

Biodiversity Net Gain update

Planning Policy Committee Thursday, 18 January 2024

Report of: Chief Planning Officer

Purpose: For information

Publication status: Open

Wards affected: All

Executive summary:

This report seeks to update Members about the work being undertaken to prepare the Council for the introduction of Biodiversity Net Gain ('BNG') regulations, together with commentary about the scope for exceeding the mandatory 10% BNG requirement; and the likely supply of off-site bio diversity units (via both the public and private sectors) to offset losses arising from development.

This report supports the Council's priority of: Creating the homes, infrastructure and environment we need/ Becoming a greener, more sustainable District

Contact officer Tim Elton - Principal Ecologist
telton@tandridge.gov.uk

Recommendation to Committee:

That the report be noted.

1. BNG Government Guidance and Legislation Update

1.1 On the 29th November 2023, the government published a series of key BNG guidance, tools, and draft secondary legislation, including:

- Local Authority Guidance
- BNG Planning Practice Guidance
- Statutory Biodiversity Metric Tools and Guidance
- The Biodiversity Net Gain Draft Statutory Instruments
- Biodiversity Net Gain developer and land manager step – by –step guidance
- Updates and additions to the Defra BNG guidance collection page

1.2 The guidance is in draft format prior to the commencement of mandatory biodiversity net gain (mBNG) and may be subject to change. The date that the BNG regulations come into force is still to be confirmed but it is understood that the timing is subject to parliamentary timetabling, and a date within late January/ early February for major development mBNG is expected.

1.3 It is considered that the likely timetable for mBNG will be as follows:

- Late January/ early February 2024 for major development
- April 2024 for small sites
- 2025 for Nationally Significant Infrastructure Projects

2. The preparedness of the Local Planning Authority to deal with the introduction of mBNG

2.1 The Council will be ready for the introduction of mBNG in late January/ early February.

2.2 The Council is an active member of the Planning Advisory Service Biodiversity Net Gain Forum for LPAs, and is participating in all Practitioner Network virtual meetings, to ensure all emerging discussion and guidance is considered in preparedness of the LPA to deal with the introduction of mBNG.

2.3 The Council has updated its BNG implementation plan in accordance with the recently published BNG guidance, tools and regulations. Working groups to process map a case study planning application through the entire DM process, and through to monitoring and enforcement, have been established and the work is underway. Internal guidance notes for DM and other Council functions will then be produced.

2.4 A draft validation checklist has been produced, which includes consideration for Biodiversity Net Gain requirements and other general biodiversity updates in accordance with current best practice guidelines. A S106 template for habitat banks has also been produced, detailed further in the present report. Other immediate priority tasks in preparedness of the Council for the introduction of mBNG include:

- Issue developer and landowner guidance on the local level details of BNG, and updating the council website to contain this;
- Member and officer training;
- developing standard wording for officer reports, decision notices and conditions;
- developing a cost calculator for BNG monitoring fees.

3. Liaison with potential strategic partnerships

3.1 The Council continues to liaise with Surrey County Council ('SCC') to ensure successful implementation and development of local level variables associated with BNG, including registering the Council's interest in becoming a Supporting Authority in the development of the Local Nature Recovery Strategy, and the development of habitat banks. Officers from the Council have attended a BNG training / workshop hosted by SCC. A further meeting between the Council's Principal Ecologist and the SCC Environment Team has taken place and further ongoing meetings are scheduled.

3.2 The Council will also be liaising with other Boroughs and Districts in due course, as well as with Parish councils, to ensure a joined up and strategic approach to BNG and the wider nature recovery as a whole.

4. Policy exceeding the 10% mBNG requirement in Tandridge

4.1 The Council continues to aspire to implement a higher than 10% BNG policy requirement for development within the District. However, it is recognised that it is important that the impacts of developing a policy exceeding the 10% mBNG requirement are carefully considered, particularly regarding impact upon 100% affordable housing schemes.

4.2 The Council has engaged with a consultant to undertake a viability assessment of affordable housing against varying levels of BNG percentage requirement. This will involve, with the support of in-house ecologist resource, the testing of case study planning applications against their ability to deliver varying levels of BNG, and the associated viability impacts at each level.

4.3 Once the case and justification for going above 10% mBNG has been finalised and a policy approach developed this will be reported back to the Planning Policy Committee. At this point it is anticipated that this will be in late spring 2024.

5. Study of habitat banks on Council owned land

5.1 The successful delivery of BNG will require a supply of high-quality off-site biodiversity units within the District subject to strict monitoring and enforcement, to ensure that biodiversity losses via development within the District are offset locally in accordance with the spatial Biodiversity Gain Hierarchy.

5.2 SCC is undertaking a County-wide BNG Habitat Banks Assessment Study, in which a total of 59 sites have been identified for assessment. This Council previously put forward council-owned sites to SCC to form part of the BNG Habitat Banks Assessment Study. These sites are:

- Fosterdown Wood (23 hectares), in Caterham
- North Down Scarp near Woldingham (3.5 hectares), in Woldingham & Oxted

5.3 In addition to this, SCC have also included in the habitat bank study two sites outside of the Council's ownership but falling within the District Council area, these are:

- National Centre for Young People with Epilepsy (42 ha), in Dormansland
- Hill Park Estate, Chestnut Avenue (25.4 ha), in Tatsfield

5.4 SCC have confirmed the appointment of an ecological consultancy to survey the above four sites within the 2024 botanical survey season, and carry out a detailed BNG study of the sites to assess their suitability to provide off-site biodiversity units as habitat banks. Informed by a habitat survey and desktop information, the consultant will prepare two biodiversity unit uplift options for each site, with one being a high level of intervention, and the second being a low cost and low intervention option. It is considered that the costs associated with the assessment of both the Council sites will be covered by SCC funding, and as such it is expected there will be no cost for this work incurred by the Council.

5.5 It is considered that a sufficient supply of off-site biodiversity units will be available in 2024, with the private market likely to have available biodiversity units from the BNG commencement date.

6. Supply of off-site BNG solutions (biodiversity units) from the private market

- 6.1 The Council is proactively liaising with local landowners and other parties within the District with interest in forming habitat banks for the sale of off-site biodiversity units to developers on the private market. The Council has received information relating to potential Habitat Banks, which are currently being reviewed. The Council has produced a Section 106 template in readiness of agreeing such a habitat bank, to ensure off-site biodiversity units within the District area are available for allocation to developments as and when required.
- 6.2 Several private sector 'match making' registers have been published, on which off-site biodiversity unit providers can advertise their biodiversity units for sale to developments which have incurred an off-set liability. The Council is monitoring these registers for availability of biodiversity units within the District. To date, one habitat bank exists on a register within the Council's area, offering 30 units of scrub and 60 units of grassland.

7. The feasibility, timing and cost of undertaking a District wide baseline habitat assessment

Officers are currently considering whether or not it is feasible in terms of time and cost to conduct a detailed District-wide baseline habitat assessment. However, habitat data based on reasonable assumptions is available, which includes the Tandridge District Council area.

8. Costs associated with BNG

- 8.1 Information of funding available for LPAs to implement BNG in 2024 and beyond have not been provided.
- 8.2 The costs of the monitoring and enforcement of both on-site significant biodiversity gains for development projects and off-site biodiversity gains (e.g. habitat banks) can be recovered via S106 agreements.
- 8.3 Due to the long-term nature of BNG, it is important that costs are regularly reviewed in line with the charges levied. These should be assessed on at least an annual basis to reflect the Council's corporate priorities, and ensure increases are applied to take account of inflation, demand, and any other appropriate factors.

Key implications

Comments of the Chief Finance Officer

The 2024/25 proposed budget is presented with significant uncertainty regarding the financial impact of BNG. Further clarity over Government funding and the approach to BNG is expected from January 2024 onwards. As with any newly introduced fee, demand and the associated income and costs come with a degree of uncertainty. The Council's approach will need to be established and then monitored carefully to ensure costs are covered.

Due to the long-term nature of BNG it is essential to ensure we proactively manage the processes and the associated financial implications as tightly as possible and minimise the associated risks.

Comments of the Head of Legal Services

One of the measures set out in the Environment Act 2021 is the mandatory Biodiversity Net Gain regime which will require most planning permissions granted in England to deliver at least a 10% net gain on the site's pre-development biodiversity value. As mentioned in the main body of this report, the new regime was due to be implemented for certain town and country planning applications in November 2023 but has been delayed for two months. The new target date of January 2024 on the introduction of BNG for major development has been announced. On 29 November 2023, the Government also announced the publication of the draft secondary legislation for the new BNG framework. This introduced the following six sets of draft regulations, all of which are required to go live together in order to implement the new BNG regime:

- The Biodiversity Gain (Town and Country Planning) (Consequential Amendments) Regulations
- The Biodiversity Gain Site Register (Financial Penalties and Fees) Regulations
- The Biodiversity Gain Site Register Regulations
- The Biodiversity Gain Requirements (Exemptions) Regulations
- The Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations
- The Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations

As well as publishing the draft regulations, since 29 November DEFRA has uploaded multiple pieces of new guidance to its website to tie in with the draft regulations. DLUHC has also published draft biodiversity net gain planning practice guidance. The draft planning practice guidance mentions an additional set of regulations to implement BNG: The Environment Act 2021 (Commencement No. 8 and Transitional Provisions) Regulations.

In total, including further material on DEFRA's Land Use blog, almost twenty new pieces of guidance have already been published since 29 November 2023. With multiple sets of draft BNG regulations to consider, that is a lot for Officers and developers to get to grips with in a very short space time and it is still not clear how much more guidance there is to come. Some of the guidance that has been published is also itself in draft, meaning that further changes to these will be made.

The sheer amount of material that has been published by the Government since the end of November 2023 – and which may still yet be published - means that there is still an awful lot for Officers in particular to get to grips with before implementation in January 2024. However as the report sets out great strides have been made to ensure the Council is as prepared as it can be.

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

----- end of report -----