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Biodiversity policy approaches and biodiversity net gain

Report summary:

The Local Plan will play a key role in ensuring the delivery of biodiversity improvements alongside new development. This report provides some background as to what approaches we may want to take in the Local Plan in achieving this aim. It focuses particularly on the concept of biodiversity net-gain (BNG), and asks members to discuss and consider the potential role of the Council in delivery of this.

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

- (1) That Strategic Planning Committee note the detail of the report and recommend that work continue to look at the potential approach of requiring 20% biodiversity net-gain (subject to viability testing) and the role that the Council might want to play in delivery.
- (2) That Strategic Planning Committee recommend that a review of existing Council owned land for their potential suitability to deliver biodiversity net gain be undertaken.
- (3) That Strategic Planning Committee recommend that work continues on producing a Habitat Regulations Assessment (HRA) for the publication version of the Local Plan for late 2022.

Reason for recommendation:

Biodiversity is a key planning issue to be considered in the Local Plan. It is important that Members are kept informed as to the current direction of travel and be given the opportunity to provide an early steer on biodiversity matters for the new local plan.

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Portfolio(s) (check which apply):

- Climate Action and Emergencies
 Coast, Country and Environment

- Council and Corporate Co-ordination
- Culture, Tourism, Leisure and Sport
- Democracy and Transparency
- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities

Equalities impact Low Impact

Climate change Low Impact

Risk: Low Risk; as members are being ask to note progress rather than make a decision.

Links to background information UK State of Nature Report 2019 [State-of-Nature-2019-UK-full-report.pdf \(nbn.org.uk\)](#), UK Environment Bill [Environment Bill continues through Parliament - GOV.UK \(www.gov.uk\)](#), Devon State of Nature Report [Wildlife - Devon Local Nature Partnership \(devonlnp.org.uk\)](#)

Link to [Council Plan](#):

Priorities (check which apply)

- Outstanding Place and Environment
- Outstanding Homes and Communities
- Outstanding Economic Growth, Productivity, and Prosperity
- Outstanding Council and Council Services

Report in full

1 Introduction

- 1.1 As in previous Plans, it will be important to include a range of local policies on nature conservation within the revision of the Local Plan. These will in part be guided by the significant levels of Government policy and guidance on the topic, and any local priorities we may want to include derived from evidence gathering that is undertaken to support plan production.
- 1.2 This paper focuses predominantly on the topic of biodiversity net-gain which will make up just one area of policy in the Local Plan. This is currently very high up on the national agenda and it is felt to be of particular importance to warrant member input into our approach at this point.

2 Issues and Options feedback

- 2.1 The Local Plan issues and options consultation presented a variety of different potential policy approaches for enhancing biodiversity. In particular, we posed a specific question asking where we should place the priority for delivering BNG. The options presented were to prioritise delivery on-site, secure habitats locally, pay a cash tariff towards a strategic scheme or a combination of the above.
- 2.2 We received 530 responses to the question. The most popular option was to utilise a combination of approaches to secure net gain for biodiversity with 38% respondents in support. 27% of people thought we should seek to secure habitats locally whereas 15%

thought we should seek to deliver net-gain on-site. The least popular option was to pay a cash tariff towards a strategic delivery scheme with just 3% support, although this was supported by the RSPB who felt it could deliver better gains to biodiversity than ad-hoc schemes. 5% of people felt that none of options were suitable or proposed alternatives.

3 Background

- 3.1 East Devon is blessed with an outstanding natural environment which supports a wide range of species and habitats of international importance. Some of these habitats are offered European protection due to their uniqueness in supporting rare and threatened species of flora and fauna, including the Pebblebed Heaths and Exe Estuary.
- 3.2 Despite this, it is widely accepted that the UK's biodiversity had been massively depleted by centuries of habitat loss, management changes and development. The UK state of nature report undertaken in 2019¹ identified that since 1970, 41 per cent of species studied have fallen and 133 species have already been lost.
- 3.3 These are trends that have been reflected in Devon with the majority of habitats now small and fragmented and their value is threatened due to a range of issues including invasive species, disease, lack of appropriate management, pollution, climate change, changes to funding sources such as agri-environment grants and continued fragmentation due to development pressure².
- 3.4 Clearly, action needs to be taken and in an attempt to buck these trends, there are a number of biodiversity initiatives being progressed both nationally and locally which will be highly influential on the direction of travel we take on biodiversity in the Local Plan. These are covered below.
- 3.5 The fact that these have yet to fully emerge means that it is challenging for us to fully take into account at this stage in Local Plan production. In particular, we need to ensure that any processes for securing BNG we may want to pursue does not conflict with the emerging legislative requirements to be set by Government. It will be important for us to actively explore best practice and keep a watching brief on developments over time to inform plan production.
- 3.6 In addition, the west end of the District was involved in an early Government pilot scheme for biodiversity offsetting back in 2014, which tested some of the early principles for delivering biodiversity offsetting and could be considered the precursor for net-gain.

The Environment Bill

- 3.7 The Government's Environment Bill, which is currently making its way through Parliament, contains a swathe of proposals to restore habitats, improve water quality and increase biodiversity. Particularly relevant to delivering biodiversity improvements through planning is the proposal to mandate a minimum 10% BNG on all development proposals. Further details, including a consultation on draft secondary legislation setting out how the Government envisage this being practically achieved across the Country is expected later this year. The Government aim for the bill to be given royal assent later this year.

Devon Nature Recovery Network

¹ UK State of Nature Report, National Biodiversity Network, 2019, [State of Nature 2019 - National Biodiversity Network \(nbn.org.uk\)](https://www.nbn.org.uk)

² Devon State of Nature Report, Devon Local Nature Partnership, 2013, [Wildlife - Devon Local Nature Partnership \(devonlnp.org.uk\)](https://www.devonlnp.org.uk)

- 3.8 As part of the wider proposals contained in the Environment Act, the Devon Wildlife Trust are currently in the process of producing a nature recovery network map for Devon. This will identify where good wildlife habitat is already, where it should be and how it will be protected, restored, created and joined together to achieve recovery. A draft of this map is expected to be completed this summer and it is envisaged that once produced, it will play a key role in providing a focus for delivery of biodiversity net-gain into particular areas within the District. The map will also be integral to the development of Local Nature Recovery Strategies which are proposed in the Environment Act to be developed at a county level.

Environmental Impact Bond

- 3.9 The Council has recently secured £100k funding to explore the creation of an Environmental Impact Bond (“The Crystal Clear Clyst Bond”) within the Clyst Valley area, which would seek to facilitate the conversion of farmland to woodland by ensuring the long-term income for farmers is more attractive than any alternative land use. The grant will be used to review and blend existing publicly funded grant schemes, including Biodiversity Credits received through off-site provision of net-gain. It will be important to monitor progress on the development of the fund and the evidence produced from the grant will no doubt be useful to support the Local Plan.

4 Biodiversity net-gain

- 4.1 BNG is an approach to development that leaves biodiversity in a better state than before. It requires developers to provide an increase in appropriate natural habitat and ecological features over and above that being affected, in such a way that the current loss of biodiversity through development will be halted and ecological networks can be restored.
- 4.2 Undertaking a BNG assessment involves calculating the biodiversity value of a site (expressed as units) pre- and post-development, and then calculating the percentage change, using a Biodiversity Metric. The most nationally recognised approach to calculate the pre-development baseline and the amount of habitat that will need to be provided post-development is the “Biodiversity Metric 3.0” produced by Natural England. This has been adopted by a number of authorities across the Country and a version of it is likely to be the Government’s preferred metric when net-gain becomes mandatory. The current thinking at this point in Local Plan production is that we will require this to be used in East Devon.
- 4.3 As previously mentioned, through the Environment Bill the Government intend to make a minimum 10% BNG a mandatory requirement for all development proposals (albeit with a simplified process for smaller scale proposals). All new habitats will need to be managed and maintained for a minimum period of 30 years and a net gain plan will need to be submitted alongside a planning application. Should the bill gain royal assent later this year, the requirement for net-gain will come into force towards the end of 2023.

5 Level of BNG to be required

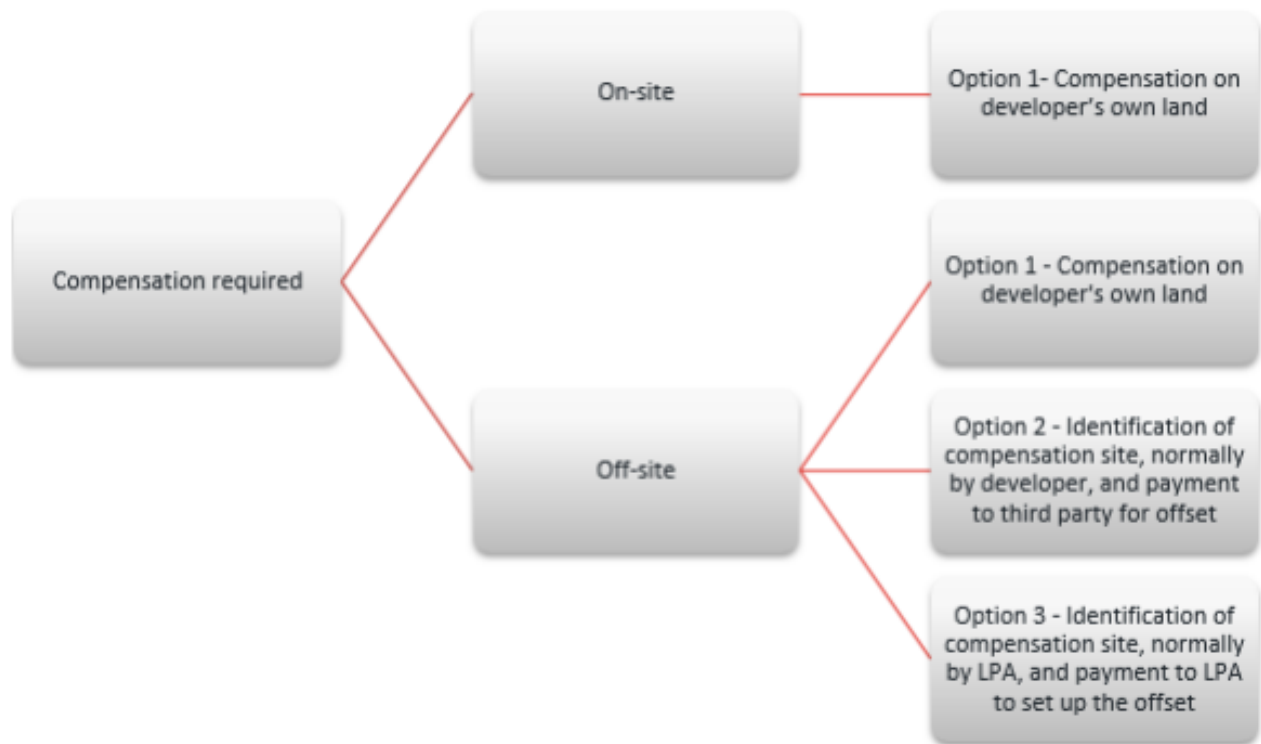
- 5.1 Whilst 10% is the level likely to be mandated by Government, the Local Plan provides the Council with the opportunity to consider including a policy requiring a higher percentage.
- 5.2 Evidence from some academic literature suggests that a level of net gain at, or ideally above, 10% is the minimum necessary to give reasonable confidence in halting development’s role in biodiversity loss (i.e. no net loss). This is due to sources of uncertainty such as recording habitats incorrectly, the narrow scope of measurements (due to the metric being simplified) the risk of habitat degradation before application submission

(i.e. baseline alteration) and the risk of undervaluation of habitats. It stands to reason that if members want to be confident that net-gain is truly being delivered, as opposed to just 'no net loss', then they may desire to go beyond 10% as a target.

- 5.3 It's worth keeping in mind that the majority of the costs associated with net gain are incurred to correct for the initial loss of biodiversity through development (i.e. achieving only 'no net loss'). A 10% net gain could be seen as a requirement to deliver approximately 110% of the total lost biodiversity and so the additional cost of going from 10% to 20% is relatively minor.
- 5.4 To put that in some perspective, using the Government estimates for the cost of off-site BNG delivery, a housing scheme on one hectare of former agricultural land would be expected to cost a developer in the region of £33,000 to deliver 20% net gain, as opposed to £30,200 with 10% net gain (assuming that all compensation is delivered off-site).
- 5.5 Members may wish to note that Lichfield District requires a net gain of 20% on new development, and experience there to date suggests that developers are able to meet this requirement and often achieve much greater levels of biodiversity net gain.
- 5.6 Having said that, it needs to be borne in mind that the proposal for 10% net gain will still be a substantial uplift beyond current practice, given that the Government estimate only 29% of residential and 15% of non-residential developments currently achieve BNG. Indeed, there will no doubt be advantages of a more significant margin of gain but the increased costs this would lead to need to be considered alongside potential development viability issues, and the resulting impacts this may have on other priorities that the Council may have (e.g. delivery of lower levels of affordable housing). Further assessment of the additional cost of levels of net-gain will need to be explored once we commence viability work for the local plan.

6 **Methods of delivery**

- 6.1 Once the required amount of habitat to be provided has been calculated via a biodiversity metric, the applicant would then be required to demonstrate that the agreed level of BNG would be delivered. The following diagram sets out some of the potential methods for delivery with some additional explanation below:



- **Option 1: Compensation on developers own land-** This would require the developer to deliver the required amount of habitat either on-site or off-site on land in their ownership. This can be secured through planning conditions or a Section 106 agreement.
- **Option 2: Payment for third party management of third party's land-** The developer would not buy the land but pay a third-party provider to deliver and maintain the habitats on their behalf. A number of different companies are already active in the area which offer this service. This can be secured via a legal agreement.
- **Option 3 - Payment for local planning authority to set up compensation agreements-** Involves the developer making a payment to the Local Authority who would then take on the management responsibilities to meet offset requirements. The Local Authority could then act in the form of a broker, paying a third party to manage land in order to meet offset requirements or in some instances could actively purchase and/or deliver biodiversity improvements on their own land. This can be secured through a section 106 or planning condition. The role of the Council is discussed further in paragraphs 7.1 – 7.3.

6.2 The Environment Bill also proposes that a further option will exist in the future to allow for developers to purchase "statutory biodiversity credits" directly from the Secretary of State, instead of a requirement to make onsite or offsite biodiversity enhancements. The funds generated from the purchase of biodiversity credits would be used to fund landscape-scale habitat enhancements across England. Further details are awaited but it would likely only be available after on-site and off-site provision has been explored.

6.3 To allow for flexibility in delivery, it would be prudent to allow for a range of approaches to delivery depending on the location and condition of the site. For example, in many situations only relatively simple, robust, low-maintenance habitats can be delivered on-site. Schemes that propose the creation of high distinctiveness habitats such as lowland meadows will not be appropriate as the land may not be suitable.

6.4 However, the Council may wish to ensure that where possible and effective, habitats are delivered on-site as a preference. This may help to ensure BNG is distributed across the District, into areas where habitats may be being most affected. This is an approach adopted

by other Local Authorities who are already securing net-gain including in Plymouth and South West Devon, and would also reflect the strong support in the issues and options consultation for BNG to be delivered either on-site or locally.

7 Potential role of the Council

7.1 Apart from the statutory role the Council will need to play in determining and assessing the net-gain requirements in planning applications. As discussed in Option 3, the Council has a number of potential active roles to play in delivering net-gain over the coming years. For example,

- Investigate setting up a paid for brokering service that applicants could utilise to be put in touch with landowners willing to bring their site forward. This could perhaps sit within the existing countryside service.
- Providing bespoke advice and guidance to developers on how to achieve BNG.
- Producing additional guidance on how to deliver BNG once the requirement comes into force, perhaps through a supplementary planning document.
- Exploring the extent to which BNG may be suitable for delivery on Council-owned sites.

7.2 Members should note that regardless of the role the Council takes, should net-gain become mandatory it will require additional resources from the local authority in order to conduct its planning functions, particularly in the determination of planning applications. The Government has committed to undertaking a full assessment of the cost of additional burdens for carrying it out. It is understood that an ecologist will shortly be coming on board with the Council and they will no doubt be integral to the consideration of any potential active role we may want to take.

7.3 Committee are asked to endorse the option of undertaking a review of council-owned land for the potential delivery. Whilst any formal commitment for undertaking a review would need to be taken by Cabinet getting some member feedback on this approach. There may be some crossover with an existing commitment in the Council's Climate Change Strategy to review the green spaces in the existing Green Space Plan to assess whether they are suitable for wildlife recovery/rewilding.

8 Implications for neighbourhood planning

8.1 The implications for Neighbourhood Planning in general are expected to be minimal, however, Neighbourhood Plan groups may wish to identify local priorities for off-site delivery of net-gain through their Plans. If supported by robust evidence, they may also be able to vary the level of net-gain to be required from development or set different priorities for its delivery.

9 Habitats Regulations Assessment

9.1 Members should also note that prior to publication of the Local Plan in late 2022, we are legally required to prepare a habitat regulations assessment, which measures the impacts of the plan on any European designated Natura 2000 biodiversity sites. In East Devon these sites include the Exe Estuary Special Protection Area (SPA), The East Devon Pebblebed Heaths Special Area of Conservation (SAC) and Special Protection Area (SPA) and the River Axe Special Area of Conservation (SAC).

- 9.2 Where impacts, such as increased recreational pressure resulting from the numbers and locations of homes proposed are identified, the assessment assesses how they can be mitigated to ensure that these important biodiversity sites are safeguarded.
- 9.3 In previous Local Plans due to a lack of experience and capacity at the Council, we have commissioned experienced ecological consultants to undertake this work on our behalf, and we expect to do the same this time around by going out to tender in the coming months.
- 9.4 Related to this work is the need for East Devon District Council, alongside Exeter and Teignbridge Councils to commission a review of the South East Devon European Site Mitigation Strategy, which provides a strategy to mitigate for the potential in-combination impacts of new housing development on three European wildlife sites; the Exe Estuary, Dawlish Warren and Pebblebed Heaths.

Financial implications:

While there are no specific financial issues at this review stage the management of such a scheme will have an impact on budgets for future years, the size of which will be dependent upon the agreed methods of delivery. Should suitable council owned sites be available they could potentially provide an additional income stream.

Legal implications:

There are no legal implications other than as set out in the report