

<b>Classification:</b> Open	<b>Decision Type:</b> Key
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<b>Report to:</b>	Cabinet	<b>Date:</b> 13 December 2023
<b>Subject:</b>	The Local Authority Biodiversity Duty: First considerations requirement	
<b>Report of</b>	Cabinet Member for Environment, Climate Change and Operations	

## 1. Summary

- 1.1 The 'biodiversity duty' requires public authorities who operate in England to consider what they can do to conserve and enhance biodiversity.
- 1.2 This report outlines the Local Authority biodiversity duty and, as part of meeting that duty, presents Bury's draft Biodiversity Strategy which sets out the Council's intended approach to the conservation and enhancement of biodiversity in Bury.
- 1.3 In particular, the report sets out:
- The new legal and procedural requirements for the Council to meet our biodiversity duty;
  - The requirement to complete our first consideration of what action to take for biodiversity by the 1<sup>st</sup> January 2024;
  - The scope and content of a draft Biodiversity Strategy which forms our first consideration of the current state of biodiversity in Bury and the potential actions that we could take to conserve and enhance biodiversity in the Borough;
  - A proposal to consult residents and stakeholders on the draft Biodiversity Strategy;
  - Work taking place to identify potential Council-owned receptor sites for off-site Biodiversity Net Gain; and
  - The potential next steps.

## 2. Recommendation(s)

- 2.1 That Members:
- Note the requirement to meet a new 'biodiversity duty' introduced by the Environment Act 2021.

- Approve the publication of the draft Biodiversity Strategy for public consultation for a period of 6 weeks.
- Note that a final version of the Biodiversity Strategy will be presented to Cabinet for adoption, taking into account any responses to the consultation.
- Note the ongoing work on identifying receptor sites including Old Kays, Brandlesholme, Chesham, Hollins Mount, Springwater Park, Outwood and Philips Park.
- Note the further requirement for the Council to produce a report no later than 1 January 2026 detailing the biodiversity net gain resulting, or expected to result, from development granted planning permission in the Borough.

### **3. Reasons for recommendation(s)**

- 3.1 The Natural Environment and Rural Communities Act 2006, as amended by the Environment Act 2021, gives public bodies the duty to conserve and enhance biodiversity and requires public bodies to complete a first consideration of what action to take for Biodiversity by 1 January 2024.

### **4. Alternative options considered and rejected**

- 4.1 Not to publish a draft Biodiversity Strategy for consultation. However, the Council is still required to complete the first consideration of the Biodiversity Duty by 1 January 2024. The Council could consider how it can meet its biodiversity duty without consulting on the Strategy, or without a Strategy at all. This option has been considered and rejected as the Council, the community and its partners would be unclear on their priorities and how to deliver them.

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### **5. Background**

- 5.1 The Natural Environment and Rural Communities Act 2006, as amended by the Environment Act 2021, gives public bodies the duty to conserve and enhance biodiversity. This means that, as a public authority, Bury Council must:
- Consider what we can do to conserve and enhance biodiversity;
  - Agree objectives and policies based on consideration of the duty; and
  - Act to deliver our policies and achieve our objectives.
- 5.2 In doing so, we must consider how other strategies, such as the Greater Manchester Local Nature Recovery Strategy (LNRS) which is currently being prepared, will affect how the authority complies with the biodiversity duty.
- 5.3 The Council is obliged to complete the first consideration of what action to take for biodiversity by 1 January 2024. Policies and objectives should be agreed as soon as possible after this, and actions should be reconsidered within 5 years of the previous consideration.
- 5.4 The Environment Act also introduces the requirement for development to achieve a minimum of 10% net gain in biodiversity from January 2024. As a local authority we will need to report on what is done to achieve biodiversity net gain on and off development sites and agree areas that are appropriate for the net gain to take place. This will take the form of a Biodiversity Report, with the first reporting period ending no later than 1 January 2026.
- 5.5 The action we take for biodiversity will contribute to the achievement of national goals and targets on biodiversity that are set out in the government's Environmental Improvement Plan (January 2023) which are as follows:
- Halt the decline in species abundance and protect 30% of UK land by 2030; and
  - By 2024, increase species abundance by at least 10% from 2030, surpassing 2022 levels, restore or create at least 500,000 ha of a range of wildlife rich habitats, reduce the risk of species extinction and restore 75% of terrestrial and freshwater habitats to favourable condition.

## **6. The legal requirements**

- 6.1 The legal requirements are set out in the Natural Environment and Rural Communities Act 2006, as amended by the Environment Act 2021.
- 6.2 These require a public authority which has any functions exercisable in relation to England to consider what action the authority can properly take, consistently with the proper exercise of its functions, to further the general biodiversity objective.
- 6.3 After that consideration the authority must (unless it concludes there is no new action it can properly take):

- a) determine such policies and specific objectives as it considers appropriate for taking action to further the general biodiversity objective, and
  - b) take such action as it considers appropriate, in the light of those policies and objectives, to further that objective.
- 6.4 The first consideration must be completed by the authority within the period of one year beginning with the day on which section 102 of the Environment Act 2021 comes into force (1 January 2024). Any subsequent consideration must be completed no more than five years after the completion of the authority's previous consideration. Where determined appropriate to do so, any new or revised policies and specific objectives should be made as soon as practicable following the consideration.
- 6.5 In complying with the duty, authorities must have regard to:
- any relevant Local Nature Recovery Strategy; and
  - any relevant species conservation strategies or protected sites strategies prepared by Natural England.

## **7. The Biodiversity Strategy**

- 7.1 As a response to this new duty, a draft Biodiversity Strategy has been prepared (see Appendix A). This draft Strategy will embrace the first consideration of what the Council can do to meet its biodiversity duty.
- 7.2 The attached draft Biodiversity Strategy outlines the current state of biodiversity in the Borough and the actions we can take including:
- Managing land to improve biodiversity including enhancing protected sites, making spaces for wildlife and improving how we manage buildings;
  - Educating, advising and raising awareness;
  - Reviewing internal policies and procedures;
  - Preparing for biodiversity net gain; and
  - Reporting on biodiversity policies and actions.

### Consultation

- 7.3 It is proposed that the draft Biodiversity Strategy is published for public consultation in order to encourage awareness of biodiversity and receive feedback on what actions are the most important to the community when conserving and enhancing biodiversity - and identify any additional considerations that the Council should consider when finalising the Strategy.
- 7.4 The Council plans to undertake a 6-week consultation which is proposed to commence on Monday 8<sup>th</sup> January 2024.
- 7.5 It is proposed that the Council web site will be used as the main point of contact for the formal consultation. Feedback will be encouraged via an online questionnaire and an email address will be established to enable people to find out more information or request hard copy documents.

- 7.6 The consultation will seek to understand the priorities of the community and promote the enhancement of biodiversity as something that they can get involved in.
- 7.7 As stated above, the draft Biodiversity Strategy will satisfy the requirement for the Council to have undertaken its first consideration of what action to take for biodiversity by 1 January 2024 and, following consultation, the approved Strategy will establish new or revised policies and specific objectives that are required to be in place as soon as practicable following the first consideration.

## **8. Biodiversity Net Gain**

- 8.1 One of the main elements of the Council's biodiversity duty is delivering Biodiversity Net Gain (BNG) through new development. The Strategy describes how this will work, but it should be noted the Council also has a role as landowner because it has land that could potentially receive and benefit from BNG delivered away from a development site. If the Council doesn't offer sites, then other landowners, perhaps in other Boroughs, will.
- 8.2 Separate from the work on the Biodiversity Strategy, an assessment of the need and supply generated by future development has been undertaken to assess the potential of Council-owned sites to deliver BNG. This work has identified 7 council-owned sites which are in the process of having costed management plans prepared to identify how many 'biodiversity units' they could deliver and at what cost.
- 8.3 The 7 sites that have currently been identified as potential Net Gain receptor sites are:
- Old Kays, Tottington;
  - Brandlesholme;
  - Chesham;
  - Hollins Mount;
  - Springwater Park;
  - Outwood; and
  - Philips Park.
- 8.4 Appendix B includes a plan of the potential Council-owned receptor sites.
- 8.5 Should they prove to be feasible as receptor sites they will need to be advertised as such, in which case it is proposed that they should be advertised as potential receptor sites for external investment via the GM Biodiversity Net Gain sites directory.
- 8.6 If the programme of receptor sites proves successful, the identification of further sites could follow.

## **9. Next steps**

- 9.1 If Members approve the publication of the draft Biodiversity Strategy for consultation, the consultation would be undertaken for a period of 6 weeks. A summary of the responses would then be reported back to Cabinet, alongside post-consultation revisions and updates prior to adoption of the Strategy.
- 9.2 The Council will then use the strategy to shape future action and revise or adopt policies which are appropriate to further the biodiversity objective.
- 9.3 Reconsideration of what we can do to conserve and enhance biodiversity will be required within 5 years.
- 9.4 The authority will also publish its first Biodiversity Report for the reporting period ending before 1 January 2026 which will outline and help everyone understand how we are collectively meeting shared goals to conserve and enhance biodiversity, allow us to showcase the action we are taking to improve biodiversity in Bury, and show other authorities and the general public what they can do for nature recovery and shared good practice. This will include details of the biodiversity net gains resulting or expected to result from biodiversity gain plans we have approved. This will be updated every 5 years.

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### **Links with the Corporate Priorities:**

As part of 'Section 4 – Vision for the Borough in 2030' in the Let's Do It Strategy there is a commitment to Carbon Neutrality by 2038 and the support of green and blue infrastructure as part of Local Neighbourhoods, which is closely related to conserving and enhancing biodiversity.

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### **Equality Impact and Considerations:**

An Equality Impact Assessment has been carried out and is attached at Appendix C. It has been concluded that there will be a neutral effect on all groups of people with protected equality characteristics.

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### **Environmental Impact and Considerations:**

The items outlined in this report demonstrate how the Council is going to meet its biodiversity duty and undertake a first consideration of what the borough can do to conserve and enhance biodiversity by 1 January 2024. It is envisaged that this will have a significantly positive impact on the Council's carbon emissions and environmental impact.

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**Assessment and Mitigation of Risk:**

<b>Risk / opportunity</b>	<b>Mitigation</b>
That the requirement to complete our first consideration of what action to take for biodiversity by 1 January 2024 is not met.	By producing and publishing a draft Biodiversity Strategy we will demonstrate that we have undertaken our first consideration and therefore have met our duty.
That the community is not engaged in the delivery of the actions required to further the biodiversity objective.	<p>By consulting on the document we hope that everyone will understand the need to support biodiversity and the role they can play in helping to further the biodiversity objective.</p> <p>The consultation will seek to understand the priorities of the community and promote the enhancement of biodiversity as something that they can get involved in.</p>

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**Legal Implications**

The proposed strategy will ensure the Council complies with the duty set out in section 102 of the Environment Act 2021. The legal implications are set out within the body of this report at paragraph 6.

**Financial Implications:**

The cost of the Biodiversity Strategy and consultation is being met through the DEFRA Biodiversity Net Gain new burdens grant for 2023-24.

The draft Strategy brings together relevant actions from existing programmes. Any new actions proposed as a result of consultation on the draft strategy will be considered before adoption of the final strategy.

**Appendices:**

Appendix A - Draft Biodiversity Strategy

Appendix B – Potential Biodiversity Net Gain Receptor Sites

**Background papers:**

*Please list any background documents to this report and include a hyperlink where possible.*

The DEFRA requirement for ‘first considerations’ in implementing the biodiversity duty:

- [Complying with the biodiversity duty](#)
- [Reporting your biodiversity duty actions](#)

DEFRA Guidance on Biodiversity Net Gain:

- [Understanding Biodiversity Net Gain](#)
- [Biodiversity net gain guidance – what you need to know - Land use: policies and framework \(blog.gov.uk\)](#)

GMCA Guidance on Biodiversity Net Gain:

- [The GMCA webpages on Biodiversity Net Gain](#)
- [Guidance for Greater Manchester](#)

**Please include a glossary of terms, abbreviations and acronyms used in this report.**

Term	Meaning
Biodiversity	The variety of plant and animal life in the world or in a particular habitat.
Biodiversity Duty	The general duty to conserve and enhance biodiversity that a public authority has and must consider when exercising its functions
Biodiversity Net Gain	Biodiversity net gain (BNG) is an approach to development, and/or land management, that aims to leave the natural environment in a measurably better state than it was beforehand.
LNRS	Local Nature Recovery Strategy