

## **Report to Cabinet**

**Subject:** Gedling Borough Council Guidance Biodiversity Net Gain

**Date:** 18 April 2024

**Author:** Head of Development and Place

### **Wards Affected**

All

### **Purpose**

To approve the responses to the comments made during the consultation on the draft Biodiversity Net Gain document and seek approval of the attached Gedling Borough Council Guidance on Biodiversity Net Gain.

### **Key Decision**

This is a Key Decision as it is likely to have a significant effect on communities living or working in an area comprising of two or more wards.

### **Recommendation(s)**

#### **THAT Cabinet**

- 1) Approve the draft responses to the comments made during the consultation on the draft Biodiversity Net Gain document set out in Appendix 1; and**
- 2) Approve the Gedling Borough Council Guidance on Biodiversity Net Gain attached as Appendix 2 to this report.**

## **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 (BNG) must be sought on all “qualifying” developments. The provisions of the Environment Act 2021 to secure mandatory biodiversity net gain from qualifying developments came into force on 12<sup>th</sup> February 2024 for large

sites and for small sites will come into force on 2<sup>nd</sup> April 2024. BNG is an approach to development that aims to leave the natural environment in a 'measurably better state' than it was beforehand.

- 1.2 This Guidance 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 Regulations on Biodiversity Net Gain has been published by Government and these are reflected in the Guidance. In order to bring Guidance in quickly a non-statutory consultation document was prepared and, whilst not required to be subject to consultation, it was felt it would be beneficial to seek views of key stakeholders. A consultation document was prepared called 'Interim Planning Policy Guidance (IPPS) on Biodiversity Net Gain'. Following the consultation, it is proposed to redraft the document and retitle it as Guidance, for reasons set out elsewhere in this report.
- 1.3 The Portfolio Holder for Sustainable Growth and Economy agreed on the 2<sup>nd</sup> of January 2024 that the IPPS would be subject to a period of public consultation lasting for four weeks for interested parties to make representations. The consultation exercise was held between 9<sup>th</sup> January 2024 and 6<sup>th</sup> of February 2024. Nineteen consultees made a substantial number of representations which are considered in this report. A presentation was also given to the Gedling Borough Developer Forum at its meeting on 18<sup>th</sup> January 2024 which led to considerable discussion.

#### Results of the Consultation exercise

- 1.4 The comments received as a result of the consultation exercise are set out in **Appendix 1** together with a draft response. A number of comments were of a supportive nature. The main issues raised are:
  - Arguments for and against raising the target to 20% BNG from a minimum of 10% set out in national legislation;
  - Concerns and questions about the status of the IPPS in terms of its weight in decision making;
  - Unnecessarily repeats Government legislation and needs editing down;
  - The guidance cannot be used to formulate new policy which should be in the development plan. In this context, the focus should be on the emerging Greater Nottingham Strategic Plan which will have a BNG policy.

- Suggestions about local issues which could be covered;
- Concerns about lack of control over the location of compensatory BNG which ought to be as close as possible to the development site;
- Points made about urbanised areas missing out if compensatory BNG is provided in the more rural parts of the Borough;
- Proposals to include sites as priority locations for compensatory BNG other than those named in the IPPS to include, for example, the River Trent and its tributaries in the vicinity of Colwick;
- Concerns about the use of open space / playing fields as a location for BNG and potential conflicts that may arise;
- Specific responses about detailed wording including the overarching principles including whether they are consistent with the legislation;
- The need to avoid risks to aviation from BNG provision within the RAF Syerston safeguarding zone that partly covers the Borough;
- Views about the need for carrying out an early review of the IPPS; and
- Sufficient resources needing to be in place to ensure BNG Plans are adequately assessed as part of the planning application process.

#### Content of the Guidance

- 1.5 The consultation document has been substantially revised as a result of the comments submitted and is attached as **Appendix 2**. More specifically it has been renamed as Guidance and its purpose clarified, which is to support the implementation of national policy on BNG. The revised Guidance clearly states it will seek to implement the national target of securing a minimum 10% BNG from qualifying development. The Guidance includes reference to an early review as good practice emerges and also in anticipation of the adoption of the Local Nature Recovery Strategy (LNRS) led by Nottinghamshire County Council. In relation to comments by consultees about the location of offsetting compensatory BNG, the LNRS once adopted will provide guidance on habitats and priority locations for offsetting to achieve local benefits for people and nature. In the meantime, the Guidance includes reference to local strategies such as the Gedling Biodiversity Opportunity Mapping for

identifying strategic sites for BNG and also refers to on-going work in progressing a Local Land Bank for BNG in cooperation with partners.

- 1.6 In relation to the points made about the Greater Nottingham Strategic Plan, the Plan is being prepared as a priority and will include a BNG policy and a target for BNG to be applied from its adoption. Further policy detail and consideration of whether a higher target might be appropriate may be provided in a future Part 2 Local Plan / supplementary planning document.
- 1.7 BNG is a new requirement of the planning system and the 10% minimum national target is non-negotiable. BNG must be provided onsite or, if this is not achievable in whole or in part, offsite compensation must be provided; failing sufficient provision onsite and offsite compensation then as a last resort there is a system of national biodiversity credits available.
- 1.8 BNG is to be secured through a standard planning condition automatically applied to all planning permissions, which requires the submission of a Biodiversity Net Gain Plan for approval at the discharge of conditions stage following the granting of planning permission (the standard planning application form requires the developer to state whether the condition for BNG should apply or not if the proposal is exempt). Although the submission of the Biodiversity Net Gain Plan is a pre-commencement condition attached to the planning permission, the regulations set out certain minimum requirements for information on BNG to be submitted with planning applications and it may be appropriate for local planning authorities to ask for further information in order to assist the consideration of biodiversity net gain as part of the determination of the planning application. The Guidance is therefore intended to assist developers through the BNG planning process and covers:
  - Measuring net gain;
    - Use of DEFRA metric;
  - “Significant” onsite BNG
  - Information required to support a planning application;
  - Biodiversity Mapping
  - The approach to securing BNG and its future maintenance; and
  - Monitoring.
- 1.9 The metric referred to above is a standard spreadsheet used to measure BNG on site prior to development by measuring three types of habitat features present, namely area based habitat such as semi improved

grassland in square metres; linear features including hedgerows and water courses in metres of length. The metric is then used to predict the level of BNG post development through an iterative design process to achieve the required minimum 10% BNG target. The use of the metric is mandatory for major sites. A small sites metric is also available for use on a voluntary basis. There are some exemptions, including sites where existing BNG is below certain thresholds. There are also safeguards against the deliberate degradation of the site prior to the submission of the planning application and accompanying metric calculations.

- 1.10 The Guidance sets out a process for developers to follow in terms of formulating BNG into the design of the development at an early stage; the use of the statutory BNG metric and the use of the British Standard for designing and implementing BNG. The Guidance also sets out the information needed in order to support planning applications. The Guidance also covers the securing of BNG through conditions and where a Section 106 planning obligation is likely to be needed; procedures for the monitoring BNG to be undertaken by the Council and application of monitoring fees.

#### “Significant” on site BNG

- 1.11 “Significant” BNG on site is defined as on-site habitat enhancement which contribute significantly to the development’s BNG relative to the BNG before development. In this case “significant” BNG must be subject to a section 106 agreement or conservation covenant requiring 30 years maintenance. The guidance clarifies that private gardens would not be considered as “significant” as there is no control over future management and they cannot be subject to Section 106 agreements. Regulations set out a BNG hierarchy that must be followed which prioritises on site enhancement / creation before offsite options are considered in compensation. The application of the BNG hierarchy and subsequent balance between onsite provision and offsite BNG compensation should be considered as part of the determination of the planning application and the Guidance sets out a sequential approach to guide developers and decision making.

#### Offsite BNG Provision

- 1.12 Whilst the priority is for on site BNG, there are likely to be sites where the required amount of BNG cannot be met either wholly or in part on site, in which case compensatory BNG must be provided off site. This

could be on other land owned or controlled by the developer or through the purchase of BNG units from a third-party provider.

- 1.13 BNG is a new mandatory requirement and inevitably will take time to bed in. The Environment Act is designed to stimulate a market for compensatory sites. However, it is acknowledged that the onus is on the developer to secure such compensatory sites. The intention is to adopt planning policies through the preparation of the Greater Nottingham Strategic Plan which together with a new Part 2 Local Plan / supplementary planning document on BNG would provide more control over the location of offsetting compensatory BNG. Work led by Nottinghamshire County Council towards the preparation of the Local Nature Recovery Strategy and on developing a local land bank with partners is also in train and will be a key input for a review of the Guidance and/or new local plan policy. Consequentially the Guidance cannot specify locational guidance for offsite BNG nor identify specific sites. However, the Guidance refers to the on-going work with partners in terms of identifying a local landbank of suitable BNG sites and further information is to be placed on the Council's website when available.

## **2 Proposal**

- 2.1 It is proposed that Cabinet approves the Guidance on Biodiversity Net Gain appended to this report.

## **3 Alternative Options**

- 3.1 The only alternative is not to prepare any 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 net gain.

## **4 Financial Implications**

- 4.1 No financial implications. Cost of officer time drafting the Guidance 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 Development Plan for Gedling Borough Council comprises the Aligned Core Strategies Local Plan Part 1 which was adopted on 10th September 2014 and the Local Planning Document Part 2 Local Plan which was adopted on 18<sup>th</sup> July 2018. The Environment Act 2021 postdates the Development Plan and will apply national mandatory BNG requirements to major

development from February 2024 and to small sites from April 2024. It is open to the Council to prepare guidance within the policy context provided by the Environment Act, national planning policy and guidance.

- 5.2 The Guidance 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 Gedling Borough Council's Guidance on Biodiversity Net Gain. However, it is considered that BNG policy would be inclusive of all groups.

## **7 Carbon Reduction/Environmental Sustainability Implications**

- 7.1 The Guidance 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 Climate Impact Assessment**

- 8.1 The Council has taken the ambitious path of becoming net zero by 2030 and the impact of the publication of the Guidance on Biodiversity Net Gain has been considered through the Climate Impact Assessment appended to this report at **Appendix 3**. The assessment shows that the Guidance implementing national policy on BNG would have a positive impact in addressing climate change issues.

## **9 Appendices**

9.1 **Appendix 1:** Gedling Borough Council Interim Planning Policy Statement: Results of Consultation.

**Appendix 2** – Guidance on Biodiversity Net Gain, May 2024.

**Appendix 3** – Climate Impact Assessment

## **10 Background Papers**

10.1 None

## **11 Reasons for Recommendations**

11.1 To approve Gedling Borough Council's responses to the consultation on BNG and to approve the Guidance on Biodiversity Net Gain.

### **Statutory Officer approval**

**Approved by:**

**Date:**

**On behalf of the Chief Financial Officer**

**Approved by:**

**Date:**

**On behalf of the Monitoring Officer**