

Resourcing for Impacts of the Environment Act and Biodiversity Net Gain (BNG)

Report of the Planning Portfolio Holder

Recommended:

That the budget requirement, as set out in section 8 of the report, be approved.

SUMMARY:

- The Environment Act imposes new requirements on the Council in terms of securing the delivery of Biodiversity Net Gain. Developments meeting certain criteria will need to achieve a mandatory 10% gain in biodiversity which will have significant impact on planning decision making. This will apply to certain types of new development requiring planning permission from the Council from November 2023. This obligation will also have wider corporate implications for the Council as a landowner, developer and manager of open space.
- In order to address these new duties, an additional full time Ecologist post is recommended to be based within Planning and Building service. This will increase the Council's capacity and resilience in this specialist area to properly address the additional workload resulting from the introduction of the Biodiversity Net Gain (BNG) requirements of the Environment Act.

1 Introduction

- 1.1 This report recommends funding for additional resource needed by the Council to accommodate the increased workload resulting from the introduction of BNG requirements under the provisions of the Environment Act 2021.

2 Background

- 2.1 The Environment Act was passed through parliament in November 2021 and makes provision for targets, plans and policies for improving the natural environment. There will be a number of new statutory requirements which will affect Local Authorities, stipulated within this Act, and to be implemented by further secondary legislation. This includes a new requirement for certain forms of development to achieve measurable gains (minimum 10%) in biodiversity in order to deliver BNG.
- 2.2 To assess the BNG required by new development, Natural England have produced a Biodiversity metric, which allows the relative gain/loss in biodiversity from a development to be calculated. This gives a value of the habitats on site before and after a proposed development, and informs the required measures to achieve a net gain in biodiversity. Developments need to

achieve a minimum 10% uplift per habitat type affected by the proposed development e.g. woodland and grassland. A 10% net gain also needs to be achieved for hedgerow and river habitats, which are calculated separately within the metric.

- 2.3 The mandatory 10% uplift can be achieved on or off-site but on site gains must be maximised and prioritised as far as possible.
- 2.4 As the local planning authority (LPA), the Council has to assess applications for development and ensure they adhere to the requirements of the Environment Act as well as other statutory requirements and planning policy. The requirements under the Environment Act do not replace/override pre-existing legislation and protection afforded to protected sites, habitats and species. BNG is a separate, additional requirement, which must be considered in conjunction with existing ecological considerations.
- 2.5 BNG requirements will also apply to other aspects of Council work, such as major projects, including development plans for town centre regeneration in Romsey and Andover, and achieving positive environmental outcomes across other service areas involved in land/environmental management.
- 2.6 The Council will also have a responsibility to monitor the on-going delivery of BNG (the requirement is a minimum of 30 years) and report on progress within the Borough, as well as informing the Local Nature Recovery Strategies (LNRS). These are broad strategies to inform where BNG and nature recovery should be focussed. This will help guide developers and LPAs in terms of preferred locations for biodiversity enhancements. It is anticipated that this will be led by the County Council. However, this will require input and ongoing monitoring from all LPAs within the County so will have an effect upon the Council.
- 2.7 Overall, therefore, the requirements of the Environment Act will have a direct and significant impact on the Council, primarily in relation to Planning & Building and Planning Policy, but will also have a significant affect upon a range of other services including Community and Leisure, Property & Asset Management, Legal, and Environmental Services. Without enabling sufficient resource to cater for the additional workload, the Council's planning performance could be adversely affected. It will likely impact upon the continued delivery of new housing (housing land supply) and other development, cause delays in planning decision making, lead to less robust decisions and result in reputational damage as well as missed opportunities to strengthen biodiversity within the Borough.
- 2.8 The requirement for BNG is further likely to affect procurement in relation to the demand for the provision of mitigation land, which is already an issue because of other statutory obligations relating to new development and the environment, such as nitrate neutrality and provision of Suitable Alternative Natural Green Space (SANGs) which deal with increased recreational pressure on the New Forest and Solent Special Protection Areas.

- 2.9 However, as well as providing a challenge and, by extension, new risks for the Council, which need to be managed, there are also likely to be opportunities whereby safeguarding land for BNG has benefits for the Borough's residents such as improved access to green space. It is anticipated therefore that successful and robust BNG delivery will have wider benefits not only to biodiversity within the Borough, but also the welfare and wellbeing of our residents, as well as having a positive contribution towards other Council goals (e.g. provision of green infrastructure). However adequate resourcing will be required to deliver the full benefit of this opportunity and successfully meet our statutory requirements.
- 2.10 The Council could also look at other options which could support biodiversity enhancements across the Borough. These might include procuring additional land, and improving land it already owns, which may be utilised for 'off site' BNG credits to support development proposals in a similar way to nitrate neutrality solutions. This would create other work streams and potential income. However there are complexities in stacking multiple benefits on sites (i.e. nitrates, SANG and BNG), and the principles which govern the application of BNG will still need to be adhered to.
- 2.11 Our existing Ecologist post (1 FTE) is already fully committed to meet the current requirements of Planning (Development Management), Planning Policy and supporting the work of other services including Communities and Leisure. There is therefore no capacity to absorb the unavoidable additional demands/work that will result directly from the new requirements of BNG which are significant.
- 2.12 The need for local authorities to identify extra resource has been highlighted in an ADEPT (Association of Directors of Environment, Economy, Planning and Transport) ALGE (Association of Local Government Ecologists) & DEFRA report (June 2022 – link in Background papers). The report says that there will be significant implications for how both capacity and capability can be developed within the planning system to accommodate BNG. This highlights the need for the provision of high quality, consistent training to be made available to relevant LPA staff.
- 2.13 Many other local authorities in Hampshire are better placed to be able to meet the additional workload requirements of BNG, having had an established in house Ecology resource for a much longer period than Test Valley. Some authorities already have greater resource as they employ 2 or more qualified ecologists, or rely on SLA agreements within Hampshire County Council. Other larger rural authorities, with similar area and population to Test Valley, already have more than 1 FTE Ecologist (Basingstoke & Deane Borough Council and Winchester City Council) and it is possible that they may consider increasing capacity subject to identification of additional resourcing.
- 2.14 In order to assess the likely workload implications of BNG, officers have considered how many applications may be subject to this requirement. This is anticipated to affect approximately 450 applications per year, based upon our current understanding of how BNG requirements will operate, with a further

1100 likely to be subject to local requirements (still achieve enhancement but the mandatory 10% would not apply). This calculation is based on an average number of applications, over the last 5 years, for which mandatory BNG is likely to apply.

- 2.15 Given the complexity of the metric calculation used in these applications, and the additional information and reports which will require review, this will be a significant additional workload pressure. This activity will need to be combined with the other work streams anticipated to successfully deliver BNG including; advisory role to other services, possible procurement of land, assessing requirements under the next local plan, input to LNRs, provision of training, and input into Council's regeneration projects. Furthermore specialist advice will be needed to support additional consultations regarding planning conditions, long term management plans (min. 30 years) and legal agreements to secure BNG. Mitigation land will need to be monitored too. Collectively therefore this extra work has been assessed and equates to the provision of at least one additional Ecologist with the same level of expertise and experience as the existing post.

3 Corporate Objectives and Priorities

- 3.1 BNG is required as it is within the statutory provisions of the Environment Act 2021.
- 3.2 In the current Corporate Plan (2019-2023) the public feedback was that *"Residents are keen to take part in more leisure activities across the Borough making the most of Test Valley's green spaces."* And that looking ahead it was recognised that *"Preserving the natural assets of Test Valley for future generations"* was a priority also.
- 3.3 Delivering corporate objectives/projects, such as the regeneration envisaged by the Masterplans for Romsey and Andover, will need to provide BNG in accordance with the new statutory requirements. Early consideration of how to address this key issue will be needed to inform policies and plans as they emerge and so it is important to the success of these projects that the council has suitable specialist/technical resources in place.

4 Consultations/Communications

- 4.1 The report considers an operational resourcing matter, in response to additional workload resulting from new statutory requirements, and as such no external consultation or communication was necessary in this case. Any consultation regarding changes to the organisational structure will be undertaken in accordance with Council policy.

5 Options

- 5.1 Option 1 – Do not approve additional resource to meet BNG requirements.
- 5.2 Option 2 – Approve additional resource (new Ecologist Post 1 FTE at grade 9) to address BNG requirements (recommended).

- 5.3 Option 3 – Consider alternative ways to support delivery of BNG to meet the Council’s statutory requirements.

6 Option Appraisal

- 6.1 **Option 1** - With no additional resource in place there is a substantial risk that the council will not be able to satisfactorily fulfil its new statutory functions under the Environment Act because it will not have sufficient capacity to accommodate the additional workload based upon the current level of staffing in this specialist area. This option is therefore not recommended. As set out at 2.7 above this could potentially adversely affect planning performance, housing delivery and robustness of decision making leading to a range of associated problems and reputational harm to the Council.

Option 2 – To fulfil its statutory duty going forward, create more team resilience, and meet the aspirations of the current Corporate Plan, this additional resourcing (1 FTE Ecologist) is the recommended option. Providing an additional Ecologist, based in the Planning and Building service, will increase capacity and resilience in the specialist area. This will enable the Council to accommodate the additional workload resulting from the requirements BNG in terms of assessing proposals for new development, and its need to show how a 10% improvement in biodiversity has been calculated and will be delivered for a minimum period of 30 years, policy development, including the Council’s new Local Plan, support for major regeneration projects as well as other the activities of services including Community and Leisure and Environmental Services.

- 6.2 **Option 3** – As per para 2.11, our current Ecologist (1 FTE) is at capacity. There is only one post with the expertise to deal with BNG and as such it cannot be covered in house by other officers. It might be possible to achieve more capacity for BNG by using external resources. For example, procuring the services provided by consultants. However, this is likely to be a more costly option than the 1 FTE post in-house and offer less flexibility and certainly of on-going delivery for the Council over a longer period of time (BNG is required to be provided for at least 30 years). This option is not therefore recommended.

7 Risk Management

- 7.1 An evaluation of the risks relating to this decision indicate that the controls in place mean that no significant risks have been identified at this time. The ability to discharge our BNG responsibilities with this additional resource will be closely monitored. If further resourcing needs are identified they will be reported at the appropriate time. Risks associated with the introduction generally of BNG are outlined above.

8 Resource Implications

- 8.1 The estimated cost of an Ecologist post, based on the mid-point of the grade, is £52,000. This is inclusive of all on-costs and after deduction of the vacancy management target that is applied to all salary budgets.
- 8.2 The recommendation is for a permanent post. Funding it constitutes budget growth as it will not be possible to identify compensating savings or additional income. It is not anticipated that the on-going cost of resourcing the additional requirements of BNG will be funded by Government. This additional pressure has been included in the revenue budget report for 2023/24, which is shown elsewhere on this agenda.

9 Legal Implications

- 9.1 There are no legal implications arising from the recommended option.

10 Equality Issues

- 10.1 Any future requirements would comply with the necessary equality duties and Council procedures

11 Other Issues

- 11.1 Community Safety - There are no implications for Community Safety.
- 11.2 Environmental Health Issues - There are no implications for Environmental Health and Protection.
- 11.3 Sustainability and Addressing a Changing Climate – There are positive implications in meeting our statutory duties with positive outcomes for sustainability and climate change.
- 11.4 Property Issues -- There may be implications for land ownership and management as a by-product of the new post – with a positive impact on land holdings with a climate and sustainability benefit.
- 11.5 Wards/Communities Affected – All wards and communities may be affected in the sense that planning applications across the Borough will need to achieve BNG.

12 Conclusion

- 12.1 To fulfil our new statutory duty for the delivery of our planning services and policy development, as well as broader corporate responsibilities and opportunities relating to BNG, it is recommended that the funding for an additional Ecologist be approved.

Background Papers (Local Government Act 1972 Section 100D)

[ADEPT \(Association of Directors of Environment, Economy, Planning and Transport\) ALGE \(Association of Local Government Ecologists\) & DEFRA report \(June 2022\)](#)

Confidentiality

It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.

No of Annexes:

None

File Ref:

N/A

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Report to:

Cabinet

Date:

22 February 2023