

# Agenda Item IMD2

## INDIVIDUAL EXECUTIVE MEMBER DECISION REFERENCE IMD: 2022 2

|                                    |                                                                                                                      |
|------------------------------------|----------------------------------------------------------------------------------------------------------------------|
| <b>TITLE</b>                       | Wokingham Borough Council's response to Defra's Consultation on Biodiversity Net Gain Regulations and Implementation |
| <b>DECISION TO BE MADE BY</b>      | Wayne Smith, Executive Member for Planning and Enforcement                                                           |
| <b>DATE, MEETING ROOM and TIME</b> | 23 March 2022<br>David Hicks 1, 9.30am                                                                               |
| <b>WARD</b>                        | None Specific                                                                                                        |
| <b>DIRECTOR / KEY OFFICER</b>      | Steve Moore – Director of Place and Growth                                                                           |

### **PURPOSE OF REPORT (Inc Strategic Outcomes)**

To ensure Wokingham Borough Council's views on the Biodiversity Net Gain Regulations and Implementation public consultation are submitted to the Department for Food and Rural Affairs (DEFRA) for their consideration when shaping the secondary legislation, policy and guidance that will help deliver the aims of the Environment Act 2021.

To ensure that the development of any such legislation, policy and guidance has minimal negative impacts upon Wokingham Borough and that any positive benefits are maximised.

### **RECOMMENDATION**

The Executive Member for Planning and Enforcement agrees that Wokingham Borough Council submits the comments contained in Enclosure 1 as this council's response to the DEFRA consultation on biodiversity net gain regulations and implementation (January 2022).

### **SUMMARY OF REPORT**

The Department for Food and Rural Affairs (DEFRA) is running a public consultation on Biodiversity Net Gain Regulations and Implementation from January 2022 until 5<sup>th</sup> April 2022, the responses of which will shape the secondary legislation, policy and guidance that will help deliver the aims of the Environment Act (2021).

This report provides an overview of key issues and sets out the recommended response. A recommended full response to the consultation is set out in Enclosure 1 to this report.

It is recommended that WBC welcome and broadly support the principle of biodiversity net gains and many of the consultation proposals regarding its implementation. However, it is also recommended that further work is needed by DEFRA to consider how biodiversity net gain will operate in some circumstances. Wider impacts, including monitoring, reporting and enforcing of biodiversity net gain should also be investigated further, particularly given the likely impact on local planning authorities and the financial implications of resourcing.

## **Background**

Biodiversity net gain is an approach to development whereby habitats for wildlife are left in a measurably better state than they were in before development, either by extending or improving them. To achieve biodiversity net gain, developments must be designed to provide benefits to both people and nature and to minimise impacts on the wider environment. The National Planning Policy Framework (the current 2021 and previous iterations) already encourages net gains for biodiversity when drawing up planning policies and making planning decisions.

In 2018, the Department for Environment, Food and Rural Affairs (DEFRA) consulted on making biodiversity net gain mandatory for new development. Broad support for these proposals was gained and a biodiversity metric (version 3.0) was developed by Natural England in conjunction with DEFRA, as a biodiversity accounting tool to calculate the biodiversity value of land and in so doing the net gain required to be achieved by a development.

The UK Government included provisions for mandatory biodiversity net gain in the Environment Act (hereafter referred to as the Act) under the Town and Country Planning Act 1990 (as a pre-commencement condition) and for any Nationally Significant Infrastructure Projects consented under the Planning Act 2008. The Act, which was given royal assent in November 2021, sets out a framework for biodiversity net gain requirements, though it leaves some of the finer details to be provided through secondary legislation, policy and guidance. This consultation seeks responses to help inform these next steps.

The Act stipulates that developers will have to deliver a minimum 10% net gain of biodiversity units for area-based habitats and any relevant linear habitats (hedgerows, lines of trees, and watercourses). This will be secured through a biodiversity gain plan which must be submitted to the relevant local planning authority for approval prior to the commencement of works.

DEFRA acknowledges that having mandatory biodiversity net gain policy and processes will affect the majority of development schemes in England and fundamentally change the way that habitat losses are considered. They also acknowledge there has been significant uncertainty and ambiguity around what biodiversity net gain means in practice. DEFRA wants to ensure biodiversity net gain has a clear meaning for the benefit of practitioners and developers, improve environmental outcomes and make the process less burdensome for developers. DEFRA is running a public consultation on Biodiversity Net Gain Regulations and Implementation from January 2022 to 5<sup>th</sup> April 2022, the responses of which will shape the secondary legislation, policy and guidance that will help deliver the Environment Act's aims.

### **Business Case (including Analysis of Issues)**

The consultation document published by DEFRA includes 55 questions. Recommended responses are set out in Enclosure 1 to this report. The following sections identify key issues only. For full details, please refer to Enclosure 1.

#### Developments impacting habitat below a minimum size 'de minimis' threshold for biodiversity net gain

DEFRA proposes to exempt developments which affect only small areas from the net biodiversity gain requirement. The proposal is to exempt development that falls below a de minimis threshold. With regards to area-based habitat and linear based habitat such

as hedgerows and lines of trees, it is recommended that WBC agrees that a de minimis threshold is appropriate in order not to be too burdensome on small developments in habitats of lower distinctiveness. The use of a 20m<sup>2</sup> threshold for an area-based habitat would be most practical and a 10m<sup>2</sup> threshold for hedgerows and lines of trees.

However, WBC believes there should not be a de minimis threshold for linear watercourse habitats, as by their nature, these are more reliant on continuity and sensitive to modification. As these habitats are calculated in separate linear units to hedgerow and trees, it should be possible to have different de minimis values/rules.

Reporting should include the number of applications where the de minimis exemption is applied, to facilitate a broad assessment and review of in-combination impact over time.

#### Proposed exemption of Householder, Self-Build and Custom-Build Housing applications and Change of Use

DEFRA proposes that householder applications, change of use applications and self-build and custom build housing applications should be exempt from the 10% biodiversity net gain requirement.

It is noted that householder applications can result in loss of garden space. The DEFRA metric recognises the biodiversity value of vegetated gardens, but this would be overlooked if householder applications were exempted. The cumulative loss could be significant, especially in an urban context. Whilst it would be disproportionate for the current small sites metric to be applied, it is recommended that WBC respond promoting the use of a simplified fixed tariff that could then be pooled to provide adequate off-site compensation would be more appropriate for householder applications, than the minimum 10% biodiversity net gain requirement. This could be collected upfront when a planning application is submitted for efficiency.

Similarly, self-build and custom housebuilding applications would be better suited to a standard fixed tariff for biodiversity net gain.

However, if there was to be an exemption, it is recommended that WBC respond indicating that it should not apply where medium or higher distinctiveness habitats are present, as this could present a loophole for significant biodiversity loss.

Turning to change of use applications, it is recommended that WBC responds that it does not agree with DEFRA's proposal that all such applications should be exempt. Within Wokingham Borough, there have been change of use applications for large sites, for example the creation of public open space, and the change from agricultural to equestrian use. Some of these applications could affect biodiversity net gain, and they warrant explicit consideration in the decision-making process.

#### Inclusion of Brownfield Land and Temporary Consents

DEFRA proposes that applications on brownfield land and for temporary planning consent should have the 10% biodiversity net gain requirement applied.

Brownfield land can contain habitat of value for biodiversity and can be situated in locations that are important for retaining. The recommended response highlights the

importance of developments on brownfield land to provide the minimum 10% biodiversity net gain.

It is also recommended that applications for temporary consent, should also be required to provide the minimum 10% biodiversity net gain. Future regulations should clearly define whether an application made following a temporary consent, to maintain the development in perpetuity, would require an additional 10% net gain on top of that which was originally achieved for the temporary consent application.

#### Phased development and development subject to subsequent applications, including variation applications

DEFRA's proposed approach to applications for outline planning permission or permissions which have the effect of permitting development in phases is that these should be subject to a condition which requires approval of a biodiversity gain plan prior to commencement of each phase. This is because it is only at reserved matters stage that the necessary detail is available to calculate a specific on-site post-development scenario.

It is recommended that this is acknowledged and that processes must be put in place to capture and agree this in a transparent way. It is further recommended that WBC welcomes the indication from DEFRA that guidance will seek 'frontloading' biodiversity gains early in the phasing, and the detail of subsequent phases would need to be compared to the original indicative post-development scenario.

#### Nationally Significant Infrastructure Projects (NSIPs)

DEFRA asks if there should be any targeted exemptions (other than that for irreplaceable habitat), reduced biodiversity net gain objectives, or other modified requirements necessary for the application of the biodiversity net gain requirement to NSIPs.

It is recommended that WBC strongly disagrees with this notion. Whilst local planning authorities do not have the powers to grant NSIPs, it should be noted that previous NSIPs have impacted Wokingham Borough, such as the M4 Smart Motorway work. It is not clear why NSIPs that cannot achieve a 10% net gain on-site or would be unable to use off-site options through the national register. NSIPs funded by national government, should be setting the standard and leading the way; demonstrating biodiversity net gain delivery during development.

It is noted that up until November 2023 there will be a transition period, after which time the minimum 10% biodiversity net gain will become mandatory. For NSIPs this is proposed to be extended to November 2025. It is recommended that WBC object to this proposal and that the transition periods for NSIPs should be consistent with all other developments, to show how government is setting the standard for key projects.

#### Reporting, evaluation and monitoring

Lastly, with regards to for project-level management, monitoring, enforcement and reporting, it is recommended that WBC respond indicating that these are not considered to be sufficient.

There are concerns regarding the production of monitoring reports and how local planning authorities are expected to monitor the delivery of off-site biodiversity secured by conservation covenants and take any subsequent enforcement action if it is not delivered. It is therefore strongly recommended that DEFRA develops a project-level case management system that can be widely adopted by local planning authorities for monitoring and reporting. Additional funding would also be required to cover the additional costs that planning authorities will incur in respect of monitoring, reporting and enforcement.

## Conclusion

In summary and conclusion, it is recommended that WBC welcome and broadly support the principle of biodiversity net gains and several of the consultation proposals regarding its implementation. It is however also recommended that further work is needed by DEFRA to consider how biodiversity net gain will operate in some circumstances, including householder development. Wider impacts, including monitoring, report and enforcing of biodiversity net gain should also be investigated further, particularly given the likely impact on local planning authorities and the financial implications of resourcing.

## FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

***The Council faces severe funding pressures, particularly in the face of the COVID-19 crisis. It is therefore imperative that Council resources are focused on the vulnerable and on its highest priorities.***

|                                   | How much will it Cost/ (Save) | Is there sufficient funding – if not quantify the Shortfall | Revenue or Capital? |
|-----------------------------------|-------------------------------|-------------------------------------------------------------|---------------------|
| Current Financial Year (Year 1)   | Nil                           | Yes                                                         | N/A                 |
| Next Financial Year (Year 2)      | Nil                           | Yes                                                         | N/A                 |
| Following Financial Year (Year 3) | Nil                           | Yes                                                         | N/A                 |

### Other financial information relevant to the Recommendation/Decision

None anticipated

### Cross-Council Implications

None anticipated

### Public Sector Equality Duty

None anticipated

## SUMMARY OF CONSULTATION RESPONSES

|                                        |               |
|----------------------------------------|---------------|
| <b>Director – Resources and Assets</b> | None received |
| <b>Monitoring Officer</b>              | No comments   |
| <b>Leader of the Council</b>           | None received |
|                                        |               |

|                                                     |
|-----------------------------------------------------|
| <b>Reasons for considering the report in Part 2</b> |
| N/A                                                 |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>List of Background Papers</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Information published by Department for Food and Rural Affairs:<br><a href="https://consult.defra.gov.uk/defra-net-gain-consultation-team/consultation-on-biodiversity-net-gain-regulations/supporting_documents/Consultation%20on%20Biodiversity%20Net%20Gain%20Regulations%20and%20Implementation_January2022.pdf">https://consult.defra.gov.uk/defra-net-gain-consultation-team/consultation-on-biodiversity-net-gain-regulations/supporting_documents/Consultation%20on%20Biodiversity%20Net%20Gain%20Regulations%20and%20Implementation_January2022.pdf</a> |
| Enclosure 1 – Consultation questions and responses in full                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

|                                   |                                            |
|-----------------------------------|--------------------------------------------|
| <b>Contact</b> Heather Reed       | <b>Service</b> Delivery and Infrastructure |
| <b>Telephone No</b> 0118 974 6453 | <b>Email</b> Heather.Read@wokingham.gov.uk |