

# **Cherwell District Council**

## **Executive**

**6 November 2023**

## **Environment Act 2021 and Biodiversity Net Gain Preparation**

### **Report of Corporate Director Communities**

This report is public.

#### **Purpose of report**

To advise Members of the forthcoming statutory requirements in respect of biodiversity under the Environment Act 2021 and of the on-going preparation for meeting those requirements.

#### **1.0 Recommendations**

The meeting is recommended:

- 1.1 To note the requirements of the Environment Act 2021 in respect of biodiversity and the on-going preparation for the introduction of statutory Biodiversity Net Gain requirements as set out in the report.
- 1.2 To approve the preparation of a revised Community Biodiversity Plan in the interest of meeting the statutory general biodiversity objective, to monitor the progress in delivering that Plan and to keep it under review.

#### **2.0 Introduction**

- 2.1 The Environment Act 2021 received Royal Assent on 9 November 2021. It operates as the UK's new framework of environmental protection. It amends requirements of the Natural Environment and Rural Communities Act 2006 (2006 Act) in respect of biodiversity. It provides powers for the Government to set binding targets, including for air quality, water quality, biodiversity, and waste reduction.
- 2.2 Ministers now have a duty to have regard to environmental principles embedded in a national Environmental Principles Policy Statement. Legally binding environmental targets have been published including halting the decline in species populations by 2030, increasing populations by at least 10% to exceed current levels by 2042, and delivering net zero ambitions and boosting nature recovery by increasing tree and woodland cover to 16.5% of total land area in England by 2050.

- 2.3 In January 2023, a national Environmental Improvement Plan was published to set out how these and other interim targets would be achieved. This included a new interim target to restore or create 140,000 hectares of wildlife-rich habitats outside protected sites by 2028, compared to 2022 levels and an interim target for increasing tree canopy and woodland cover by 0.26% (equivalent to 34,000 hectares) by 31 January 2028.
- 2.4 Of particular interest to our planning services is the forthcoming statutory requirement for new applications for planning permission for development to deliver a minimum of 10% increase in biodiversity (Biodiversity Net Gain - BNG). Developers will need to ensure they can demonstrate a net gain on-site or through agreed off-site 'biodiversity units' on developers' own land or from habitat banks. A national statutory credit scheme will be also available to developers as the option of last resort where it is shown that on- or off-site net gains cannot be achieved.
- 2.5 To date, planning officers have been seeking to negotiate 10% net gain on development sites of 0.5 hectares or more on a non-statutory basis in accordance with the Executive's decision on 7 October 2019.
- 2.6 Under the forthcoming statutory requirements, developers will have to submit a Biodiversity Gain Statement with qualifying planning applications. Development on those sites would not be able to commence until a subsequent Biodiversity Gain Plan has been approved by the Council as Local Planning Authority (LPA).
- 2.7 The statutory requirement for Biodiversity Net Gain for major sites had been due to come into effect in November 2023 but has been delayed to January 2024 with small sites following in April 2024.
- 2.8 How we support the achievement of Biodiversity Net Gain in the future is also being considered through the Cherwell Local Plan Review. Implementation for Nationally Significant Infrastructure Projects which may fall within the Council's administrative boundary remains planned for 2025.

## **3.0 Report Details**

### **Biodiversity Objective**

- 3.1 Section 102 of the Environment Act 2021 amends the duty to conserve biodiversity under Section 40 of the Natural Environment and Rural Communities Act 2006. Section 40 now places a duty on public bodies to conserve and enhance biodiversity (the 'general biodiversity objective'). The 2021 Act mandated a 10% net gain in biodiversity through the planning system.

### **Biodiversity Action**

- 3.2 The Council has a duty to:
1. 'from time to time' consider what action it can properly take to conserve and enhance biodiversity;
  2. then, determine what policies and specific objectives are appropriate for taking action to further the general biodiversity objective;

3. then, take action to further the conservation and enhancement of biodiversity in light of those policies and objectives.

3.3 This applies to the Council's wider responsibilities not just to those as Local Planning Authority.

3.4 The Council must complete its first consideration of what action it can properly take to further the general biodiversity objective by 1 January 2024 (i.e. one year after Section 102 of the Act became effective). It must agree the policies and objectives for taking action as soon as practicable after this which might include revising existing policies and objectives. It must then take the action to meet the biodiversity objective.

3.5 The Council must reconsider the actions it can take within 5 years of when it completes its previous consideration. It can decide to do this more often.

### **Local Nature Recovery Strategies**

3.6 In complying with the above, the Council must have regard to any relevant Local Nature Recovery Strategies (LNRSs) as well as any species conservation strategy or protected site strategy prepared by Natural England.

3.7 Regulations for the production of LNRSs came into effect in April 2023 with supporting guidance. They are a new system of county-scale strategies which will identify where action for nature will have particular benefit, both for nature itself and for the wider natural environment.

3.8 Preparation of each strategy will be locally led by a 'responsible authority' (in this case the County Council) which must:

- map the most valuable existing areas for nature
- agree priorities for nature's recovery and
- map specific proposals for creating or improving habitat for nature and wider environmental goals.

3.9 The responsible authority must work with Natural England and with local planning authorities to prepare and agree their strategy.

3.10 LNRSs must be informed by public consultation. Each strategy should take 12 to 18 months to prepare and publish. By March 2025 local nature recovery strategies should be in place across England.

### **Biodiversity Reports**

3.11 New Section 40A of the 2006 Act requires a biodiversity report to be prepared. The Council is required to publish its first biodiversity report no later than 1 January 2026 (being 3 years after the obligation coming into force) to demonstrate the policies and actions carried out to comply with the biodiversity duty. After this, the end date of each reporting period must be within 5 years of the end date of the previous reporting period.

3.12 The report must include a summary of the action taken to comply with the biodiversity duty and how compliance with the biodiversity duty will be achieved in the next reporting period.

- 3.13 Reports from local planning authorities must also include
- the actions carried out to meet biodiversity net gain obligations
  - details of biodiversity net gains resulting, or expected to result, from approved biodiversity gain plans
  - how biodiversity net gain obligations will be met in the next reporting period.

### **Biodiversity Net Gain**

- 3.14 The Environment Act 2021 introduces a requirement to secure 10% Biodiversity Net Gain (BNG) from the grant of planning permission for new development. This is achieved using a biodiversity metric to measure biodiversity value and provision by the applicant of a Biodiversity Gain Plan for delivery.
- 3.15 When this requirement is in place every planning permission which is granted (expected to be for applications made after the provisions come into force) will be deemed to have been granted subject to the condition that the development may not be begun unless:
- a biodiversity gain plan has been submitted to the planning authority; and
  - the planning authority has approved the plan.
- 3.16 It is recommended that the local planning authority make these an express condition of any planning permission rather than relying on the deemed provision set out in Part 2 of Schedule 7A of the 2006 Act.
- 3.17 A Biodiversity Gain Plan includes how adverse impacts on habitats have been minimised; the pre-development biodiversity value of the on-site habitat; the post-development biodiversity value of the on-site habitat; the biodiversity value of any off-site habitat provided in relation to the development; and any statutory biodiversity credits purchased for the development.
- 3.18 Where on-site gains cannot be achieved, developers must create habitat off-site or purchase 'biodiversity units' for doing so from a landowner or land manager. If developers cannot secure the requisite BNG on or off-site, they must buy statutory credits from the Government as a last resort. They must provide evidence for using this option. The Government will use receipts to invest in habitat creation elsewhere in England. A combination of options may sometimes be appropriate.
- 3.19 To ensure that off-site Biodiversity Net Gains are legitimate, they must be listed on a register of 'biodiversity gain sites', to be established by the Secretary of State and on which more information is awaited. For land to be registered, the habitat enhancement works must be secured by a planning obligation or conservation covenant, maintained for at least 30 years and be available to be allocated to one or more developments for which planning permission is granted. A registration fee is also expected. A market in biodiversity units is expected to develop with landowners selling habitat potential to developers.
- 3.20 A conservation covenant is a new form of land agreement, introduced by the 2021 Act, and made between landowner and a 'responsible body' who is responsible for enforcing it. Unlike planning obligations, a conservation covenant does not need to relate to a specific development and can be entered into between a landowner and a responsible body to create biodiversity units for sale to developers.

- 3.21 Local authorities may be able to act as providers of offsite biodiversity units or as intermediaries. The Government expects local authorities to put in place measures to manage conflicts of interest. Councils will not be allowed to require developers to use any particular provider of offsite units. Nor will they be able to charge developers a general tariff for off-site gains that is not linked to specific, registered, biodiversity gain sites.
- 3.22 It will not be the responsibility of the Council to find or supply any off-site biodiversity units required for the implementation of Biodiversity Net Gain. However, facilitating the development of a local market for biodiversity units (in the form of Habitat Banks) will encourage biodiversity gains to remain in the district, allow alignment with Council priority areas (such as Conservation Target Areas) and avoid resort to national statutory credits.
- 3.23 However, the development of a local market of units within habitat banks is being facilitated by liaising with local brokers, landowners and conservation charities and through input within the task and finish BNG group of the Local Nature Partnership
- 3.24 In due course, the Council will need to determine whether or not to be a broker, whether to be a unit/ habitat bank provider or to continue working with third party organisations and brokers in facilitating the local market. The Council will also need to determine whether it wishes to apply to be registered as a responsible body.
- 3.25 The price of national statutory biodiversity credits will be set higher than prices for equivalent biodiversity gain on the market and Defra published indicative credit prices on 27 July 2023. Natural England will sell statutory biodiversity credits on behalf of the Secretary of State. A digital sales platform is currently being developed and tested.
- 3.26 On 27 September 2023 the Government announced a change to the timetable for mandatory BNG for large sites, delaying its introduction from November 2023 to January 2024. Biodiversity Net Gain for defined small sites is presently required from April 2024 and for Nationally Significant Infrastructure Projects from 2025. There is a possibility that the timetable changes again, but officers continue to prepare.
- 3.27 All guidance and the regulations are expected by the end of November to provide developers and planning authorities with the necessary tools and information.

### **Meeting the Council's Obligations**

#### *Biodiversity Objective*

- 3.28 In recent years the Council has produced a Community Nature Plan to demonstrate its fulfilment of its statutory biodiversity duty under Section 40 of the Natural Environment and Rural Communities (NERC) Act 2006; that is now amended by Section 102 of the Environment Act.
- 3.29 In January 2022 the Executive considered a report by the Assistant Director – Well-Being and resolved:

*'1.1 To note the 2020-2022 Community Nature Plan progress report and its approach to addressing the Council's statutory biodiversity duty.'*

1.2 *To recognise the essential role of key partners in the delivery of the Community Nature Plan.*

1.3 *To note that the development of the 2022-2024 Community Nature Plan (CNP) will include an all-member seminar in 2022 involving planners, as requested by the Overview and Scrutiny Committee December 2020 and the implications of the provisions of the Environment Act will be taken into account in this next iteration of the Community Nature Plan’.*

3.30 It is considered that continuing with a commitment to produce a revised Community Biodiversity Plan, to monitor its delivery, and to keep the Plan under review, would be most appropriate means to by which to demonstrate on-going compliance with the biodiversity objective (see recommendation 1.2).

#### *Local Nature Recovery Strategy*

3.31 The District and City Councils are working with Oxfordshire County Council in preparing the LNRS together with representatives from community action groups, the Oxfordshire Local Nature Partnership, the boards of the county’s Areas of Outstanding Natural Beauty, agricultural businesses, non-governmental organisations, charities such as Wild Oxfordshire, the Bucks, Berks and Oxon local Wildlife Trust (BBOWT), the Environment Agency, Forestry Commission, Natural England, the University of Oxford and others.

3.32 The main purpose of the LNRS is to identify locations to create or improve habitats and the species that they support. They provide a focus for action across the public, private and voluntary sectors.

3.33 Work started at the end of 2022. A steering group meets monthly and ensures that all stakeholders are engaged. The Local Nature Recovery Strategy will be key to prioritising and targeting the local delivery of nature recovery. It will inform our own Community Biodiversity Plan and Local Plan Review and our approach to securing Biodiversity Net Gain.

#### *Local Nature Partnership*

3.34 The Council’s membership of the Oxfordshire Local Nature Partnerships (LNP) will also assist in meeting the biodiversity objective. The overall purpose of an LNP is to:

- drive positive change in the local natural environment, taking a strategic view of the challenges and opportunities involved and identifying ways to manage it as a system for the benefit of nature, people and the economy
- contribute to achieving the Government’s national environmental objectives locally, including the identification of local ecological networks, alongside addressing local priorities
- become local champions influencing decision-making relating to the natural environment and its value to social and economic outcomes, in particular, through working closely with local authorities, Local Enterprise Partnerships (LEPs) and Health and Wellbeing Boards.

#### *Climate Action Framework – Action Plan*

- 3.35 The Council published its Climate Action Framework in 2020. An Action Plan is being prepared and presents the opportunity to embed an integrated response to the inter-related challenges of climate change and biodiversity enhancement. The action plan will be presented to the Executive on 6 November 2023 and will be reviewed regularly.

#### *Cherwell Local Plan Review*

- 3.36 The consultation draft of the Cherwell Local Plan Review has '*Meeting the Challenge of Climate Change and Ensuring Sustainable Development*' as its first theme. The draft vision includes the clear goal of the district's biodiversity resource being enhanced and its natural environment being more diverse. It highlights that social, economic and ecological resilience provides the capacity to adapt to change, including minimising flood risk. Its emerging policies seek to achieve this. A Green and Blue Infrastructure Strategy was completed in 2022 and policy development will continue in the interest of testing whether more than 10% BNG could be achieved.

#### *BNG Resourcing*

- 3.37 With some consideration of net gain issues in the Partial Review of the Local Plan prior to its submission for Examination in 2018, and with the report to the Executive in October 2019, there is experience within the Council with BNG objectives, principles and metrics. An additional ecologist has also been recruited into the Planning and Development department to assist preparation and BNG assessments.

#### *BNG Training*

- 3.38 Training seminars have been held by Natural England and others and staff have been encouraged to attend such events to develop their understanding. The Council's Ecologists also liaise regularly with partner organisations such as the Local Nature Partnership and neighbouring Local Authorities. Training and upskilling will continue including to become increasingly familiar with the 'Biodiversity Metric' used to assess BNG against a baseline biodiversity position. Those assessing developer submissions will need to be competent to do so and the complexity of submissions will determine the level of competency required to undertake checks and assessments.
- 3.39 Member training and a learning event for other affected services (e.g. Legal, Climate Change, Landscape) are also planned. Officer liaison has been taking place.
- 3.40 In September 2023, PAS has produced a 'readiness checklist' for the implementation of statutory requirements which is now being used.

#### *Recording and Monitoring BNG*

- 3.41 Habitat monitoring (the actual delivery of the habitat) is the responsibility of the developer as set out in its Biodiversity Gain Plan to be approved by the LPA. Monitoring delivery of BNG rests with the Council as LPA. DEFRA is looking at standardised reporting requirements over the 30 years for developers with a draft template and digital capability. Natural England have developed and have been testing a Habitat Management and Monitoring Plan template.

- 3.42 LPAs will be required to set any specific and proportionate monitoring requirements as part of planning conditions and obligations used to secure off-site or significant on-site habitat enhancements.
- 3.43 Planning Practice Guidance states that LPAs can charge a monitoring fee for s106 obligations now. BNG can pay for itself over time so LPAs can generate income through monitoring and pre-application fees.
- 3.44 Further guidance on reporting on biodiversity net gain is expected including a suggested format for tabulating quantitative data.
- 3.45 The Planning Advisory Service (PAS) emphasises that monitoring and evaluation are critical to the BNG assessment process to ensure that the net gains are delivered at both a policy and site-specific level. Officers will need to decide on an approach to monitoring and formalise the administration arrangements. Members will be updated in due course.

### **Next Steps**

- 3.46 Planning Officers will continue to prepare for the statutory introduction of BNG in liaison with other services and having regard to the PAS checklist. Further secondary legislation and guidance will be reviewed as it emerges.
- 3.47 More specifically, we will be:
- re-introducing a development management validation checklist to supplement national validation requirements and capture the local information required to support Biodiversity Net Gain assessments. Re-introduction of the list aligns to wider service improvement objectives and will require public consultation.
  - considering the recommended approach to achieving net gain off-site including whether there is potential for the Council to establish a habitat bank vehicle using its own land or to be a broker (or both). As a broker, CDC could connect developers to off-site unit providers
  - preparing and updating on-line Biodiversity Net Gain guidance including to ensure that developer submissions are robust, full compliance is achieved and the requisite net gains are delivered
  - preparing our monitoring systems to demonstrate BNG in line with expected national guidance
  - continuing with Local Plan work to determine whether or the not the Council should require more than 10% BNG from new development
  - subject to the Executive's approval, commencing preparation of a revised Community Biodiversity Plan and monitor its implementation and success
  - continuing with / arranging staff and Member training across affected services
  - scoping the cross-service implications of meeting the requirements of the Environment Act 2021, its BNG requirements and consider resourcing implications.

## **4.0 Conclusion and Reasons for Recommendations**

- 4.1 The Council needs to be ready to conform with the requirements of the Environment Act 2021 in relation to biodiversity. Additional ecologist resource has been acquired

and officers are preparing for the expected introduction of the statutory requirement to deliver Biodiversity Net Gain. The delay in implementation to January 2024 provides some additional time but there is a need to continue preparation at pace, albeit while further guidance is awaited. It should be noted that January 2024 will be the real start of the process. To assist meeting the Council's obligations and to ensure an integrated approach to achieving the biodiversity objective, it is recommended that a revised Community Biodiversity Plan is prepared.

## **5.0 Consultation**

- 5.1 Councillor Dan Sames: Portfolio Holder for Planning and Development
- 5.2 There will need to be on-going consultation and engagement with Councillor Sames, Councillor McHugh as Portfolio Holder for Cleaner and Greener Communities and Councillor Chapman as Portfolio Holder for Healthy and Safe Communities.

## **6.0 Alternative Options and Reasons for Rejection**

- 6.1 Paragraph 3.4 of this report explains the Council's obligations to meet the biodiversity objective under s.40A of the 2006 Act. The Executive could decide that the preparation of a revised Community Biodiversity Plan is not the action it would wish to take to further the general biodiversity objective by 1 January 2024. However, the Council's Community Nature Plan 2020-22 provides a clear starting point for review and should Members decide to take alternative action, this action would need to be determined by 1 January 2024.

## **7.0 Implications**

### **Financial and Resource Implications**

- 7.1 The resourcing of a revised Community Biodiversity Plan will be met from existing service budgets. The cost of the forthcoming statutory obligations to secure at least 10% biodiversity net gain from qualifying planning applications are being met in part from existing Planning and Development budget and in part from the Government's 'Biodiversity Net Gain Grant' for 22/23 and 23/24.

Comments checked by:

Kelly Wheeler, Finance Business Partner

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### **Legal Implications**

- 7.2 The legal implications are set out in detail in this report which relate to the amendment of the biodiversity objective in the 2006 Act, which became effective from 1 January 2023, and the introduction of statutory requirements for the achievement of biodiversity net gain from January 2024. The Council will also

need to consider whether and how it may be a broker for biodiversity credits in due course.

- 7.3 One specific recommendation is to ensure that once the relevant provisions are in force any planning permission granted includes an express planning condition about the biodiversity gain plan as set out in this report rather than relying on the deemed provisions on the legislation.

Comments checked by:

Shiraz Sheikh, Monitoring Officer and Assistant Director – Law and Governance  
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### **Risk Implications**

- 7.4 The risks for the Council relate to non-compliance with its statutory responsibilities. This report has been prepared in the interest of ensuring compliance.

Comments checked by:

Shona Ware, Assistant Director of Customer Focus  
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### **Equalities and Inclusion Implications**

- 7.5 There are no equalities or inclusion implications arising from this report.

Comments checked by:

Shona Ware, Assistant Director of Customer Focus  
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### **Sustainability Implications**

- 7.6 Biodiversity Net Gain is a positive move for sustainability. Biodiversity is known to be decreasing at an alarming rate across the UK and so its inclusion in law is a welcome step. Increases in biodiversity in Cherwell will also support our climate objectives, as an increase in the extent of natural capital supports both climate change mitigation and adaptation.

Comments checked by:

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## **8.0 Decision Information**

### **Key Decision**

**Financial Threshold Met:** No

**Community Impact Threshold Met:** Yes

## **Wards Affected**

All

## **Links to Corporate Plan and Policy Framework**

Business Plan Priorities 2023-2024: Supporting environmental sustainability

## **Lead Councillor**

Councillor Dan Sames, Portfolio Holder – Planning and Development

## **Document Information**

### **Appendix number and title**

- Appendix 1: Natural England BNG Process Diagram

## **Background papers**

None

## **Reference documents**

Report & Minutes, Executive meeting 7 October 2019, Community Nature Plan Restoring and Enhancing Nature and Green,

<https://modgov.cherwell.gov.uk/ieListDocuments.aspx?CIId=115&MIId=3246&Ver=4>

(Item 42)

<https://www.gov.uk/government/news/new-legally-binding-environment-targets-set-out#:~:text=Legally%20binding%20targets%20to%20protect,better%20state%20for%20future%20generations.>

<https://www.gov.uk/government/publications/environmental-improvement-plan>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1146160/Local\\_nature\\_recovery\\_strategy\\_statutory\\_guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1146160/Local_nature_recovery_strategy_statutory_guidance.pdf)

<https://www.gov.uk/guidance/understanding-biodiversity-net-gain>

<https://www.gov.uk/guidance/complying-with-the-biodiversity-duty>

<https://www.gov.uk/guidance/reporting-your-biodiversity-duty-actions>

<https://www.local.gov.uk/pas/topics/environment/biodiversity-net-gain-local-authorities/biodiversity-net-gain-fags#off-site-bng>

[https://naturalengland.blog.gov.uk/wp-content/uploads/sites/183/2022/04/BNG-Brochure\\_Final\\_Compressed-002.pdf](https://naturalengland.blog.gov.uk/wp-content/uploads/sites/183/2022/04/BNG-Brochure_Final_Compressed-002.pdf)

<https://cieem.net/resource/biodiversity-net-gain-report-and-audit-templates>

## **Report Author and contact details**

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