



**Council – 14<sup>th</sup> December 2023**

**PUBLIC SECTOR BIODIVERSITY DUTY - UPDATE**

**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 provides a further update to Members about the Biodiversity Duty and sets out activities which the District Council has undertaken and is currently undertaking that contribute to meeting the new requirement.

**Recommendations**

1. That the specialist professional services quotation brief for the preparation of a biodiversity action plan at Appendix 1 be approved
2. That the updates on the preparation of the Local Nature Recovery Strategy be noted
3. That the updated timeframe for the delivery of Biodiversity Net Gain is noted
4. That the updates to the Initial Assessment of District Council activities linked to the Biodiversity Duty and Biodiversity Resolution at Appendix 2 are noted
5. That a delivery plan and costings are prepared for a collaborative project between the Council and the Derbyshire Swift Group to address the loss of swift nesting sites across the district and presented to the appropriate committee for consideration.

## **List of Appendices**

- Appendix 1 Specialist professional services quotation brief for the preparation of a biodiversity action plan
- Appendix 2 Update of 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**

Recommendation one has been considered and approved by the Biodiversity Subcommittee on 13 September and Community & Environment committee on 26 October 2023.

Recommendation five has been considered and approved by the Biodiversity Subcommittee on 24 October 2023.

## **Council Approval Required**

No

## **Exempt from Press or Public**

No

# BIODIVERSITY DUTY – UPDATE

## 1 Background

- 1.1 The Natural Environment and Rural Communities Act 2006, (NERC Act 2006) which came into force on 30 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 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.
- 1.3 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.
- 1.4 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.
- 1.5 In addition, the Environment Act introduces mandatory ‘Biodiversity Net Gain’ (BNG) requirements which set a minimum of 10% BNG from development sites from January 2024 (amended from November 2023).
- 1.6 At a meeting on 26 January 2023 the Council resolved to support the recovery of nature across the Derbyshire Dales.
- 1.7 A report was brought to Council on 16 March 2023 that set out activities that the District Council has undertaken and is currently undertaking that contribute to meeting the new Biodiversity Duty. It recommended that a plan be prepared which sets out further actions the District Council should undertake to meet the requirements of the newly enhanced duty.
- 1.8 It was agreed that a further update would be presented to Members no later than 31 December 2023.

## 2 Preparation of a biodiversity action plan

- 2.1 In order to meet the enhanced Biodiversity Duty local authorities are required to complete a first consideration of what action to take for biodiversity by 1 January 2024 and agree policies and objectives soon after this.
- 2.2 At a meeting of the Biodiversity Sub-committee on 19 July 2023 it was agreed that a specification be prepared for a new biodiversity ‘action plan’ which sets out further actions the District Council should undertake to meet the requirements of the newly enhanced duty for the period 2024-2027
- 2.3 The indicative timeframes for preparation of this plan are:
  - By end December – consultant partner engaged
  - January 2024 – consultant partner meets with Officer Working Group and Chair/Vice Chair of Biodiversity Sub-committee
  - April 2024 – plan presented to Council

- 2.4 At a meeting of the Biodiversity Sub-committee on 13 September 2023 Members approved the specification in **Appendix 1** and a budget to commission the plan. The supplementary budget was approved as part of the Q1 revenue budget report at Council on 28 September 2023. The details of this budget are set out in 12.4. The specification received further approval at the Community & Environment Committee of 26 October 2023.

### **3 Biodiversity Verges and Open Space projects**

- 3.1 In October 2020, Council supported the setting up of a Biodiversity Road Verge and Open Space Project. The project was proposed for three years to trial and explore different methods of increasing wildflowers throughout the Derbyshire Dales as a means of mitigating pollution and increasing the benefits to pollinating insects.
- 3.2 Community and Environment Committee considered a progress report on this project in December 2022 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 were included in 2023 - the final year of the project.
- 3.3 Elected Members approved a later request to join The Pathfinders Project in the summer of 2023. The Pathfinder Project was launched by Derbyshire County Council to specially trial a cut and collect management regime on highway verges that the Derbyshire Dales District Council manages on their behalf. This work was intertwined with that of The Biodiversity Project and saw the total amount of sites being managed for enhanced biodiversity rise to 101.
- 3.4 The Pathfinder Project has now ended, and the Clean and Green Manager is working closely with the Derbyshire Road Verge Project Officer (of Derbyshire County Council) on the raw data to evaluate the effectiveness of the project. As the evaluation is still ongoing, the Clean and Green Manager anticipates the presentation of this information to Members will be the Community & Environment Committee on 8 February 2024.
- 3.5 Nevertheless, the Clean and Green Manager recently attended the Biodiversity Sub-committee on 13 September 2023 and discussed the expectations of the upcoming report, and the following points were agreed:
- Merge the report with the Climate Change Officers report
  - Pathfinder results to be presented in the report with the option to merge any sites into the Biodiversity Project
  - The wider biodiversity action plan to incorporate public feedback, consultation and communication next April
  - Motion operation for management of grass verges for next year – keeping the wider verges tidy by keeping a band mown at the edge
  - Management proposal for a local DDDC site
  - Liaise with other Councils to see whether they are using native or non-native seed mixes
  - Work in partnership with other organisations – local community groups, schools, associations such as Derbyshire Beekeepers Association
  - Produce a ‘How to guide at home’
  - Review signage and explore larger options

- Investigate the DCC process for selecting changes for the mowing regimes next year on the back of the Pathfinder data

#### **4 Local Nature Recovery Strategy (LNRS)**

4.1 Preparation of the LNRS is a County Council duty. Each strategy will:

- Agree priorities for nature's recovery
- Map the most valuable existing areas for nature
- Map specific proposals for creating or improving habitat for nature and wider environmental goals

There will be 48 LNRSs covering the whole of England.

4.2 The benefits that the LNRS for Derbyshire is expected to provide are as follows:

- Strategically guide a locally led transformation in the way in which biodiversity is protected, restored and enhanced
- Enable funding and resources to be used more efficiently and effectively in the support of nature recovery
- Encourage all organisations and individuals interested in nature recovery to work effectively together to achieve agreed outcomes for nature
- Enable landowners and land managers to understand how their land can contribute to nature's recovery
- Offer opportunities to increase public connections to nature whilst supporting its recovery
- Support the application of the National Planning Policy Framework (NPPF) (conserving and enhancing the natural environment) in Derbyshire
- Inform the delivery of the duty on Derbyshire's local authorities to report on action taken to conserve and enhance biodiversity ("the general biodiversity objective" as set out in section 40 of the Natural Environment and Rural Communities Act 2006 (NERC Act) as revised by the Environment Act 2021)
- Maximise and quantify the value of BNG as a condition of planning permission to Derbyshire (Sections 98 to 101 Environment Act 2021)
- Tangible and significant contributions to the delivery of the Government's national "apex goal" of "thriving plants and wildlife" as set-out in the Environmental Improvement Plan (EIP) 2023

- 4.3 LNRSs will support development plans and provide closer alignment with the planning system, to enable not only better environmental outcomes, but also improve development planning in the long term. The Local Plans prepared by Local Planning Authorities must be consistent with national policy, as set out in the NPPF. LNRSs should be used by plan-makers to inform the way they address the NPPF requirement for plans to protect and enhance biodiversity.
- 4.4 The Levelling Up and Regeneration Bill (LURB) is making changes to the planning system which will lead to government updating the NPPF. These updates will include how LNRSs should be given weight in the plan-making process. In addition, the government has recently tabled an amendment to the LURB that would require all tiers of planning to 'take account of' LNRS, including specific elements of the strategies such as those areas identified as having potential to be of particular importance for biodiversity and other environmental benefits'
- 4.5 The Government has committed to publishing guidance for local planning authorities on how they should take account of LNRS and reflect them in local plans. This guidance is due to be published later in 2023. Working jointly with the new requirement for Biodiversity Net Gain, this is designed to help the planning system play a more proactive role for nature and the environment.
- 4.6 Derbyshire County Council is in the process of preparing an Information Memorandum to explain the process for preparing the LNRS over the period October 2023 to March 2025.
- 4.7 Derbyshire County Council has identified the persons and organisations it considers appropriate to involve in the preparation of the LNRS. The District Council is identified as a 'supporting authority', as defined in the Environment (Local Nature Recovery Strategies) (Procedure) Regulations 2023), in the preparation of the Local Nature Recovery Strategy for Derbyshire.
- 4.8 Derbyshire County Council will proactively seek to involve all supporting authorities in the preparation of the LNRS and will have regard to any opinions expressed by the authorities in relation to the strategy.
- 4.9 Supporting authorities have the power to object to a consultation draft of a LNRS or the responsible authority's preparation of it.
- 4.10 The management arrangements that Derbyshire County Council will use in the preparation of the LNRS is work in progress, anticipated to be completed by 31 December 2023. A draft outline governance structure has been provided but is currently subject to further work.
- 4.11 The final draft LNRS will be provided to Derbyshire County Council's neighbouring responsible authorities. At this time, Derbyshire County Council will notify them of the date on which the final LNRS will be published (this is expected to be 31 March 2025). The supporting authorities (apart from Natural England) will be asked by Derbyshire County Council to provide their formal political leadership written approval to the final LNRS Strategy for Derbyshire within 28-days of them receiving this approval request.

## 5 Biodiversity Net Gain

- 5.1 The concept of Biodiversity Net Gain (BNG) encourages developers to leave the natural environment in a 'measurably better state' than it was beforehand. BNG seeks to deliver 'measurable' improvements for biodiversity by creating or enhancing habitats in association with development.
- 5.2 The Environment Act 2021 introduces a mandatory requirement for a minimum of 10% BNG 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. BNG means at least 10% when compared to the site's original status.
- 5.3 There are 3 ways a developer can achieve 10% BNG:
  - They can enhance and restore biodiversity on-site (within the red line boundary of a development site).
  - If developers can only achieve part of their BNG on-site, they can deliver through a mixture of on-site and off-site. Developers can either make off-site biodiversity gains on their own land outside the development site or buy off-site biodiversity units on the market.
  - If developers cannot achieve on-site or off-site BNG, they must buy statutory biodiversity credits from the government. This must be a last resort. The government will use the revenue to invest in habitat creation in England.
- 5.4 On the 27 September 2023 DEFRA confirmed that the Government was delaying the introduction of the mandate to deliver 10% BNG on all sites. BNG was proposed to become part of the planning system in England in November 2023. However, DEFRA has said that under its 'updated timetable' developers will be required to deliver net gain on all sites from January 2024. It will apply to small sites from April 2024.
- 5.5 On 29 November 2023 DEFRA published further draft guidance including setting the roles and responsibilities of local planning authorities in delivering BNG.
- 5.6 Officers are currently working through this guidance to ensure that the appropriate development management processes and procedures are in place to assess, measure and secure the required BNG on planning applications submitted in line with the updated timetable.
- 5.7 The District Council has extended the existing Service Level Agreement with Derbyshire Wildlife Trust to include the assessment of eligible planning applications to ensure that assessment of BNG proposals are 'accurate, achievable and, where needed, off site measures have been identified'.
- 5.8 Officers are currently exploring the available options for monitoring and enforcement of the new BNG requirement. There is concern that the Council lacks the expertise or capacity to receive and check multiple monitoring reports from multiple sites. Site visits may be necessary to ensure that the necessary habitat management is taking place and to an appropriate standard. A further update will come back to Council as this theme of work is developed.

5.9 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. The Local Plan Sub-committee is considering such a variation as part of the wider Local Plan review.

## **6 Update to initial assessment of activities**

6.1 Members will be aware that Council on 26 January 2023 resolved to extend considerably beyond existing and planned biodiversity activities. A copy of the resolution is in the Minutes of that meeting.

6.2 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 and Hurst Farm Housing Estate Regeneration Manager continue to meet quarterly to consider the most appropriate way forward.

6.3 For each of the elements set out in the Council Resolution an assessment was undertaken in relation to current and potential future actions, including potential partnership arrangements and potential future resource requirements for any additional interventions. This was presented to Members on 16 March 2023.

6.4 An update to this assessment is set out in the **Appendix 2** to this report.

6.5 It is recommended that this additional (interim) activity be noted and that, subject to approval of recommendation one, this interim plan be superseded by the Biodiversity Action Plan.

## **7 Proposed collaborative project between the Council and the Derbyshire Swift Group**

- 7.1 The proposal seeks to develop a collaborative project between the Council and a local Swift Conservation Project. In common with several other long-distance migratory bird species breeding numbers of the Common Swift have declined by more than 65% across the UK over the past 25 years. The main factor behind the decline of swifts appears to be the ongoing loss of suitable nest sites as building repair renovation and replacement gradually results in the loss of access holes to their nest sites within the fabric of buildings.
- 7.2 The matter of provision of integral nest sites for swifts through hollow chambers fitted into the fabric of a building (swift bricks) during new development was discussed by the Biodiversity Sub-committee on 13 September 2023. The sub-committee had received representation by residents in support of making swift bricks mandatory on new development. It was agreed that this discussion would be taken up through the Local Plan Sub-committee as part of the Local Plan review.
- 7.3 This proposal focuses on creating and replacing nesting sites on our existing housing and buildings. The opportunity presented is clearly at a significant scale and less time constrained than interventions on new built development. The installation of swift boxes – phase 3 of the proposed project - is a simple and relatively inexpensive process but it is important that these preceding phases are undertaken to ensure the interventions have the most impact.
- 7.4 As part of the newly enhanced Biodiversity Duty Councils are encouraged to 'help the public understand biodiversity and why it's important to conserve and enhance it' and to 'include the public in projects to improve biodiversity'. This 'pilot' project presents an opportunity for the Council to demonstrate early action following the nature recovery motion resolved in January 2023.
- 7.5 The proposed project was discussed and received unanimous support at the Biodiversity Sub-committee on 24 October 2023.
- 7.6 The proposal is for a two-year project in the first instance. Subject to securing funding for phase one of the project – data collection and surveying would begin in Spring 2024 as the swifts return to the UK. Prior to the phase one beginning the Council would work with the Swift Conservation Project to refine the aims of the project, explore sources of funding and develop funding bids.

## **8 Options Considered and Recommended Proposal**

- 8.1 Recommendation one – An action plan could be prepared 'in house' but the Council lacks the relevant capacity and expertise to undertake this work at the present time.
- 8.2 The recommendation is that the quotation brief is approved and the Council appoints a consultant or consultants to undertake the work in accordance with the timeframes set out below.
- 8.3 Recommendation six – The proposal could be rejected but any project is unlikely to proceed at scale without the support of the Council.
- 8.4 The recommendation is that the project proposal is explored at this stage. This pilot project presents an early opportunity for the Council to engage in a partnership project while the action plan is developed.

## **9 Consultation**

9.1 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.

## **10 Timetable for Implementation**

10.1 The timetables for each of the recommendations of this report are presented in the body of the report where appropriate.

## **11 Policy Implications**

11.1 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.

## **12 Financial and Resource Implications**

12.1 The Council has been allocated additional burdens funding to enable local authorities to be prepared for the introduction of BNG. The following ring-fenced sums have been received from the Government –

- 2021/22 £10,040
- 2022/23 £26,807
- 2023/24 £26,807

Total grant funding £63,654.

12.2 From this grant funding, the Council has already incurred expenditure totalling £24,863, leaving available grant funding of £38,791.

12.3 The costs of meeting the requirements of the enhanced Biodiversity Duty are anticipated to be £58,791. This includes expenditure of £22,365 in 2023/24 via a Service Level Agreement (SLA) for services in relation to BNG from the Derbyshire Wildlife Trust. The SLA was enhanced in 2022/23 and again in 2023/24 to assist the District Council in being prepared for the implementation of BNG. The remaining £36,426 is expected to cover the costs of developing the Biodiversity Action Plan.

12.4 At the Council meeting on 28 September 2023, a supplementary revenue budget of £58,791 was approved for 2023/24. This is to be financed as follows:

- £11,984 from the grants unapplied reserve (the unspent balance of the grant for 2022/23)
- £26,807 grant receivable in 2023/24
- £20,000 from the General Reserve.

- 12.5 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.
- 12.6 The financial risks associated with the recommendations of this report are assessed as low at present.

### **13 Legal Advice and Implications**

- 13.1 This report relates to the enhanced Biodiversity Duty
- 13.2 Section 102 and Section 103 of the Environment Act 2021 – brought into effect on 1 January 2023 require that in carrying out its functions that the District Council must consider how it will conserve and enhance biodiversity.
- 13.3 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.
- 13.4 The preparation of this report before 31 December 2023 meets these requirements. Mechanisms will need to be put in place which in future years ensure that the reporting requirements of Section 103 are met
- 13.5 If decisions are taken as recommended at the beginning of this report the legal risk of challenge has been assessed as low.

### **14 Equalities Implications**

- 14.1 The development of any new activities to meet this enhanced duty will need to have the equality implications identified as part of their development.

### **15 Climate Change Implications**

- 15.1 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.

### **16 Report Authorisation**

Approvals obtained from:-

	<b>Named Officer</b>	<b>Date</b>
Chief Executive	Paul Wilson	05/12/2023
Director of Resources/ S.151 Officer (or Financial Services Manager)	Karen Henriksen	04/12/2023
Monitoring Officer	Helen Mitchell	6/12/2023