sites prior to the submission of a planning application could potentially result in a significantly reduced biodiversity unit baseline and therefore create an advantage in reaching the required 10% BNG which, if unchallenged, could undermine the intentions of BNG. The Environment Act 2021 contains a provision to backdate the biodiversity value of an application site to 30<sup>th</sup> January 2020. To address these concerns the officers will explore the possibility of developing a mapping project in 2024 to record biodiversity in key areas of the district. Part of the investigation will look at the potential to use willing volunteers from the Parishes to feed in detailed local knowledge and assist with recording and identification.
12. The Council will also need to develop its policy towards the off-site biodiversity unit market. At present there is no plan to become a habitat bank or broker of biodiversity unit but it is recognised that BNG provides potential for the Council to use corporate assets to enter into the commercial marketplace. In the meantime, in order for TDC to offset its own liability as a developer under the mBNG regime, it will be important that TDC has a 'habitat bank' of available biodiversity units. This would require the creation of a habitat bank on TDC-owned land, informed by a study requiring a baseline habitat assessment of sites.
13. It is recommended that the feasibility, timing and cost of undertaking a district wide baseline habitat assessment and Habitat Bank study be investigated and a further report brought back to the March 2024 Planning Policy Committee.

Whether a higher target than 10% mandatory BNG can be achieved

14. The Defra Consultation on Biodiversity Net Gain Regulations and Implementation January 2022 states:

*'We maintain the view that 10% strikes the right balance between the UK Government's ambition for development and the pressing need to reverse environmental decline. The 10% will be a mandatory requirement but should not be viewed as a cap on the aspirations of developers that want to voluntarily go further or do so in the course of designing proposals to meet other local planning policies.'*

[...and]

*'It remains the UK Government's intention to continue to allow higher percentage targets to be set by planning authorities at a local or site level. Any higher target should be made clear at an early stage in the planning or development process and careful consideration should be given to the feasibility and achievability of any requirements above 10%, which can have significant impacts on the costs of developing a site.'*

15. Officers have undertaken a comprehensive review of adopted and emerging planning policy across England which exceeds the mandatory 10% BNG requirement. The study found that at least two LPAs to have already a 20% mandatory biodiversity net gain in adopted policy, these were:
- Guildford Borough Council
  - Lichfield District Council.

One Local Planning Authority was found to have 30% mandatory measurable BNG draft/emerging policy. A total of ten further Local Planning Authorities were found to have 20% mandatory measurable BNG draft/emerging policies for development.

16. Consultants will be engaged in the coming weeks to help assess the viability of increasing BNG requirements above 10% on sites across the district.
17. A report on findings relating to evidence base needs, policy mechanisms and viability will be brought to the January 2024 Planning Policy Committee with recommendations on whether or not it is proposed to develop above 10% BNG policy and, if so, at what level this should be.

*Partnership working*

18. The successful implementation of BNG and landscape scale nature recovery will require working with county level organisations and neighbouring authorities. The Council's ecologist has been liaising with county level organisations including Surrey County Council (SCC), Surrey Nature Partnership (SyNP), and Surrey Wildlife Trust, to ascertain county-level progress towards BNG. It is understood that:

- SCC have been appointed as the Responsible Authority for the Local Nature Recovery Strategy which will underpin the strategic locations of off-site biodiversity gains.
- SCC or Surrey Wildlife Trust will produce guidance on Biodiversity Net Gain.
- SCC are commissioning a study looking at the potential for BNG habitat banks across Surrey and have identified potential habitat bank sites to be subject to baseline habitat surveys, and the potential for BNG uplift assessed.
- SCC propose to host a Surrey-wide off-site biodiversity unit online register, on which biodiversity units can be purchased by third parties or utilised for councils own development projects, including TDC.
- SCC propose one biodiversity unit tariff across Surrey.
- A Surrey BNG working group will be set up and will include Local Planning Authorities.

19. Partnership working has been incorporated as part of the Tandridge BNG Implementation Plan. This specifically includes:

- Taking an active role in the development of the Local Nature Recovery Strategy (LNRS) as a 'Supporting Authority', to ensure that the LNRS aligns with TDC strategies.
- Obtaining details of SCC sites within the TDC district that will be subject to detailed BNG assessments as potential habitat banks.
- Investigating if a data sharing agreement can be reached, to obtain county-wide desk-based baseline habitat survey data that falls within the TDC district.
- Working with SCC to investigate the feasibility of TDC hosting a 'sub-register' to the main proposed county-level SCC register, to host a marketplace for Biodiversity Units available within the district.

20. TDC will continually work with the relevant partners for BNG within the County and neighbouring authorities which are key to the local success of BNG.

## **Other options considered**

21. Given the uncertainty around the introduction of MBNG into the planning system consideration has been given to delaying or not progressing with mBNG work. However, given the importance of BNG and the natural environment in Tandridge this was not felt to be a viable option .

## **Key implications**

### **Comments of the Chief Finance Officer**

The full financial implications of BNG are yet to be established, and to some extent will depend on the detail of Government proposals (for example the enforcement requirements as set out above). Finance are working closely with Planning to assess the financial implications and ensure that appropriate costs are recovered from developers, to ensure that robust monitoring, tracking and management arrangements can be funded. Finance are also working with departments across the Council to assess the wider opportunities and impacts of BNG. Examples include the potential use of our own land as an opportunity, and the impact on the Housing Development programme as a potential risk.

### **Comments of the Head of Legal Services**

The local authorities' regulatory statutory duty with regard to biodiversity net gain relates to its policy making role in respect of planning as well as how this links into a local nature recovery strategy. In addition, ecologists will evaluate the biodiversity net gain information accompanying a planning application (completed net gain metric and net gain plan) and provide advice to the planning authority whether this is acceptable or not on this basis. Any requirement for offsite net gain provision would be secured via a S106 agreement.

The concept of BNG is not entirely new. However, it has rapidly become a key element of the planning decision making system. Three years ago, national policy encouraged biodiversity net gain to occur with new development. That changed to the present national policy which has a broad expectation that development should deliver a net gain (NPPF para 174). Under the provisions of the Environment Act 2021 (which will come into force in November 2023) the planning authority is mandated to provide a minimum 10% net gain in all but very small development schemes. Thus, we have quickly moved from 'encouragement', to an 'expectation', and on to 'mandatory' BNG.

Put simply, biodiversity implications will not be a fringe or negotiable element within the planning decision making process; it will be a heavily regulated, mandated element. Rather than just part of a complex planning system, BNG is perhaps better described as akin to Building Regulations – it must be done, and there is no way of developers (or the local planning authority, for that matter) side stepping the issue. With limited guidance from the Government, building up to the mandated system, the Planning Service Team will need to produce a guide for all, both internal and external, so that it establishes how Officers will mandate the BNG. The guide has to be written in as simple language as possible, so not only does it assist those involved directly in the planning process (applicants, planning officers etc) but also forms a useful guide to those with a general interest in the topic (parish councils, environmental bodies, general public, etc). Committee should be asked to endorse the guide as a working document, helping to give clarity and consistency as we move towards mandatory BNG.

### **Other corporate implications**

None

### **Equality**

Introduction of mBNG will benefit all residents of the District and will:

- (i) promote equality of opportunity; and
- (ii) through allowing better access to nature, positively impact groups with protected characteristics in the community.

### **Climate change**

Apart from improvements in access to nature and increased biodiversity, there are no significant environmental / sustainability implications associated with this report.

### **Appendices**

None

### **Background papers**

None.

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