

Report of the Portfolio Holder for Growth and Regeneration

Subject: Interim Planning Policy Statement Biodiversity Net gain

Date: 14th. December 2023

Author: Planning Policy Manager

Wards Affected

Borough-wide

Purpose

To seek approval of the attached draft Interim Planning Policy Statement on Biodiversity Net Gain for the purposes of public consultation.

Key Decision

This is a key decision

Recommendation(s)

THAT:

The Portfolio Holder approves the proposed draft Interim Planning Policy Statement on Biodiversity Net Gain as set out in Appendix 1 for the purposes of public consultation.

1 Background

1.1 The Environment Act 2021 amends the Town and Country Planning Act to require that a minimum mandatory 10% biodiversity net gain must be sought on all “qualifying” developments. The provisions of the Environment Act 2021 to secure mandatory biodiversity net gain from qualifying developments is expected to come into force from January 2024 for large sites and from 1st April 2024 for small sites. BNG is an approach to development that aims to leave the natural environment in a ‘measurably better state’ than it was beforehand.

1.2	<p>This Interim Planning Policy Statement (IPPS) seeks to add further detail to the requirements of the Environment Act 2021 in relation to achieving biodiversity net gain (BNG) from the development of land. Secondary Legislation in the form of Draft Regulations on Biodiversity Net Gain have been published by Government and these are reflected in the IPPS. Once approved the IPPS will support adopted local plan policy set out in Aligned Core Strategy Policy 17 (Biodiversity) and Local Planning Document Policy LPD 18 (Protecting and Enhancing Biodiversity).</p>
1.3	<p>The IPPS is based on a common framework prepared by Nottinghamshire Councils in partnership with the Nottinghamshire Wildlife Trust and supported by Natural England. This common framework seeks to ensure a consistent and coordinated approach to biodiversity net gain across Nottinghamshire.</p>
1.4	<p>This IPPS is intended to fill the policy gap in the interregnum prior to the adoption of the Greater Nottingham Strategic Plan anticipated to be adopted during 2025 and the subsequent adoption of supplementary planning document(s) dealing with biodiversity. In the meantime, from January 2024, the IPPS will provide more detailed planning guidance in order to support planning applications being submitted.</p>
1.5	<p>Although public consultation is not mandatory for such a non-statutory interim planning policy statement, it is proposed to publish the document for a period of 4 weeks for interested parties to make representations; and to consider any comments made prior to approval. This would be in the spirit of Gedling Borough's Statement of Community Involvement for statutory plans, is good practice and likely to add value. Following its approval by Gedling Borough Council, the IPPS will be a material planning consideration in decision making.</p>
1.6	<p>The Environment Act 2021 also inserts the "Biodiversity Duty" as new Section 40 and reporting on this function through new Section 40A into the Natural Environment and Rural Communities Act 2006. This places a duty on public authorities to consider what action the authority can take to further the general biodiversity objective. The deadline for this is 1st January 2024 and may be fulfilled by revising existing policies and objectives to further enhance / create biodiversity. The preparation of this IPPS would assist in fulfilling this duty. Section 40A of the Natural Environment and Rural Communities Act requires regular reporting on this Biodiversity Duty including monitoring of biodiversity gain plans required by the general condition to provide mandatory 10% biodiversity net gain on qualifying development gaining planning permission.</p>

	<u>Content of the IPPS</u>
1.6	The IPPS sets out the policy context, national and local together with relevant strategies. In particular it refers to the Nottinghamshire BNG Framework produced by all Nottinghamshire local planning authorities in partnership with Nottinghamshire County Council and Nottinghamshire Wildlife Trust and supported by Natural England. This document sets out a number of key principles including amongst others to: - avoid the loss of irreplaceable habitats; set a preference for onsite provision followed by compensation offsite where on site solutions are not feasible; and be inclusive and equitable in the distribution of newly created habitat. The Framework also seeks to achieve best outcomes and a long-term legacy for BNG and to secure BNG through high quality design with BNG being an integral part of design and place making.
1.7	<p>Polices set out in the IPPS Guidance are to cover:</p> <ul style="list-style-type: none"> • Setting minimum BNG requirement of 10% and establishing thresholds for specific development types; • Measuring net gain; <ul style="list-style-type: none"> ○ Through Use of DEFRA metric; • Information required to support a planning application; • The approach to securing BNG and its future maintenance; • Monitoring; and • To provide guidance on location of compensatory sites in Gedling Borough for off-site BNG.
1.8	The IPPS seeks to implement the requirements of the Environment Act by setting a mandatory minimum 10% biodiversity net gain for qualifying sites / developments. Developers are therefore required to provide a minimum of 10% (IPPS Policy 1).
1.9	In accordance with national legislation “major” developments are required to provide 10% BNG measured against Natural England’s Biodiversity Metric for large sites (Metric 4.0). Small sites are encouraged in line with Government guidance to use the Small Sites Metric produced by Natural England. This is to ensure that all BNG is measurable (IPPS Policy 2).
1.10	IPPS Policy 3 sets out the process for measuring net gain in order to provide additional detail for developers. This includes: using a suitably qualified ecologist or “competent” person to survey the site; prepare the Biodiversity Net Gain Report, metric spreadsheets and Biodiversity Net Gain Plan which will set out how BNG is to be delivered. IPPS Policy 3 also refers to the need to submit a Habitat Management and Monitoring Gain Plan setting how net gains are to be provided, monitored and maintained in the long term. The Policy requires an iterative approach

	that seeks to maximise delivery of BNG throughout the different stages of the development process and to ensure BNG is integral to the design process. The IPPS identifies the information required to support a planning application with details set out in Appendix 2 of the IPPS.
1.11	The Environment Act includes provision to exempt irreplaceable habitats from the mandatory BNG requirement. Draft Secondary legislation has now defined these irreplaceable habitats by publishing a list of habitat types to be considered irreplaceable. This includes ancient woodland, ancient and veteran trees for example. BNG does not change existing protections for nature conservation, so current legal and policy provisions relating to development impacts on the natural environment, including protected sites and species, and priority species and habitats, all need to be considered in relation to habitat loss. A development cannot avoid this requirement by virtue of delivering a net gain. These important policy caveats are covered in IPPS Policies 4 and 5.
	<u>Offsite Provision</u>
1.13	A key aspect of the IPPS is to provide guidance on suitable locations for compensatory BNG, if the required quantum BNG cannot be provided on site in its entirety or only in part. A key principle is that compensatory BNG should be located in close proximity to the development site. Other considerations include the type of biodiversity that is being lost and the best location to maximise BNG. In this context, it is considered that publicly owned / managed sites including Local Nature Reserves, Local Wildlife Sites and Country Parks would be particularly suitable if proximate to the development site. The use of Council controlled land for BNG compensation cannot be insisted upon and privately owned sites may be acceptable. However, all sites public and private must be registered on the Biodiversity Gain Sites Register. Appendix 3 provides a list of potential locations owned by Gedling Borough Council for offsite BNG.
	<u>Securing, maintaining and monitoring BNG</u>
1.14	The IPPS also sets out how BNG will be secured and maintained through the use of planning conditions and Section 106 Planning Agreements.
2	Proposal
2.1	It is proposed that the Portfolio Holder approve the attached draft IPPS on Biodiversity Net Gain for the purposes of public consultation.

3	Alternative Options
3.1	The only alternative is not to prepare any policy guidance and rely on national policy. However, it is considered that this option is not appropriate given the need to provide more detailed guidance to provide certainty for developers on on-site and off-site biodiversity gain; and to provide interim planning policy in the interregnum prior to the adoption of the emerging Greater Nottingham Strategic Plan.
4	Financial Implications
4.1	No financial implications. Cost of officer time drafting the IPPS is met from existing budgets and a DEFRA grant award
5	Legal Implications
5.1	The Town and Country Planning Act 1990 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The Gedling Borough Council's Local Plan Part 1 was adopted on 10th September 2014 and Part 2 Local Plan on the 18 th July 2018 form the Development Plan. The Environment Act 2021 postdates the Development Plan and will apply national mandatory BNG requirements to major development from January 2024 and to small sites from April 2024. It is open to the Council to prepare interim planning policy guidance within the policy context provided by the Environment Act, national planning policy and guidance.
5.2	The Interim Planning Policy Statement will form part of the Council's planning policy guidance documents and be a material planning consideration when determining planning applications.
5.3	Section 40 of the Natural Environment and Rural Communities Act 2006 (as amended) places a duty on public authorities to consider what action it can take to further the biodiversity gain objective. Section 40A requires the public authority to report on a summary of the actions carried out including monitoring of biodiversity gain plans required as a condition of planning permission.
6	Equalities Implications
6.1	The equality impacts arising from the introduction of BNG as required under national policy has been assessed by Central Government and it is not necessary to repeat this exercise for those aspects of national policy that is being delivered locally through the Gedling Borough Interim Planning Policy Statement. However, it is considered that BNG policy would be inclusive of all groups and will also be subject to public

	consultation where the views of all groups including those with protected characteristics can be considered.
7	Carbon Reduction/Environmental Sustainability Implications
7.1	The IPPS is seeking to implement national policy on achieving a net gain in biodiversity locally to ensure that the approach to development aims to leave the natural environment in a ‘measurably better state’ than it was beforehand. Achieving Net Gain ‘locally’ also contributes towards ‘nature conservation priorities’ at local, regional and national levels and performs an important role that biodiversity has to play in climate change mitigation, adaptation and resilience and ability to meet global and local climate change ambitions which will, in turn, protect biodiversity.
8	Appendices
8.1	Appendix 1 – Biodiversity Net Gain Interim Planning Policy Statement January 2024.
9	Background Papers
9.1	None
10	Reasons for Recommendations
10.1	To ensure that the IPPS is subject to a period of public consultation.

<p>Statutory Officer approval</p> <p>Approved by: Date: On behalf of the Chief Financial Officer</p> <p>Approved by: Date: On behalf of the Monitoring Officer</p>
