

REPORT TO:	ENVIRONMENTAL AND DEVELOPMENT SERVICES COMMITTEE	AGENDA ITEM: 9
DATE OF MEETING:	09 NOVEMBER 2023	CATEGORY: DELEGATED
REPORT FROM:	STRATEGIC DIRECTOR (SERVICE DELIVERY)	OPEN
MEMBERS' CONTACT POINT:	BRANDON STACEY (07810139579) brandon.stacey@southderbyshire.gov.uk	DOC:
SUBJECT:	PREPARING FOR THE BIODIVERSITY DUTY	REF:
WARD(S) AFFECTED:	ALL	TERMS OF REFERENCE:

1.0 Recommendations

That the contents of this report are noted by Members and that approval is given for the information contained within this report and Appendix 1 to be compiled into a Biodiversity Duty document for publication by 1 January 2024.

2.0 Purpose of Report

2.1 This report advises Members about the Biodiversity Duty, and outlines activities which the District Council has, and is currently undertaking that contributes to meeting the new requirement. Additionally, it recommends that a plan be prepared which sets out further actions the Council should undertake to meet the requirements of the newly enhanced biodiversity duty, and in particular those relating to Biodiversity Net Gain as specified by the Environment Act 2021.

3.0 Executive Summary

- 3.1 The Council is required to publish a Biodiversity Duty by 1 January 2024. The Duty should outline how the Council intends to conserve and enhance biodiversity within the District over the next five years.
- 3.2 The most important aspect of meeting the Biodiversity Duty was introduced by the Environment Act 2021. The Act introduced a mandatory requirement for development to achieve 10% biodiversity net gain (other than exemptions and small sites). This requirement was expected to be introduced in November 2023, however due to a lack of secondary legislation and guidance from the government, this has recently been delayed until January 2024.
- 3.3 Biodiversity Net Gain is an approach to development and land management that aims to leave the natural environment in a measurably better state than it was beforehand. This will contribute towards the District's Biodiversity Duty as development is delivered through the Local Plan process and because of mandatory drivers for improvement in biodiversity with every major development.

3.4 Duties relating to biodiversity outside designated sites are primarily within the Natural Environment and Rural Communities Act (2006). The delivery of Biodiversity Net Gain will facilitate adherence to wildlife legislation and policy. Specifically, Biodiversity Net Gain will contribute to the delivery of:

- The Conservation of Habitats and Species Regulations (2017, as amended)
- Wildlife and Countryside Act (1981, as amended) (WCA)
- The Natural Environment and Rural Communities (NERC) Act (2006)
- National Planning Policy Framework (NPPF) (2021)
- Biodiversity 2020: A strategy for England's wildlife and ecosystem services
- A Green Future: Our 25 Year Plan (25 YEP) to Improve the Environment (Defra, January 2018)
- Climate and Environment Action Plan 2021-30
- Corporate Plan for 2020-24
- Additional strategies, plans and planning documents specific to South Derbyshire and its cooperative local planning authorities.

3.5 There is a new requirement for Nature Recovery Network mapping to reverse habitat fragmentation and create an ecological network in which habitats and species are protected. The Nature Recovery Network map should identify where habitat creation or enhancement would be best placed to improve connectivity and strategic networks.

4.0 Detail

Complying with the Biodiversity Duty

- 4.1 The Natural Environment and Rural Communities Act 2006, (NERC Act 2006) introduced in Section 40 a duty on public authorities to conserve biodiversity, which was defined in relation to a living organism or type of habitat, restoring or enhancing a population or habitat.
- 4.2 The Environment Act, brought into force in November 2021, introduced a wide range of responsibilities in relation to Biodiversity some of which will be directed by the County Council to implement but others of which fall to the District Council.
- 4.3 Section 102 amends the NERC Act 2006 in creating a Biodiversity Duty to 'conserve and enhance' in relation to council functions. It also sets out that a local authority must have regard to any relevant local nature recovery strategy (LNRS) and any relevant species conservation strategy. The production of the LNRS is specifically a County Council function (in consultation with the District Council), this is currently being prepared but is currently at early stages.
- 4.4 Section 103 of the Act requires local authorities to publish biodiversity reports which summarise action taken to comply with the wider Duty. These reports should include what has been done in relation to biodiversity, information about biodiversity, and a summary of plans for carrying out the functions over a five-year period.

Biodiversity Net Gain for planning applications

- 4.5 Mandatory 10% Biodiversity Net Gain will need to be achieved on planning applications using the Biodiversity Metric. The Metric serves to calculate how a development, or a change in land management, will affect the biodiversity value of a site. Such alterations include, the building of houses, planting a woodland or creating a wildflower meadow. The Metric will be able to assess the current biodiversity unit value of an area of land, demonstrate potential biodiversity net

gains or losses, measure and account for direct impacts on biodiversity and compare proposals for a site, including creating or enhancing habitat on-site or off-site. On-site refers to all land within the boundary of a site. Off-site refers to all land outside of the on-site boundary, regardless of ownership. The Metric calculates the value of 'biodiversity units' which correspond to the size, quality and location of a habitat. Planning applications will need to satisfy the Metric in the validation stage.

- 4.6 Using the Metric and a biodiversity gain plan, an overall 10% net gain must be demonstrated, alongside a habitat management plan which will articulate how the net gain will be secured for a minimum of 30 years through either planning obligations or conservation covenants. The Act sets out that development subject to mandatory BNG will be required to submit a biodiversity gain plan for planning authority approval and the planning authority required to approve it prior to commencement. This is required under the '*General condition of planning permission*' added as Schedule 7A to the Town and Country Planning Act 1990 (under Schedule 14 of the Environment Act). A National Register of net gain delivery sites will be maintained with a statutory responsibility for local authorities to provide relevant information. The Act sets out that the biodiversity gain plan should cover:
- 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;
 - Any statutory biodiversity credits purchased; plus
 - Any further requirements as set out in secondary legislation.
- 4.7 The full biodiversity gain plan will be submitted either with the planning application or after the permission is granted, but before development has commenced. Defra are producing a standardised template for the biodiversity gain plan.
- 4.8 Under the mitigation hierarchy, the preference is for on-site habitat creation or enhancement. Should this not be considered achievable, off-site habitat creation or enhancement may be delivered using land holdings or habitat banks. As a last resort, statutory credits may be purchased if on and off-site provision are not pursued. Statutory credits can be purchased at a specified price and can contribute towards landscape-scale strategic habitat creation using nature-based solutions.
- 4.9 The Environment Act makes provision for the Secretary of State to set up a system of statutory biodiversity credits that will be invested in habitat creation. The biodiversity credits scheme allows the UK government to sell biodiversity credits to developers if the required biodiversity net gains cannot be achieved on-site or through the off-site market. The price of biodiversity credits will be set higher than prices for equivalent biodiversity gain on the market and Defra published indicative credit prices in July 2023. Natural England will sell statutory biodiversity credits on behalf of the Secretary of State. An accessible and user-friendly digital sales platform is currently being developed and tested.

Activities the Council has been undertaking to meet the Biodiversity Duty

- 4.11 District Council officers have been in discussion with both Derbyshire Wildlife Trust and Derbyshire County Council as to which is best able to help with this requirement countywide, given it is beyond the capacity of a single district or borough alone.

4.12 In recent years, the Council has approved and/or participated in activities relating to the following:

- **Swadlincote Woodlands Improvements.** Swadlincote Woodlands has now achieved Local Nature Reserve status. Capital Grant works across the Woodlands were undertaken in 2023, led by the Biodiversity Officer and supported by the Park Life Officer. 12 volunteer work party sessions have been undertaken facilitated by the Park Life Officer and Biodiversity Officer, to continue the delivery of the Biodiversity Management Plan for the Woodlands. The Park Life Officer and Environmental Education Project ran a grant funded Forest School and two wildlife identification events for local communities within the Woodlands. The events were well-attended. It is the intention to expand the range of events in 2024.
- **Other Site Improvements for Biodiversity.** A wildflower meadow has been sown within Church Gresley cemetery, led by the Biodiversity Office. Autumn hay meadow management continued in 2022 on wildlife meadows across various Council sites led by the Biodiversity Officer, totalling over 6ha. The hay meadow management removes the grass cuttings from site, preventing nutrient enrichment and promoting wildflower development. 1ha of unmanaged wildlife meadow was brought into hay meadow management in 2022. A 'No Mow' grass trial was implemented during April to mid-July 2022 at over 30 Council public open spaces. The trial was successful with minimal complaints, largely due to a strategic approach to choosing sites and effective working relationships between Parks & Green Spaces and Operational Services. 3000 native trees and shrubs have been planted in Cadley Park, organised by Parks & Green Spaces & the Environment Education Project, funded by East Midlands Airport.
- **Woodville By-Pass Biodiversity Net Gain Project.** As part of the Woodville by-pass, the Council offered three of its sites for biodiversity improvements to offset the ecological impact of the scheme. This was agreed by Committee and a monetary contribution of £147,000 was paid to the Council by County to implement the improvements and manage and monitor the sites for a period of 32 years. The work to implement these improvements has now been undertaken, led by the Biodiversity Officer:
 - Swadlincote Woodlands (1.2ha) – glade creation, woodland wildflower/bulb planting and tree/shrub planting.
 - Sandholes Park, Midway (2ha) – the first phase of wildflower seeding has been completed (approx. 1ha) with the final phase to be anticipated to be completed in autumn 2023. A phased approach was undertaken to avoid ground disturbance across the whole of the park area, so this would be more acceptable to park users.
 - Old Hall Meadow, George Street, Church Gresley (1.3ha) – similarly, the first phase of wildflower seeding has been completed (approx. 0.7ha).
- **Biodiversity Net Gain.** Biodiversity Net Gain (BNG) is a legal provision of the Environment Act which requires developers to attain a measured uplift of biodiversity improvements (10%) either within a development site, off-site or both. To assist the Council in preparing for BNG, the Biodiversity Officer and planning officers have:
 - Attended over 20 BNG workshops/seminars provided by the Planning Advisory Service/DEFRA/Natural England/Derbyshire County Council
 - Lead the Council's response to the DEFRA BNG Consultation in the spring
 - Facilitated regular liaison and update meetings with Council Officer's in Planning Policy, as well as the Derbyshire County Ecologist

- Wrote to 30 organisations who may have an interest in setting up and managing biodiversity offsetting land, to understand future supply within South Derbyshire and create a database of potential offsetting providers.
 - Identified potential Council land which could be used for biodiversity offsetting and updated the Biodiversity Working Group on key findings.
- **Biodiversity Recording.** Over 25 of the Council's 'Core Nature Sites' have been subject to detailed habitat surveys utilising a national recording system (UKHAB). It is intended that the habitat inventory and associated data will be uploaded to the Council's GIS system for greater Officer and manager use. This will provide the Council with a baseline to eventually create an inventory of habitats across its landholding to:
 - quantify the range and type of habitats present.
 - identify opportunities for biodiversity improvement particularly through developer contributions.
 - produce an Ecosystems and Natural Capital study to determine the environmental value of its landholding across a range of quantifiable measures.
- **Local Green Spaces Plan.** Adopted September 2020, this Plan designates areas of land that are of value to the local community, for protection from most forms of development. The Plan will be used to guide development, together with the rest of the development plan, through the determination of planning applications in the District. Local Green Spaces can also be designated through Neighbourhood Development Plans and the relevant local green space policies in the development plan also apply to spaces designated in this way.
- **The National Forest.** Much of the District lies within the boundaries of the National Forest. The National Forest Strategy (2014-24), alongside Local Plan policies such as INF8, have ensured that the National Forest continues to support opportunities for biodiversity enhancement through mandatory tree planting requirements and environmental protections.
- **Procedure Documents.** A requirement of the Council's ISO 14001 Environmental Management System, the document sets out the Council's overarching legal and policy duties in respect of biodiversity and its directly linked to the APN and Work Programme. An Invasive Plant Species Procedure document is at a final stage of production by the Biodiversity Officer with support from Environmental Services. The purpose of the document is to create a framework through which invasive plants reported to or identified by the Council can be investigated and if necessary remediated, following an agreed Council-wide process and format.
- **Planning.** The Biodiversity Officer worked with Planning Policy Officers to identify and incorporate several new biodiversity questions into the Issues and Options document to inform the new Local Plan, such as mandatory swift boxes in new houses and hedgehog highways in gardens. The Biodiversity Officer has advised over 60 planning applications since 2022 (biodiversity and trees) and supported Planning Policy with their viability assessments. The Local Plans Part 1 and 2 were updated with various new policies addressing biodiversity-related issues.
- **Other.** The Biodiversity Officer has provided specific advice, guidance and face-face meetings with four Parish Council's, Melbourne Sports Partnership and Rosliston Forestry Centre to improve biodiversity on Council leased/owned land.

Current & Future Activities

Derbyshire Wildlife Trust

- 4.13 The District Council has entered into a Service Level Agreement with the Derbyshire Wildlife Trust (DWT). This secures advice on planning applications affecting sites important for nature conservation and provides advice to landowners of sites on the Derbyshire Wildlife Sites Register to help them improve biodiversity. As part of the SLA, the Wildlife Trust also undertakes a review of sites to determine the extent to which they are appropriate for inclusion on the Derbyshire Wildlife Sites Register. The SLA may be updated to cover additional Biodiversity Net Gain duties from 2024.

The Local Plan

- 4.14 The Local Plan Part 2 was updated and adopted in November 2017 with a suite of new policies including a set covering Biodiversity. Policy BNE3 of the Local Plan Part 1 makes it clear that in bringing forward development, the District Council will seek to protect, manage and where possible enhance biodiversity across the plan area. It also seeks to encourage development to include measures that contribute positively to the biodiversity of the plan area to ensure that there is a net overall gain to biodiversity. The emerging Local Plan will be produced in alignment with the new legal requirements for Biodiversity Net Gain and implement (where practicable) the biodiversity-related opportunities discussed in the Issues and Options consultation.

The South Derbyshire Action Plan for Nature (APN) and Work Programme

- 4.15 The APN¹ contains provisions to implement local nature recovery was produced by Derbyshire Wildlife Trust and defines a baseline for biodiversity within South Derbyshire and the opportunities that are available to the Council to deliver strategic nature recovery. The APN provided an evidence base for the Council's Biodiversity Work Group to produce a Work Programme to begin the progress in achieving this aim. A Biodiversity Officer was appointed by the Council at the start of February 2022 to deliver the Work Programme. Whilst the original Work Programme has provided initial direction 2022, the 2023 Work Programme has been principally revised to define measurable and quantifiable targets to focus the delivery of nature recovery within South Derbyshire. This approach outlined a clear a direction of travel for Officers and managers in 2023 and also provided a method under which progress of the 2023 Work Programme can be made accountable to the Council.

Biodiversity Working Group

- 4.16 The Biodiversity Officer and Planning Officers have contributed towards numerous Biodiversity Working Group meetings and provided presentations to Officers and Managers principally on the new Environment Act and the challenges and opportunities presented to the Council, as well as progress on the delivery of the Work Programme. The Working Group will continue to meet for the foreseeable future.

Local Nature Recovery Strategy

¹ [Action Plan for Nature](#)

- 4.17 The District Council will work in partnership with the County Council (and other Derbyshire Authorities) to develop the Local Nature Recovery Strategy² which will provide a strategic overview of the habitats throughout the County.

Future Requirements

- 4.18 The Environment Act 2021 introduced a wide range of responsibilities in relation to Biodiversity some of which will fall directly to the District Council to implement, with others falling directly to the County Council (the Local Nature Recovery Strategy is a County Council duty).
- 4.19 Section 102 amends the NERC Act 2006 by making it a Biodiversity Duty for a public authority to conserve and enhance biodiversity in relation to its functions. It also sets out that a local authority it must have regard to any relevant local nature recovery strategy and any relevant species conservation strategy. Furthermore, it indicates that the Secretary of State will issue guidance to local planning authorities on how to comply with their duty. Such guidance is due before January 2024.
- 4.20 Section 103 states that local authorities will be required to publish biodiversity reports, which summarise the action taken to comply with the duty, and a summary of the authorities plans for complying with the duties over a period of five years. Local planning authorities are to include what it has done in relation to biodiversity, information about biodiversity, and a summarise its plans for carrying out the functions over a five-year period.
- 4.21 Once the 10% Biodiversity Net Gain requirement has been implemented and secondary legislation and guidance has been published by the government a future report will be brought to this committee to identify activities that the District Council may wish to implement to assist in meeting the Biodiversity Duty.

5.0 Financial Implications

- 5.1 None directly arising from this report. The costs of delivering the 'current activities' set out in this report can be met from existing budgets.
- 5.2 The following ring-fenced sums have been received from the Government to assist with the Biodiversity Net Gain duty (notification received on 1 March 2023):
- 2021/22 £10,040
 - 2022/23 £26,807
 - 2023/24 £15,638
- 5.3 Ongoing costs however are unfunded, and the principle that developers should pay is generally accepted.
- 5.4 Any additional future activities that support the achievement of the Biodiversity Duty will need to be assessed to ensure that they are capable of being resourced.
- 5.5 The financial risks associated with the recommendations of this report are assessed as low at present.

² [Local nature recovery - Derbyshire County Council](#)

6.0 Corporate Implications

Employment Implications

6.1 None directly arising from this report.

Legal Implications

6.2 None directly arising from this report. The legal requirements of Biodiversity Net Gain will be mandatory as of January 2024. Section 102 and Section 103 of the Environment Act 2021, which were brought into effect on 1st January 2023 require that in carrying out its functions that the District Council must consider how it will conserve and enhance biodiversity. The legislation also requires that the District Council must consider what action the authority can properly take, consistently with the proper exercise of its functions, to further the general biodiversity objective, and that it reports what actions it has taken to comply with its duties.

Corporate Plan Implications

6.3 Achieving enhanced Biodiversity Net Gain has the potential to assist the Council achieve better environmental outcomes from development.

Risk Impact

6.4 None directly arising from this report.

7.0 Community Implications

Consultation

7.1 None required at this stage.

Equality and Diversity Impact

7.2 None directly arising from this report. The development of any new activities to meet this duty will need to have the Equality implications identified as part of their development.

Social Value Impact

7.3 None directly arising from this report.

Environmental Sustainability

7.4 Nature-based solutions are a significant part of the response to limiting climate Change and addressing the ecological emergency as declared by the Council on 14 September 2023. Conserved or restored habitats offer the potential to both reduce and remove emissions by enhancing the ability of ecosystems to sequester carbon dioxide, or reverse the decline of an ecosystem so that it no longer emits harmful greenhouse gas emissions and once more becomes a 'net sink' of carbon. Resilient ecosystems can also reduce the impacts of a changing climate, such as flooding and storm surges.

8.0 Conclusions

8.1 That the contents of this report are noted by Members and that approval is given for the information contained within this report and the actions and items in Appendix 1 are agreed to contribute towards a Biodiversity Duty document. This report will be published by 1 January 2024.

9.0 Background Papers

- The Environment Act 2021
- Natural Environment and Rural Communities Act (NERC 2006)
- Biodiversity Net Gain DEFRA Consultation 2022
- National Planning Policy Framework July 2021
- National Planning Practice Guide
- South Derbyshire Local Plan Part 1 and Part 2

List of Appendices

Appendix 1: Preliminary list of District Council activities linked to the Biodiversity Duty