

Part I

Item No:

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WELWYN HATFIELD BOROUGH COUNCIL
CABINET PLANNING AND PARKING PANEL
REPORT OF THE ASSISTANT DIRECTOR (PLANNING)

BIODIVERSITY NET GAIN - GUIDANCE NOTE

1 Executive Summary

- 1.1 This report presents the Biodiversity Net Gain - Guidance Note for the Panel's consideration and onward recommendation for approval by Cabinet.
- 1.2 On commencement of the relevant provisions of the Environment Act 2021, a mandatory requirement for Biodiversity Net Gain of at least 10% will be brought into force for development under the Town and Country Planning Act 1990.
- 1.3 Secondary legislation, and further national guidance is awaited to clarify how the mandatory requirement will be applied in practice.
- 1.4 The Guidance Note has been prepared to provide interim guidance and information for applicants and decision makers on how the mandatory requirement for Biodiversity Net Gain will apply to development proposals. Reference is also made to relevant policies in the emerging local plan.

2 Recommendation

- 2.1 The Cabinet Planning and Parking Panel recommends to Cabinet that the Biodiversity Net Gain Guidance Note be endorsed.
- 2.2 That Cabinet gives delegated powers to the Assistant Director (Planning) in consultation with the Executive Member for Planning, to update the Guidance Note as required.

3 Explanation

- 3.1 Biodiversity can be described *'the variety of all life on Earth. It includes all species of animals and plants – everything that is alive on our planet. Biodiversity is important for its own sake, and human survival depends upon it'*. It is "... key to the survival of life on Earth."¹
- 3.2 Biodiversity has its own intrinsic value, but this value goes further, providing us with essentials such as food, fresh water, and clean air, as well as protection from natural disasters, regulation of our climate, purification of our water, or pollination of our crops. Biodiversity is important for our economic and social wellbeing, and provides important cultural services², enriching our lives.
- 3.3 The 25 Year Environment Plan, *'A Green Future: Our 25 Year Plan to Improve the Environment'* (2018), set out the government's ambition to leave our environment in a better state than we found it. Since then, it has focussed on embedding the principle of biodiversity net gain into the planning system, as part of its response to concerns on the state of the natural environment.

¹ [Biodiversity 2020: A strategy for England's wildlife and ecosystem services - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/biodiversity-2020-a-strategy-for-england-s-wildlife-and-ecosystem-services)

² The non-material benefits people obtain from ecosystems, such as aesthetic inspiration, a sense of identity and home, and spiritual experience, related to the natural environment.

- 3.4 The '*Environmental Improvement Plan 2023*³ reinforces the government's commitment to halting the decline in biodiversity and supporting nature recovery, with a target to halt species decline by 2030, and biodiversity net gain has a key role to play in this respect.
- 3.5 Biodiversity Net Gain (BNG) is an approach to development and / or land management that leaves the natural environment in a measurably better state than before.
- 3.6 On commencement of the relevant provisions of the Environment Act 2021, a mandatory requirement for BNG will be brought into force for development under the Town and Country Planning Act 1990. Development within scope will be required to deliver and then maintain for a minimum period of 30 years, BNG of at least 10%.
- 3.7 Secondary legislation, national guidance and BNG templates are still awaited.
- 3.8 The purpose of the Biodiversity Net Gain - Guidance Note is to provide interim guidance and information for applicants and decision makers on how the requirement for BNG will apply to development proposals. Reference is also made to relevant policies in the emerging Local Plan.
- 3.9 This Guidance Note is not a Supplementary Planning Document and it does not form part of the development plan.
- 3.10 However, it has been prepared in the context of adopted and emerging local planning policies, legislation and the National Planning Policy Framework (NPPF). It refers to national Planning Practice Guidance (PPG), other national (BNG related) guidance, best practice, the Biodiversity Metric and user guides, BNG related templates, national plans, strategies and reports.
- 3.11 It is considered to be a material consideration that may be taken into account when determining planning applications.
- 3.12 The scope of what can constitute a material consideration is very wide, however, in general the courts have taken the view that planning is concerned with land use in the public interest. Provided regard is had to all material considerations, it is for the decision maker to decide what weight is to be given to a material consideration in each case⁴.
- 3.13 It is recommended that the Panel recommends that the Biodiversity Net Gain - Guidance Note be approved by Cabinet.
- 3.14 BNG is a new and evolving environmental planning objective and the Guidance Note may need to be subject to future review.
- 3.15 It is therefore also recommended that Cabinet gives delegated powers to the Assistant Director (Planning) in consultation with the Executive Member for Planning, to update the Guidance Note from time to time, where this is considered necessary in order to maintain its relevance over time, e.g., updates to reflect the adoption of the Local Plan, the publication of national guidance, templates, BNG tools, draft regulations, or the coming into force of primary or secondary legislation.
- 3.16 The Biodiversity Net Gain - Guidance Note is attached to this report as Appendix A.

4 Link to Corporate Priorities

- 4.1 A key priority of the Council's Corporate Business Plan 2023-2024 is '*Attractive and accessible green spaces*'. The Business Plan sets out a range of projects to support this priority, including biodiversity enhancement, tree planting and wildlife area enhancement projects. The '*Quality homes through managed growth*' priority is supported by projects such as moving the Local Plan to adoption and progressing Supplementary Planning Documents.

³ [Environmental Improvement Plan 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/environmental-improvement-plan-2023)

⁴ [Determining a planning application - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/determining-a-planning-application)

5 Legal Implications

- 5.1 The Environment Act 2021 received Royal Assent on 9th November 2021 and introduced new requirements affecting multiple sectors. A key legislative change associated with this Act is the introduction of a requirement for development, under the Town and Country Planning Act 1990, to provide a biodiversity net gain of at least 10% and maintain this net gain for a minimum period of 30 years.
- 5.2 Once enacted (expected, November 2023), the requirement for development within scope to deliver BNG of at least 10% will be mandatory. There will be no scope for local planning authorities to reduce the 10% BNG requirement.

6 Financial Implications

- 6.1 There are no financial implications arising from this report.

7 Risk Management Implications

- 7.1 The introduction of the mandatory requirement for BNG through the enactment of the relevant provisions of the Environment Act 2021, and the introduction of associated BNG activities at a national level, (such as the statutory credits scheme and the biodiversity gain sites register) is outside the control of the council. Should there be a delay to the expected commencement date (November 2023), officers will review the implications for the Guidance Note (and any relevant Local Plan policies).

8 Security & Terrorism Implications

- 8.1 There are no security and terrorism implications arising from this report.

9 Procurement Implications

- 9.1 There are no procurement implications arising from this report.

10 Climate Change Implications

- 10.1 Biodiversity loss and climate change are inextricably linked. '*Hertfordshire's State of Nature*' report (2020)⁵ indicates that climate change is likely to have played a part in wildlife declines, affecting the availability of foods, hibernation patterns, population sizes, distribution and range.
- 10.2 The government's most recent '*UK Climate Change Risk Assessment 2022*'⁶ identifies risks to terrestrial species and habitats from changing climatic conditions and extreme weather events, temperature change, water scarcity, wildfire, flooding, wind and altered hydrology⁷. Risks are also identified to freshwater species and habitats from changing climatic conditions and extreme events, including higher water temperatures, flooding, water scarcity and phenological shifts⁸.
- 10.3 The introduction of a mandatory requirement for biodiversity net gain into the planning system has a key role to play in halting the decline in biodiversity and supporting nature recovery.
- 10.4 The council's Climate Action Plan is aligned to its Climate Strategy. There are several action plan points on biodiversity, including developing local plan policies that protect and enhance ecological networks and biodiversity assets, the implementation of a

⁵ [State of Nature | Herts and Middlesex Wildlife Trust \(hertswildlifetrust.org.uk\)](https://www.hertswildlifetrust.org.uk)

⁶ [UK Climate Change Risk Assessment 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

⁷ The distribution and movement of water both on and below the Earth's surface.

⁸ A change in the timing of growth and breeding events in the life of an individual organism.

biodiversity net gain policy, and purchasing ecological advice from Hertfordshire County Council to inform planning decisions.

- 10.5 The Hertfordshire Climate Change and Sustainability Partnership's 'Strategic Action Plan for Biodiversity' (April 2022) seeks to address challenges in biodiversity declines, ensuring that outcomes resulting from new development, and greenspace management can halt and reverse these declines. The partnership's priorities include protecting and enhancing biodiversity through the planning system.
- 10.6 The Welwyn Hatfield Trees and Woodland Strategy 2018-2023 promotes urban tree cover to offset the negative impacts of living in an urban environment and climate change. BNG may present opportunities that contribute towards increasing urban tree cover in the borough, either within development sites or off-site, where appropriate.

11 Policy Implications

- 11.1 The adopted Welwyn Hatfield District Plan does not include a policy requirement to secure a 'measurable' net gain for biodiversity, and neither did the Draft Local Plan, as submitted for examination in May 2017.
- 11.2 A Further Main Modification, (FM15), has been proposed to Policy SADM 16 of the Draft Local Plan, the effect of which would be to require relevant development to deliver BNG of at least 10%, consistent with the (forthcoming) mandatory requirement, and the NPPF.
- 11.3 As the Draft Local Plan has not reached adoption, it is not recommended that a Supplementary Planning Document be issued for consultation at the current time, as national Planning Practice Guidance sets out that SPDs should "... *build upon and provide more detailed advice or guidance on policies in an adopted local plan.*".
- 11.4 Officers will report back to the Panel at a future date if it is considered that a Draft Supplementary Planning Document should be issued for consultation.

12 Human Resources Implications

- 12.1 The Interim Guidance Note has been prepared by the council's planning policy team. The introduction of mandatory BNG will place a new requirement on development proposals, the details of which will need to be considered at planning application stage. The council does not have an in-house ecologist to provide specialist technical support on BNG. It currently has a Service Level Agreement (SLA) with Hertfordshire County Council to provide ecological services. This SLA is currently under review to explore the opportunities for supporting Hertfordshire's district councils in matters including BNG.

13 Equalities and Diversity

- 13.1 The principal purpose of the guidance note is to provide guidance and information for applicants and decision makers on how the mandatory requirement for BNG will apply to development proposals. The Guidance Note does not propose changes to existing Welwyn Hatfield Borough Council service-related policies or the development of new service-related policies. Accordingly, an Equalities Impact Assessment has not been completed.

Appendices

- Appendix A – Biodiversity Net Gain - Guidance Note