



REPORT FROM THE CLIMATE POLICY & SCRUTINY SUB-COMMITTEE

1 BIODIVERSITY NET GAIN UPDATE

- 1.1 This item of business was considered by the Climate Policy & Scrutiny Sub-Committee at its meeting on 15 October 2024. The report that was considered by the Sub-Committee is appended as **Appendix 1**.

SUMMARY

- 1.2 During the meeting, the Sub-Committee considered the options presented in the report and resolved to recommend to Cabinet that it should prepare a Biodiversity Report which incorporates a range of BNG measures (Option 3 – Preferred Option). In addition, however, the Sub-Committee recommended that the Cabinet should also complete the suggested guidance document for developers as part of the measures within the Biodiversity Report (thus incorporating Option 2).
- 1.3 New burdens funding has been provided by Government for BNG, which can be used to secure the necessary ecological expertise needed to support the development of the Biodiversity Report and any associated action plan. The actions recommended in the Biodiversity Report itself will potentially have cost implications which will be reported once that document is drafted.

DISCUSSION

- 1.4 The Sub-Committee raised several questions:
- **Council's role in additional housing:** The Sub-Committee enquired about potential loopholes in the legislation/guidance and whether the Council could be considered another contractor in the context of additional housing. It was clarified that BNG focuses solely on ecological matters and does not apply to renovation projects. However, the Council is subject to the same legislation.
 - **Self-Build regulations:** Concerns were expressed about preventing abuse in light of an increasing number of smaller self-build projects. The Sub-

Committee sought clarity on the measures in place to hold individuals accountable for self-build exemptions. It was noted that Castle Point has a Community Infrastructure Levy, which provides the Council with additional checks and balances compared to other areas.

- **Promoting green initiatives:** The Sub-Committee emphasised the importance of branding Castle Point as a green borough. They advocated for the promotion of tree and shrub planting, suggesting that guidance be incorporated into the Castle Point Plan or through initiatives such as Urban Greening Policy.
- **Impact of NPPF revisions on BNG:** Questions arose regarding the implications of the revised National Planning Policy Framework (NPPF) on BNG. It was confirmed that there would be overlaps and interconnections, with the Local Nature Recovery Strategy (LNRS) serving to link these elements together.

2 RECOMMENDATION

2.1 It is proposed that Cabinet **RESOLVES**

- (1) To note the work of the Climate Policy & Scrutiny Sub-Committee in relation to Biodiversity Net Gain.
- (2) To agree the preparation of the Biodiversity Report including the guidance for developers as part of the Council's approach to meeting its statutory duties under the Environment Act 2021.

Background Papers:-

None.



BIODIVERSITY NET GAIN UPDATE

1 PURPOSE OF REPORT

- 1.1 To provide an update on the implementation of the law around biodiversity net gain in the Borough.

2 LINKS TO COUNCIL'S PRIORITIES AND OBJECTIVES

- 2.1 Biodiversity Net Gain (BNG) is linked to the Council's Environment priority.

3 INTRODUCTION

- 3.1 Biodiversity Net Gain (BNG) was introduced by the Environment Act 2021. It came into effect for large sites in February 2024 and came into effect for small sites in April 2024.
- 3.2 BNG requires that where development occurs, any harm to biodiversity is offset through compensatory provision that secures an overall uplift of biodiversity of 10% above that which originally existed. Any new provision is protected for a minimum of 30 years.
- 3.3 The harm to biodiversity is assessed using a calculator provided by Defra, and new provision is calculated using the same calculator. The calculator takes account of the type of habitat being lost and being re-provided, the difficulty in re-providing that habitat, the location of any re-provision and whether that location is strategically important i.e. it is identified in the Local Nature Recovery Strategy.
- 3.4 Ideally, new provision of biodiversity occurs within a development site, although off-site provision is allowed under the rules. Where no off-site provision is available, national credits can be purchased. These are purposefully the most expensive option to encourage a BNG market of local sites to develop.
- 3.5 Some developments are exempt from BNG. These include developments of less than 25 sqm, residential extensions and self-build homes. Fully brownfield sites are also exempt, as 10% of nothing is nothing.

4 PREVIOUS WORK ON BNG

- 4.1 Anticipating the introduction of BNG and concerned that developers, especially small and medium sized building companies, may struggle to implement its requirements, a draft guidance document was prepared by colleagues working together across Essex in 2023.
- 4.2 This guidance document was presented to the [Environment Policy and Scrutiny Committee on 20 November 2023](#), and it was subsequently agreed by [Cabinet on 20 December 2023](#) that consultation be undertaken on the draft guidance to enable it to be adopted as a Supplementary Planning Document.
- 4.3 Consultation was undertaken between 8 January and 5 February 2024. However, during that consultation and since that time, further guidance on the implementation of BNG has been published by Defra and Natural England, and there remains a need to integrate that information into the guidance.
- 4.4 A pattern has also emerged across the country in respect of small-scale development proposals. It has been seen that an increasing number smaller scale planning applications are being submitted with self-build exemptions to avoid the need for BNG. Consequently, nationwide since February 2024, only 0.5% of planning applications have been subject to BNG. In the Borough, the Council has received just five BNG liable applications where no exemption has been applied for.

5 BNG EVIDENCE WORK

- 5.1 Since the Council consulted on the draft BNG Guidance, additional evidence work has also been undertaken in relation to BNG. As reported to this Committee on [17 September 2024](#), Essex County Council has prepared a draft Local Nature Recovery Strategy (LNRS) which identifies Areas of Particular Importance for Biodiversity (APIBs), and opportunity areas where new habitats could be created to enable nature recovery.
- 5.2 The mapping of APIBs and opportunity areas help to identify where BNG is best located to contribute to nature recovery. This work is therefore evidence of where we should look to secure BNG in the Borough.
- 5.3 Separately, for the purpose of the Castle Point Plan, the Council has prepared an Open Space Assessment which identifies where there are strategic opportunities within our open spaces to secure BNG. It has also undertaken a Local Wildlife Site Review which identifies priority habitats where nature conservation should be encouraged at a local level. The individual site assessments, identify how each of the local wildlife sites could be improved through a BNG approach.
- 5.4 Finally, the Council has recently commissioned viability evidence for the Castle Point Plan which will conclude towards the end of 2024. This will amongst other things test policy options around the level of BNG that should be secured alongside other infrastructure contributions and policy

requirements. This will enable the Castle Point Plan, which is due to be published as a draft in early 2025, to set a requirement for BNG, which may exceed the minimum requirement of 10% for some or all sites.

6 NEXT STEPS

- 6.1 Given that preparing guidance for developers alone is unlikely to secure the effectively delivery of BNG in the Borough or support the delivery of the LNRS locally given the focus on urban development and the use of self-build exemptions, it is proposed that work on BNG is refocused.
- 6.2 There is evidence that there is scope in the Borough to secure biodiversity enhancements and be a net contributor of biodiversity at an Essex wide and national level. It is therefore suggested that a broader piece of work on BNG which covers the creation of off-site opportunities in the Borough, as well as matters related to developer compliance is therefore appropriate.
- 6.3 In taking such an approach, the Council would be complying with the separate requirement of the Environment Act to prepare a Biodiversity Report, which sets out the policies and actions it plans to take to comply with the general biodiversity duty established through the Natural Environment and Rural Communities Act.
- 6.4 Due to the need for Council officers to focus on delivering the Castle Point Plan to timetable, and the need to ensure alignment with the emerging Plan itself, it is envisaged that a report on this matter will be brought to this Committee in Spring 2025 for consideration.

7 OPTIONS

- 7.1 Option 1: **Do nothing**. The Council could choose to not do anything to enable developers to deliver BNG, or to positively work towards BNG delivery. This is a low cost option in the short term, but would come with risks in terms dealing with planning applications and in terms of further decline in the natural environment. There are also risks in relation to compliance with the general biodiversity duty.
- 7.2 Option 2: **Complete the guidance document for developers**. Whilst this can form part of any future work on BNG, it is unlikely whilst self-build exemptions exist to be effective in supporting the delivery of good quality BNG outcomes from the small developers to which it was targeted. This work alone is not therefore likely to be effective in securing BNG.
- 7.3 Option 3: **Prepare a Biodiversity Report which incorporates a range of BNG measures**. This would effectively address the statutory biodiversity duty and would also help to position the Council as a net contributor of biodiversity.
- 7.4 Preferred Option **Prepare a Biodiversity Report which incorporates a range of BNG measures**.

8 RISK IMPLICATIONS

- 8.1 There are potential risks to the Councils' reputation if it fails to comply with its statutory biodiversity duty. Other risks associated with the production of a Biodiversity Report are minimal because the bulk of the work is required for the preparation of the Castle Point Plan in any event, provided that the Committee accepts that preparation of the Plan must take precedence at this point in time.
- 8.2 The actions recommended in the Biodiversity Report itself will potentially have risk implications which will be reported once that document is drafted.

9 ENVIRONMENTAL IMPLICATIONS

- 9.1 Preparing a Biodiversity Report will secure compliance with the Environment Act and put the Council in a position to make a positive contribution to biodiversity net gain and overall nature recovery.

10 FINANCIAL IMPLICATIONS

- 10.1 New burdens funding has been provided by Government for BNG, which can be used to secure the necessary ecological expertise needed to support the development of the Biodiversity Report and any associated action plan.
- 10.2 The actions recommended in the Biodiversity Report itself will potentially have cost implications which will be reported once that document is drafted.

11 LEGAL IMPLICATIONS

- 11.1 The suggested approach secures compliance with relevant legislation in the Environment Act 2021 and the Natural Environment and Rural Communities Act 2006.

12 HUMAN RESOURCES IMPLICATIONS

- 12.1 Ecological expertise will be secured for this work via a Service Level Agreement with Essex Place Services.

13 EQUALITY AND DIVERSITY IMPLICATIONS

- 13.1 An equality impact assessment has not been completed as no decision is being made.