

REPORT TO: Environment and Urban Renewal Policy
and Performance Board

DATE: 24th February 2021

REPORTING OFFICER: Strategic Director – Enterprise,
Community and Resources

PORTFOLIO: Physical Environment

SUBJECT: Implications of the Environment Bill

WARDS: Borough wide

1.0 PURPOSE OF THE REPORT

1.1 To provide the Board with an overview of the forthcoming Environment Bill and its implications for planning and regeneration.

2.0 RECOMMENDATIONS: That

- 1. the Board notes the likely implications of the Environment Bill; and**
- 2. the Board invites a further report when the detail of the transition arrangements and secondary legislation is available.**

3.0 SUPPORTING INFORMATION

3.1 The Environment Bill sets the new environmental governance framework as the UK leaves the EU. The Bill sets out new environmental frameworks including:

- Setting legally binding environmental targets, with environmental improvement plans and a requirement for monitoring;
- Setting out policy statements on environmental principles;
- Establishes the Office for Environmental Protection and its legal powers;
- Creates legislation around waste, air quality and water quality;
- Sets the requirement for Biodiversity Net Gain to be a condition of planning permission;
- Establishes the mechanism for Conservation Covenants in relation to Biodiversity Net Gain;
- The preparation of Local Nature Recovery Strategies and Nature Recovery Networks to direct offsite Biodiversity Net Gain provision;
- The preparation of Species Conservation Strategies and Protected Site Strategies;
- Controlling of felling of trees; and
- Regulation of chemicals.

- 3.2 There are many aspects of the Environment Bill and there are a number of requirements on Local Authorities, however, this report focusses on those of particular relevance to the planning system as follows:
- The requirement for **all** development to achieve a minimum of 10% Biodiversity Net Gain; and
 - The update of the NERC Biodiversity duty on all public bodies to both conserve and enhance biodiversity.
- 3.3 The Environment Bill is currently at the reporting stage of its passage through the House of Commons. It is expected to gain Royal Assent in Spring 2021. Once enacted there will be a two year transition period. This transition period is to allow for the development of secondary legislation and the development of systems to support the implementation of the Bill. It is not currently clear what requirements there will be on Local Authorities to implement biodiversity net gain during this transition period.

4.0 POLICY IMPLICATIONS

4.1 Biodiversity Net Gain (BNG)

- 4.2 The Environment Bill will require all development to achieve a minimum of 10% Biodiversity Net Gain (BNG). This will be mandatory and habitat net gains are to be maintained for at least 30 years. The process of achieving this through the planning system brings in new mechanisms in the form of the Defra [biodiversity metric](#), conservation covenants and biodiversity credit schemes.
- 4.3 Appendix 1 to this report shows the Biodiversity Net Gain process within the planning system.
- 4.4 Calculating biodiversity net gain will require a change to current ecological survey and reporting through the mandatory use of the Defra Biodiversity Metric. The biodiversity metric quantifies habitat loss or gain by providing a 'Biodiversity Unit' figure. This figure is then be used to determine the amount of habitat provision required to achieve a net gain.
- 4.5 Where Biodiversity Net Gain is not achievable on-site (likely to be a significant proportion of developments), then off-site compensation will be required. However, developers and the LPA must still follow the mitigation hierarchy (avoid, mitigate, compensate) as required by NPPF. Developers will be required to submit a Biodiversity Gain Plan. The off-site provision will be secured through a Section 106 agreement, where this is within the LPA area or through a Conservation Covenant where this is outside of the LPA area. In addition, developers can purchase Biodiversity credits through a national Biodiversity Credit scheme. Section 106 agreements will need to be ring fenced, and there will need to be transparency between the net gain required by the specific development and the provision of habitats on the ground, as this will need to be published within the National Biodiversity Gain Site Register.

4.6 Local Nature Recovery Strategies

4.7 The Environment Bill makes provision for the preparation of Local Nature Recovery Strategies (LNRS) and Nature Recovery Networks (NRNs). The preparation of these LNRS and NRNs falls to the Local Authority in consultation with the wider community. Local Nature Partnerships will play a key role in the development of the LNRS and NRNs.

4.8 Nature Connected (the Local Nature Partnership for the Liverpool City Region) is to be briefed at the end of January on LNRS and NRNs. The NRN will inform and guide appropriate BNG habitat provision both onsite and off-site so that habitat provision is targeted and coherent and will achieve Biodiversity gains.

4.9 Update to the NERC Biodiversity Duty and Biodiversity Reports

4.10 The Environment Bill will update Section 40 of the Natural Environment and Rural Communities Act 2006 (NERC). Section 40 places a duty on all Local Authorities to have regard to the conservation of biodiversity in its policy and decision making. The Environment Bill strengthens this duty and will require Local Authorities to not only conserve biodiversity but also to enhance biodiversity.

4.11 Local Authorities will be required to undertake periodic review of the action the authority has taken in exercise of its Biodiversity Duty. Following review, the Authority must determine such policies and specific objectives including within their Local Plan as it considers appropriate for taking action to further their general biodiversity objectives.

4.12 The Local Authority must publish Biodiversity Reports. **The first of these Biodiversity reports must be published no longer than three years following the Royal Assent.** Subsequent reports must cover a period of no longer than five years. This report must also include a summary of biodiversity gain through planning permissions for that Local Authority.

5.0 OTHER IMPLICATIONS

5.1 There will be practical challenges to enable the system of Biodiversity Net Gain to operate smoothly. Therefore, during the lead up to Royal Assent and the two-year transition period, local authorities will need to develop and implement effective systems. Further detail will be provided to the Board as the detail of the transition period and secondary legislation emerges. However, the following elements are likely to be fundamental to the successful implementation of Biodiversity Net Gain and will require resourcing:

- Training in use of the Biodiversity Metric;

- Briefing and training to Members and Officers involved in planning and regeneration;
- The roll out of the use of the Biodiversity metric, initially for larger developments, to ensure they are providing net gain and also to allow trialling of the metric and systems before full roll out;
- Consideration of an LCR-wide position on Biodiversity Net Gain to set developer expectations and to provide clarity;
- Consideration of an LCR wide Local Nature Recovery Strategy including a Nature Recovery Network based around the existing LCR Ecological Network and the [LCR Natural Capital Baseline](#) being developed by Liverpool John Moores University;
- Identifying sites and areas within each local authority area for the delivery of habitat creation and enhancement. The Local Wildlife System and public greenspaces is seen as a key component of this provision;
- Engagement with land owners / managers to provide off-site compensation sites ready for planning;
- The identification of sites and areas for inclusion within the Biodiversity Credit scheme; and
- Conformity with the emerging LCR Spatial Development Strategy Natural Environment and Natural Capital policy;

5.2 Within the Liverpool City Region, the Merseyside Environmental Advisory Service (MEAS) (a shared service operated via Sefton Council, to which Halton subscribes) has already started trial of the metric and some officers have attended Defra training courses, however, more training is required. It is clear from trialling the metric is that it will take additional time to review planning applications with Defra metric reports, potentially impacting on statutory timescales for determination. Secondly, with the requirement for **all development to achieve Net Gain** comes the need for all developments to be reviewed. Therefore, it is likely to increase the requirement for consultation with MEAS on schemes submitted for planning.

5.3 The metric has been used on a number of larger scale planning applications within the LCR where there will be significant impacts to habitats planning applications or where timescales are likely to lead to subsequent reserved matter applications being subject to BNG. Increasingly enquiries are being received from environmental consultancies and developers on the requirement to use the Defra metric and the need to provide BNG in support of planning applications. To provide clarity to developers and to ensure a level playing field in the transition period before BNG becomes mandatory, the LCR Local Authorities may wish to consider preparing a joint position statement on Biodiversity Net Gain. This has been done elsewhere in the Country, e.g. Surrey¹. This may be particularly useful given the different stages of

¹ https://surreynaturepartnership.files.wordpress.com/2020/11/recommendation-for-20-bng-in-surrey_snp-november2020_final.pdf

Local Plan preparation for each Local Planning Authority and given that the emerging LCR Spatial Development Strategy for the Natural Environment includes the requirement for Biodiversity Net Gain (BNG).

- 5.4 Whilst the minimum mandatory net gain requirement is 10% there are a number of Local Authorities who have set more ambitious net gain targets (e.g. Lichfield, Oxford and Surrey which have adopted 20%) and the LCR Local Authorities could consider whether a more ambitious target would be appropriate for the sub-region.
- 5.5 The requirement for offsite provision of habitat creation or improvement is likely to be significant. In terms of planning and local communities, the location of this needs to be ideally close to the development and within the Local Authority area. Only if this cannot be achieved should it go out of the LA area. This sequential approach needs to be set out in local policy, and this could be set out within a LCR position paper on Biodiversity Net Gain. This brings in the issue of the need for suitable off site land on which to create or improve habitats to deliver net gain. This should be informed by the Nature Recovery Network. Establishing ready to go to sites or a habitat bank is vital in terms of delivering timely planning decisions, but will require significant upfront work and liaison now with Natural England, landowners and LA land managers. Local Authority owned local sites could also provide opportunities for transparent delivery of off-site compensation provision.
- 5.6 There is an option within the Environment Bill for developers to purchase Biodiversity Credits from the Secretary of State. This could be seen as an attractive, efficient option to many developers. However, the danger with this approach is that the credit schemes may not be within the local area and this could lead to a net loss of biodiversity within the LCR. The identification of sites for the national Biodiversity Credit Scheme can be achieved through the preparation of Nature Recovery Network for the LCR.
- 5.7 To secure off-site provision through the planning system S.106 agreements will be required. This will require a system for ring fencing and recording spends to ensure transparency. This is outside of the expertise of MEAS and requires input from the LCR Local Planning Authorities, although MEAS are happy to assist. The LCR Local Planning Authorities will also need to develop mechanisms to enable the use of Conservation Covenants within the planning system.
- 5.8 The Environment Bill requires the Local Authority to publish 'Biodiversity Reports', the first is to be published within 3 years of the Bill becoming law with subsequent reports every 5 years. The report should include a summary of biodiversity gain through planning permissions for a Local Authority. Each Local Authority will need to identify responsible officers to collate data and produce a report.

6.0 RISK ANALYSIS

- 6.1 The Environment Bill has a number of requirements for Local Authorities. Those of particular relevance to the planning system are the requirement for **all** development to achieve a minimum of 10% Biodiversity Net Gain; and the update of the NERC Biodiversity duty on all public bodies to both conserve and enhance biodiversity and the requirement this brings to review policies and produce a Biodiversity Report.
- 6.2 The implementation of the Bill has a number of challenges to get the system of Biodiversity Net Gain working smoothly through the planning system, these include:
- The implementation of the Defra Biodiversity Metric within all planning applications and their review;
 - Securing BNG through S.106 agreements and Conservation Covenants and ensuring effective systems are in place to facilitate this;
 - Identification of offsite BNG sites for habitat creation, restoration or enhancement so the LCR has a ready to go bank of sites to allow timely planning decisions; and
 - The development of Local Nature Recovery Strategies and Nature Recovery Networks to inform the appropriate location of habitat creation through BNG.
- 6.3 The key risk to be managed will be the resourcing of this additional legal requirement to ensure its environmental aims are achieved without adding delays in the approval of suitable development.

7.0 EQUALITY AND DIVERSITY ISSUES

- 7.1 There are no equality and diversity implications arising from the subject of this report.

8.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

Document	Place of Inspection	Contact Officer
Environment Bill https://services.parliament.uk/bills/2019-21/environment.html https://www.gov.uk/government/publications/environment-bill-2020/30-january-2020-environment-bill-2020-policy-statement	Online	Alasdair Cross

Appendix 1: Biodiversity Net Gain process through planning

