

WELWYN HATFIELD BOROUGH COUNCIL
CABINET PLANNING AND PARKING PANEL – 20 JUNE 2024
REPORT OF THE ASSISTANT DIRECTOR (PLANNING)

BIODIVERSITY NET GAIN (BNG) – UPDATE ON THE INTRODUCTION OF
MANDATORY BNG AND THE WELWYN HATFIELD GUIDANCE NOTE 2023

1 Executive Summary

- 1.1 This report provides an update on the introduction of mandatory Biodiversity Net Gain and the status of the Welwyn Hatfield Biodiversity Net Gain (BNG) Guidance Note 2023.
- 1.2 At the time the Welwyn Hatfield BNG Guidance Note was endorsed in September 2023, the Welwyn Hatfield Local Plan 2016-2036 had not yet been adopted, and secondary legislation and national guidance was still awaited to clarify how the requirement for mandatory BNG would be applied in practice.
- 1.3 Commencement of the mandatory requirement for Biodiversity Net Gain was expected to take place in November 2023. In the event, the mandatory requirement commenced on 12 February 2024 (for major development). National Planning Practice Guidance was issued on 14 February 2024 and DEFRA has issued extensive guidance relating to this matter, with updates in February, March and April 2024.
- 1.4 For the reasons set out within the report, it is no longer necessary or appropriate to take the Welwyn Hatfield Biodiversity Net Gain Guidance Note into account in decision making for planning applications where a biodiversity net gain requirement applies.

2 Recommendation

- 2.1 That the Panel notes the introduction of mandatory Biodiversity Net Gain (BNG) and recommends to Cabinet that the Welwyn Hatfield BNG Guidance Note should no longer be a material consideration in decision making where a biodiversity net gain requirement applies.
- 2.2 If unanimously agreed by the Panel, for the decision to be taken by the executive member using their delegated powers under paragraph 18.1(b) of the Cabinet procedure rules.

3 Explanation

- 3.1 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. Recently issued national Planning Practice Guidance (PPG) on the matter states that BNG is a way of creating and improving biodiversity by requiring development to have a positive impact ('net gain') on biodiversity.
- 3.2 The purpose of the Welwyn Hatfield BNG Guidance Note was to provide interim guidance and information for applicants and decision-makers on how the requirement for BNG would apply to development proposals. It did not form part of Welwyn Hatfield's development plan and it was not a Supplementary Planning Document.
- 3.3 The Welwyn Hatfield BNG Guidance Note was endorsed by Cabinet on 5 September 2023 and authority was delegated to the Assistant Director (Planning) in consultation with the Executive Member for Planning, to update the Guidance Note as required, with

further report detailing subsequent changes to be reported back to CPPP before 1 March 2024.

- 3.4 At the time of preparing the Welwyn Hatfield BNG Guidance Note, the Welwyn Hatfield Local Plan 2016-2036 had not yet been adopted and further legislation and national guidance was awaited to clarify how the mandatory requirement for BNG, which was expected to come into force in November 2023, would be applied in practice.
- 3.5 The intention had been to await the publication of secondary legislation and national guidance and then review and update the Welwyn Hatfield BNG Guidance Note as appropriate.
- 3.6 However, on the 27 September 2023, the government announced a delay to the commencement of mandatory BNG, pushing its introduction back to January 2024, (small sites from April 2024)¹. It also announced that it would publish all guidance and regulations by the end of November 2023.
- 3.7 The timetable for mandatory BNG was then delayed again. The requirement came into force for major development on 12 February 2024, small sites from 2 April 2024.
- 3.8 Between November 2023 and April 2024, government departments (DLUHC and DEFRA) published and updated a range of national guidance on BNG. National Planning Practice Guidance (PPG) was published on 14 February 2024 and the DEFRA BNG 'collection' currently comprises twenty-five guidance notes / BNG tools².
- 3.9 Due to the delay in statutory commencement and the numerous ongoing updates to the extensive collection of national guidance on BNG, it was not possible to review the implications or make any changes to the Welwyn Hatfield Guidance Note, and report back to CPPP prior to 1 March. However, in order to assist interested parties, a note was added to the inside cover to signpost government websites on this matter.

How do existing local policies apply following the introduction of mandatory BNG³

- 3.10 National Planning Practice Guidance on BNG clarifies the role of local policy in decision-taking. Key matters to note include the following:

"[...] The statutory provisions are an important material consideration that in many cases will take precedence over local planning policy. The statutory framework represents the appropriate national approach towards, and benchmark for, biodiversity gains in planning.

A local policy, for instance, which required a gain of at least 10% from new developments in anticipation of the statutory framework should no longer apply when determining applications for planning permission subject to biodiversity net gain, although it may continue to be a material consideration during a transition period and for other types of planning permission not yet subject to the statutory framework. [...]

Decision makers should not give weight to local policy which requires biodiversity gains for types of development which would now be exempt under the statutory framework. Other local biodiversity policies which require specific enhancements to support biodiversity would continue to apply to these applications where appropriate."

- 3.11 As a consequence, that part of policy SADM 16 (Ecology and Landscape) of the Welwyn Hatfield Local Plan 2016-2036, which specifically requires all development that is not otherwise exempt to deliver a measurable biodiversity net gain of at least 10%, (in anticipation of mandatory BNG, and as referred to in paragraphs 12.53 and 12.54 of the Local Plan) has been superseded by the statutory framework and should no longer be taken into account when determining planning applications that are subject to mandatory BNG.

¹ <https://www.gov.uk/government/news/biodiversity-net-gain-moves-step-closer-with-timetable-set-out>

² [Biodiversity net gain - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/collections/biodiversity-net-gain)

³ Paragraph: 020 Reference ID: 74-020-20240214

- 3.12 The policy SADM 16 ‘net gain’ requirement in has been, and will be, a material consideration in the determination of planning applications for [major] development⁴ that were submitted prior to mandatory BNG coming into force (the policy requirement for small sites had been aligned with the requirement for mandatory BNG from April 2024, so did not come into effect). Other parts of policy SADM 16 will continue to be applied.
- 3.13 The government is responsible for the statutory framework and for publishing national policy and guidance as to how the mandatory requirement for BNG will apply. It is not necessary for the council to duplicate the provisions of the statutory framework and the associated national guidance.

How should plan-makers deal with biodiversity net gain?

- 3.14 The PPG states⁵:

“[...] Plan-makers [...] do not need to include policies which duplicate the detailed provisions of this statutory framework. It will also be inappropriate for plans or supplementary planning documents to include policies or guidance which are incompatible with this framework, for instance by applying biodiversity net gain to exempt categories of development or encouraging the use of a different biodiversity metric or biodiversity gain hierarchy. [...]”

- 3.15 The Welwyn Hatfield BNG Guidance Note is out of step with the statutory framework and associated national guidance and should no longer be taken into account in decision making for planning applications where BNG is required. Information available at the national level negates the need for local guidance which seeks to duplicate this.

Local Plan Review

- 3.16 In accordance with Policy SP 2 of the Welwyn Hatfield Local Plan, the Council is required undertake a review of the Local Plan commencing no later than one year after the adoption of the plan. An updated or replacement plan is to be submitted for examination no later than three years after the date of adoption of the plan. The timetable and scope of a Local Plan Review will be the subject of reports to this Panel in due course.
- 3.17 The Panel is asked to note that it is through a Local Plan Review that a locally specific BNG policy could be considered. A local BNG policy may have linkages with wider strategic objectives and the overall place-making strategy for the authority, e.g., to recreation and health, flood risk alleviation, or the more comprehensive climate emergency ambitions of a council. It is also through the Local Plan Review that a higher percentage than the statutory objective of at least 10% BNG can be explored.
- 3.18 Among other matters, the PPG says the following with regards to plan-making⁶, which will be taken into account as part of the Local Plan Review:

“[...] Plan-makers can complement the statutory framework for biodiversity net gain by, for instance, including policies which support appropriate local offsite biodiversity sites, including whether specific allocated sites for development should include biodiversity enhancements to support other developments meet their net gain objectives in line with Local Nature Recovery Strategies.

Plan-makers should not seek a higher percentage than the statutory objective of 10% biodiversity net gain, either on an area-wide basis or for specific allocations for development unless justified. To justify such policies, they will need to be evidenced including as to local need for a higher percentage, local opportunities for a higher

⁴ Not otherwise exempt

⁵ Paragraph: 006 Reference ID: 74-006-20240214

⁶ Paragraph: 006 Reference ID: 74-006-20240214

percentage and any impacts on viability for development. Consideration will also need to be given to how the policy will be implemented.”

Council motion

- 3.18 At a meeting of the Council on 12 October 2023 a motion was passed in relation BNG, an update on the progress towards the motion is set out at Appendix 1

Implications

4 Legal Implications

- 4.1 National Planning Practice Guidance (PPG) on BNG sets out the statutory framework for biodiversity net gain.
- 4.2 In England, BNG is required under [Schedule 7A \(Biodiversity Gain in England\) of the Town and Country Planning Act 1990](#), (inserted by Schedule 14 of the Environment Act 2021, and amended by the Levelling Up and Regeneration Act 2023). The Biodiversity Gain (Town and Country Planning) (Consequential Amendments) Regulations 2024 made consequential amendments to other parts of the 1990 Act.
- 4.3 Biodiversity net gain regulations most directly relevant to planning are:
- [The Environment Act 2021 \(Commencement No. 8 and Transitional Provisions\) Regulations 2024 \(legislation.gov.uk\)](#)
 - [The Biodiversity Gain Requirements \(Exemptions\) Regulations 2024](#)
 - [The Biodiversity Gain \(Town and Country Planning\) \(Modifications and Amendments\) \(England\) Regulations 2024](#)
 - [The Biodiversity Gain Requirements \(Irreplaceable Habitat\) Regulations 2024](#).
- 4.4 In addition, there are regulations for the Biodiversity Gain Site register established under [section 100 of the Environment Act 2021](#) for registered offsite biodiversity gains.

5 Financial Implications

- 5.1 There are no direct financial implications arising from this report.

6 Risk Management Implications

- 6.1 The previous report to CPPP in August 2023 explained that the introduction of mandatory BNG and associated activities is outside the control of the council and a risk of delay was noted.
- 6.2 Officers have reviewed the implications of mandatory BNG as introduced, together with national Planning Practice Guidance in relation to the Welwyn Hatfield BNG Guidance Note and Local Plan policy, as set out in this report.

7 Security & Terrorism Implications

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

8 Procurement Implications

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

9 Climate Change Implications

- 9.1 Biodiversity loss and climate change are inextricably linked. ‘*Hertfordshire’s State of Nature*’ report (2020)⁷ indicates that climate change is likely to have played a part in

⁷ [State of Nature | Herts and Middlesex Wildlife Trust \(hertswildlifetrust.org.uk\)](#)

wildlife declines, affecting the availability of foods, hibernation patterns, population sizes, distribution and range. The link is also highlighted in the UK State of Nature Report 2023⁸.

- 9.2 The council's Climate Action Plan⁹ 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 biodiversity net gain, and purchasing ecological advice from Hertfordshire County Council to inform planning decisions.
- 9.3 The Hertfordshire Climate Change and Sustainability Partnership consists of all ten district and borough councils, the county council and the Local Enterprise Partnership in Hertfordshire¹⁰. It has a number of priority Strategic Action Plans, including one for Biodiversity, which responds to continuing declines in species and habitat, intending to take action to restore and enhance biodiversity across Hertfordshire, including by protecting and enhancing biodiversity through the planning system.
- 9.4 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. The Council's Tree and Woodland Strategy will be subject to review and consultation in 2024.

10 Policy Implications

- 10.1 The Policy implications of this report are set out in the main body of the report. The Welwyn Hatfield Local Plan 2016-2036 was adopted by the Council in October 2023. Among other matters, Policy SADM 16 (Ecology and Landscape) of the Local Plan requires "*All developments that are not otherwise exempt to deliver a measurable biodiversity net gain of at least 10%.*"
- 10.2 Since the introduction of mandatory BNG and associated national guidance, the Government has now made it clear that, a local policy which required a gain of at least 10% from new developments in anticipation of the statutory framework should no longer apply when determining applications for planning permission subject to biodiversity net gain.
- 10.3 That part of SADM 16 will therefore no longer apply to relevant applications submitted from the commencement of the statutory requirements for BNG.

11 Human Resources Implications

- 11.1 There are no Human Resources Implications arising from this report.

12 Link to Corporate Priorities

- 12.1 The subject of this report is linked to the Council's recently agreed Corporate Priorities including 'Action on Climate Change', specifically increase and promote biodiversity.

Equalities and Diversity

- 12.2 The report 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.

⁸ [TP25999-State-of-Nature-main-report_2023_FULL-DOC-v12.pdf \(stateofnature.org.uk\)](#)

⁹ [Climate Change Strategy – Welwyn Hatfield Borough Council \(welhat.gov.uk\)](#)

¹⁰ [Hertfordshire Climate Change and Sustainability Partnership \(hccsp.org.uk\)](#)

Appendices:

Appendix 1: Council Motion 12 October 2023 Update

Appendix 1

Biodiversity net gain is a way of creating and improving biodiversity by requiring development to have a positive impact ('net gain') on biodiversity. This following is an update on the progress towards the motions passed by the Council on 12th October 2023.

1. *Encourage biodiversity net gain on site in the first instance, to maximise the potential benefit for nature and for communities and only consider off-setting of biodiversity net gain in exceptional circumstances.*

At the time of the motion, legislation and national guidance was awaited to clarify how the mandatory requirement for BNG, which was expected to come into force in November 2023, would be applied in practice. Between November 2023 and April 2024, government departments (DLUHC and DEFRA) have published and updated a wide range of national guidance on BNG.

There is no requirement under the statutory framework to demonstrate '*exceptional circumstances*' for biodiversity off-setting and it is inappropriate for plans or supplementary documents to include policies or guidance which are incompatible with framework, e.g., by encouraging the use of a different biodiversity gain hierarchy.

The Biodiversity Gain Hierarchy has been designed for the purpose of the statutory framework for the discharge of the Biodiversity Gain condition to reflect the habitat categories in the biodiversity metric and the type of ways that the objective of at least a 10% gain can be achieved. Planning authorities must take into account how the Biodiversity Gain Hierarchy has been applied, or if it has not been applied the reason for that or absence of a reason, when determining whether to approve the Biodiversity Gain Plan

The Biodiversity Gain Hierarchy has a specific meaning and effect, as set out in Articles 37A and 37D of the Town and Country Planning (Development Management Procedure) (England) Order 2015. This hierarchy, (which does not apply to irreplaceable habitats and is different from the mitigation hierarchy set out in paragraph 186a of the NPPF) sets out a list of priority actions:

- First, in relation to onsite habitats which have a medium, high and very high distinctiveness (a score of four or more according to the statutory biodiversity metric), the avoidance of adverse effects from the development and, if they cannot be avoided, the mitigation of those effects; and
- Then, in relation to all onsite habitats which are adversely affected by the development, the adverse effect should be compensated by prioritising in order, where possible, the enhancement of existing onsite habitats, creation of new onsite habitats, allocation of registered offsite gains and finally the purchase of biodiversity credits.

2. *Carry out a review into the practicalities of establishing a local list of sites suitable for biodiversity projects with the joint aims of:*

- a) Providing biodiversity projects within the Borough so that a proximity requirement for off-site BNG can be considered.***
- b) Facilitating a higher net biodiversity gain than the statutory 10% for new developments from the implementation of any new Local Plan or local plan review.***

Planning Practice Guidance on BNG (14 February 2024) sets out that "*Plan-makers should not seek a higher percentage than the statutory objective of 10% biodiversity net gain, either on an area-wide basis or for specific allocations for development unless justified. To justify such policies, they will need to be evidenced including as to local need for a higher percentage, local opportunities for a higher percentage and any impacts on*

viability for development. Consideration will also need to be given to how the policy will be implemented.”

Through the Local Plan Review, a Call for Sites can be carried out with the objective of identifying areas of land that may present local opportunities for biodiversity net gain. However, any higher percentage that may be considered through a Local Plan policy must be assessed as part of the wider consideration of the impact of Local Plan policies on development viability, and must be justified by the evidence of the need for a higher percentage.

As landowner, putting forward potential biodiversity projects that will allow the Council to provide biodiversity Units. This review will need to consider resources, legal implications and best practice from other areas with a report to CPPP and cabinet within 6 months to enable the effect of national legislation to be understood.

- ***The review will consider the implications of putting out a call for biodiversity projects.***
- ***Consider the inclusion of projects from the council's own property.***
- ***Put these recommendations to the most relevant committee(s) when produced.***

As set out above, the Local Plan review provides the opportunity to issue a 'Call for Sites' inviting landowners and land managers to identify and put forward areas of land that might be suitable for local offsite biodiversity sites. Officers consider that this would be the most effective way of putting out a call for biodiversity sites; to do so separately would have resource implications and detract from the work that the planning policy team are currently doing.

The Council as a landowner can identify land that it considers might be suitable and put this forward through the Call for Sites process at the appropriate time. This is again considered the most effective way of the Council considering what land as landowner could be put forward, and ensures that any Council-owned sites can be considered alongside other sites across the Borough, securing a more effective outcome.

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