



**Council – 16<sup>th</sup> March 2023**

## **PUBLIC SECTOR BIODIVERSITY DUTY**

**Report of Director of Regeneration and Policy and Director of Regulatory Services**

### **Report Author and Contact Details**

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### **Wards Affected**

All Wards

### **Report Summary**

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

### **Recommendations**

1. That the additional requirements in relation to the new Biodiversity Duty, as set out in section 3 of the report, be noted.
2. That past and current activities in relation to biodiversity, as set out in sections 1 and 2 of the report, be noted.
3. That the initial assessment of biodiversity activity set out in the appendix be noted.
4. That a further update be presented to Members by no later than 31<sup>st</sup> December 2023 that sets out what further actions have been and will be implemented in respect of the Biodiversity Duty.

### **List of Appendices**

- Appendix 1 Initial Assessment of District Council activities linked to the Biodiversity Duty and Biodiversity Resolution

## **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
- Derbyshire Dales Local Plan 2017

## **Consideration of report by Council or other committee**

No

## **Council Approval Required**

No

## **Exempt from Press or Public**

No

## BIODIVERSITY DUTY

### 1. Background

- 1.1 The Natural Environment and Rural Communities Act 2006, (NERC Act 2006) which came into force on 30<sup>th</sup> March 2006 introduced in Section 40 a duty on public authorities to conserve biodiversity defined as in relation to a living organism or type of habitat, restoring or enhancing a population or habitat.
- 1.2 Following the introduction of this duty the County Council's Biodiversity Officer undertook an audit of the District Council's services in relation to this duty. This was completed in December 2008. The audit concluded that "Derbyshire Dales District Council takes biodiversity into consideration within the majority of its services". A copy of the audit undertaken in 2008 is attached at APPENDIX 1 for information.
- 1.3 Since then, the District Council has:
  - Continued to operate its Ranger Service, whose function is to manage High Tor, Pic Tor and Lovers' Walk for the purpose of preserving and where appropriate enhancing these sites as designated LNR.
  - Continued to operate an SLA with the Derbyshire Wildlife Trust which provides advice on planning applications and works with landowners of sites on the LWS register to improve biodiversity. The Trust also reviews sites to determine the extent to which sites are appropriate for inclusion on the LWS Register. We are likely to enhance the SLA to cover additional Biodiversity Net Gain duties from this year (see below).
  - Updated and adopted the Local Plan in 2017 with a suite of new policies including a set covering Biodiversity.
  - Instigated the Biodiversity Verge project.
  - Continued to have the Clean and Green Team manage District Council-owned sites on behalf of the District Council.
- 1.4 The Environment Act brought into force in November 2021 introduced a wide range of responsibilities in relation to Biodiversity some of which will fall directly to the County Council to implement but others of which fall to the District Council.
- 1.5 Section 102 amends the NERC Act 2006 by making it 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 (LRNS) and any relevant species conservation strategy. The LRNS is specifically a County Council function.
- 1.6 Section 103 requires local authorities to publish biodiversity reports which summarise action taken to comply with the wider duty – these 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.
- 1.7 In addition, the Environment Act introduces mandatory 'Biodiversity Net Gain' (BNG) requirements which set a minimum of 10% BNG from development sites

from November 2023. District Council officers have for some time been in discussion with both Derbyshire Wildlife Trust and Derbyshire County Council as to which is best able to help with this duty countywide (it being beyond the capacity of a single district or borough alone).

## **2. Current Activities**

### District Council Rangers

- 1.1 The District Council has continued to operate its Ranger Service, whose function is to manage High Tor, Pic Tor and Lovers' Walk for the purpose of preserving and where appropriate enhancing these sites as designated Local Nature Reserves.

### Derbyshire Wildlife Trust

- 1.2 Annually 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.

### Local Plan

- 1.3 The Local Plan was updated and adopted in December 2017 with a suite of new policies including a set covering Biodiversity. Policy PD3 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.

### Supplementary Planning Document

- 1.4 In addition, following the declaration of a Climate Emergency in May 2019, the Climate Change Working Party identified preparing and adopting a Supplementary Planning Document (SPD) on Climate Change as a priority. This was adopted by the District Council in July 2021 and includes measures such as bat and swallow boxes that will benefit biodiversity.
- 1.5 The Climate Change SPD provides guidance on the implementation of Policy PD3 in the adopted Derbyshire Dales Local Plan as well guidance on securing enhanced green infrastructure. The Climate Change SPD encourages applicants to consider green infrastructure at the earliest stages of design and to identify, appraise and agree actions for the project that will optimise the benefits of green infrastructure through liaison with key stakeholders. It advises that applicants should prioritise native planting that provides habitat for local wildlife and, where possible, create transitional habitats between woodland and grasslands to increase the diversity of microclimates and habitats for species, an important feature for climate change adaptation. Recognising the value of

blue infrastructure to biodiversity the SPD also promotes the use of natural flood management schemes and encourages the use of Sustainable Drainage Systems, as a means of enhancing biodiversity by broadening the range of habitats within a development.

#### Biodiversity Verges and Open Space project

- 1.6 In October 2020, Council supported the setting up of a Biodiversity Road Verge and Open Space Project. The purpose of this project was primarily looking at increasing the prevalence of wildflowers throughout the Derbyshire Dales as a means of mitigating pollution and increasing the benefits to pollinating insects. Community and Environment Committee<sup>1</sup> recently considered a progress report on this project and were advised that, since its inception, 38 sites throughout Derbyshire Dales had been identified and managed for wildflowers. The report also identified how this project was engaging with Derbyshire County Council, Town and Parish Councils as well as local communities. A further 10 sites are being considered for 2023- the final year of the project.

#### Tree management on District Council land

- 1.7 As part of the management of the Councils estate / tree stock, a number of methods have been developed to maximise the biodiversity benefits and wildlife value of trees that have to be removed on District Council land including the retention of tree monoliths to provide bat habitat, bird nesting features and insect habitats.
- 1.8 Trees that have had to be removed from District Council land over the last 4 years (trees are only removed when they are dead, fallen or dangerous) have been replaced with the planting of 55 trees where the locations were appropriate with a range of native and attractive species including a small orchard at Ashbourne park and the planting of slightly larger trees in key locations around the District Council. (e.g. Cedar of Lebanon trees at Gorsey Bank Recreation ground in Wirksworth, Booth Drive in Ashbourne and Ashbourne Park and Hall Leys Park; Scots pines in Matlock town centre opposite Maazi; and numerous oaks and yews across the district).

#### Tree Preservation Orders for third party land

- 1.9 The District Council has made 20 new Tree Preservation Orders, which have been confirmed since 2018 to protect high amenity trees of biodiversity value from removal.

#### Nesting boxes

- 1.10 During delivery of our local authority delivery home energy efficiency grant funded schemes, the District Council worked with installers, local experts, and Natural England so that impacts on bats and nesting birds were managed in accordance with the relevant legislation. Where appropriate residents were

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<sup>1</sup> <https://democracy.derbyshiredales.gov.uk/documents/s4199/Biodiversity%20Report%20Update.pdf>  
<https://democracy.derbyshiredales.gov.uk/documents/s4200/Biodiversity%20Report%20Appendix%2001.pdf>

offered the opportunity to have a universal nesting box installed lessening the impacts of nest site loss on rapidly declining bird populations.

- 1.11 The District Council is currently investigating the introduction of bird nesting boxes to its Town Hall site during planned window replacement. This small site specific intervention aims to increase the opportunities for nesting birds to breed in an urban setting.

#### Derwent Connections project

- 1.12 Since early 2021 the District Council has been part of the Derwent Connections project. This is a Derbyshire Wildlife Trust-organised project which seeks to make space for nature, through a rewilding approach and water by keeping more water in the landscape, improving infiltration and slowing the flow across surfaces and down slopes.
- 1.13 The District Council has landholdings in and upstream of areas at risk of flooding along the River Derwent in Matlock and Rowsley. Discussions are currently ongoing with Derbyshire Wildlife Trust about use of these sites as part of a wider Natural Flood Management scheme. This is likely to involve identifying areas for habitat creation and restoration. By undertaking this project the District Council will meet its duty to preserve and enhance by conserving and improving the biodiversity of these sites.

#### Hurst Farm woodland management

- 1.14 The District Council has been involved in creating a Woodland Management Plan for the woodland surrounding Hurst Farm, which was adopted by Council in November 2022.<sup>2</sup> This plan was produced as part of the Development Phase for the Hurst Farm Heritage Trail project, which was funded by the National Lottery Heritage Fund. As the most deprived community in the Derbyshire Dales with accompanying issues around poor health, difficult access to nature, low employment and educational attainment the, woodland plan will not only improve the health and biodiversity of the woodland, but also connect the community to the woodland and improve access to it.
- 1.15 The management and maintenance activities set out in the plan will be executed by the Hurst Farm community through the Hurst Farm Green Estate social enterprise that has been set up. After completing the development phase and securing three year delivery grant funding from the Heritage Lottery for a manager post, a ranger will work with and train a network of local volunteers, who will maintain the woodland and habitats supported by the District Council. The delivery funding received will enable the Green Estate organisation to develop its income generating business activities to become financially sustainable. Enabling them to continue to employ the ranger and support the volunteer network to continue the management of the woodland and habits into the future.

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<https://democracy.derbyshiredales.gov.uk/documents/s4036/Hurst%20Farm%20Heritage%20Trail%20Lottery%20Bid%20Approval.pdf>

- 1.16 The delivery phase of the Hurst Farm Heritage Trail project including the creation of accessible pathways, will see the planting of over 700no new trees, create 1800m2 of wildflower meadow, create a natural swale drainage system to capture run off, maintain the local grassland habitat to support the resident rare butterfly, and install bird and invertebrate habitats. As part of the project we will be creating a stronger community ownership of the woodland and skills through the running of forest school activities for children, the training of local young people and adults in the John Muir Award, woodland management and woodland crafts.
- 1.17 Members are recommended to note the past and current activities in relation to biodiversity set out in the sections above.

### **3. Future Requirements**

- 3.1 The Environment Act gained Royal Assent in November 2021 and introduced a wide range of responsibilities in relation to Biodiversity some of which will fall directly to the District Council to implement whilst others fall directly to the County Council (the Local Nature Recovery Strategy is a County Council duty).
- 3.2 Section 102 amends the NERC Act 2006 by now 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. It also indicates that the Secretary of State will issue guidance to local planning authorities on how to comply with their duty – due no later than November 2023.
- 3.3 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 – as local planning authority it should include what it has done in relation to biodiversity, information about biodiversity, and a summary of its plans for carrying out the functions over a five year period.

#### Biodiversity Net Gain

- 3.4 The Environment Act has also introduced a mandatory requirement on local planning authorities that they must achieve a minimum of 10% Biodiversity Net Gain from qualifying development sites. This aspect of the legislation is due to be brought into force in November 2023.
- 3.5 A detailed report on the implications of Biodiversity Net Gain for the Derbyshire Dales Local Plan will be presented to a future meeting on the Local Plan Working Group. However, in the meantime and for information, a summary of the key principles of Biodiversity Net Gain are set out in the following paragraphs:
- 3.6 The concept of Biodiversity Net Gain encourages developers to leave the natural environment in a 'measurably better state' than it was beforehand. Biodiversity Net Gain seeks to deliver 'measurable' improvements for biodiversity by creating or enhancing habitats in association with

development. Biodiversity net gain can be achieved on-site, off-site, or through a combination of on-site and off-site measures.

- 3.7 The [Environment Act 2021](#) requires that all planning permissions granted in England (with a few exemptions) will have to deliver at least 10% Biodiversity Net Gain (BNG) from sometime in November 2023. The Act introduces a mandatory requirement for a minimum of 10% biodiversity net gain in the planning system, to “*ensure that new developments enhance biodiversity and create new green spaces for local communities to enjoy.*” BNG will be measured using DEFRA’s biodiversity metric and habitats will need to be secured for at least 30 years. Biodiversity Net Gain means at least 10% when compared to the site’s original status, this can involve on site or off site (financial) contributions, or through Biodiversity Net Gain credits.
- 3.8 The adopted Derbyshire Dales Local Plan and the NPPF indicates support for developments which achieve a net gain in biodiversity; however at the present time this is not quantified. The introduction of the new statutory obligation therefore quantifies the minimum level of net gain required. The legislation does not limit net gain to 10%, but any variation to this requirement requires justification and also requires further assessment against development viability.
- 3.9 Discussions are on-going with the Derbyshire Wildlife Trust and Derbyshire County Council about what levels of support these organisations may be able to provide in taking this new regime through the development of new local plan policies, and the assessment of individual planning applications.

#### **4. Additional activities**

- 4.1 Members will be aware that Council on 26th January 2023 resolved to extend considerably beyond existing and planned biodiversity activities. A copy of the resolution is in the Minutes of that meeting.
- 4.2 In light of the resolution, an Officer Working Group consisting of the Director of Regeneration and Policy, Director of Regulatory Services, Policy Manager, Development Manager, Climate Change Officer, Community Development Manager, Hurst Farm Housing Estate Regeneration Manager and Hurst Farm Housing Estate Regeneration Officer have met twice to consider the most appropriate way forward.
- 4.3 For each of the elements set out in the Council Resolution an assessment is being undertaken in relation to current and potential future actions, including potential partnership arrangements and potential future resource requirements for any additional interventions. Due to the short time since the 26 January meeting, this is only a partial assessment of the District Council’s activities. A copy of the review to date is set out in the **Appendix 1** to this report.
- 4.4 It is recommended that this additional (interim) activity be noted and that a further update be brought to Members.

#### **5. Options Considered and Recommended Proposal**

5.1 A future update which identifies those activities the District Council should implement to meet the new duty will set out further options.

## **6. Consultation**

6.1 Consultation will be undertaken as part of the development of new projects as appropriate, including revisions to the policies in the emerging Derbyshire Dales Local Plan.

## **7. Timetable for Implementation**

7.1 The Biodiversity Net Gain requirements come into force in November 2023

## **8. Policy Implications**

8.1 The achievement of the enhanced Biodiversity Duty will require that the District Council give it appropriate level consideration in the revised Derbyshire Dales Local Plan.

## **9. Financial and Resource Implications**

9.1 The costs of delivering the 'current activities' set out in this report can be met from existing budgets.

9.2 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

9.3 They are currently held in reserve to assist with one-off (short-term) costs in setting up the BNG system. Ongoing costs however are unfunded, and the principle that developers should pay is generally accepted. It is considered that the 'future requirements' set out in the report in respect of Biodiversity Net Gain, including professional resources that might be procured in partnership with other authorities, can be funded in the foreseeable future.

9.4 Any additional activities that support the achievement of the Biodiversity Duty will need to be assessed to ensure that they are capable of fitting within the Medium Term Financial Plan and that consequent staffing requirements are capable of being resourced.

9.5 The financial risks associated with the recommendations of this report are assessed as low at present.

## **10. Legal Advice and Implications**

10.1 This report relates to the Biodiversity Duty

- 10.2 Section 102 and Section 103 of the Environment Act 2021 – brought into effect on 1<sup>st</sup> January 2023 require that in carrying out its functions that the District Council must consider how it will conserve and enhance biodiversity.
- 10.3 The legislation also requires that the District Council must from time to time 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.
- 10.4 The preparation of a further report by no later than 31<sup>st</sup> December will meet these requirements. Mechanisms will need to be put in place which in future years ensure that the reporting requirements of Section 103 are met.
- 10.5 There are 4 recommended decisions connected to this report, 3 are for noting and 1 is to advise a further report is expected. The legal risk connected to these decisions has been assessed as low.

## **11. Equalities Implications**

- 11.1 The Equality implications of activities set out in this report have already been identified. The development of any new activities to meet this duty will need to have the Equality implications identified as part of their development.

## **12. Climate Change Implications**

- 12.1 Nature based solutions are a significant part of the response to limiting climate change. Climate change is a significant cause of biodiversity loss and so the two crises are inescapably linked. Improving biodiversity can support efforts to reduce the effects of climate change. 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 disastrous impacts of a changing climate, such as flooding and storm surges.

### **Report Authorisation**

Approvals obtained from:-

	<b>Named Officer</b>	<b>Date</b>
Director of Community & Environmental Services, in absence of the Chief Executive	Ashley Watts	08/03/2023
Director of Resources/ S.151 Officer (or Financial Services Manager)	Karen Henriksen	08/03/2023
Monitoring Officer (or Legal Services Manager)	Kerry France	08/03/2023