

<b>Classification:</b> Open	<b>Decision Type:</b> Key
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<b>Report to:</b>	Cabinet	<b>Date:</b> 08 January 2025
<b>Subject:</b>	Biodiversity Net Gain – Council-owned Receptor Sites	
<b>Report of</b>	Cabinet Member for Environment, Climate Change and Operations	

## 1 Summary

- 1.1 Earlier this year the government introduced a mandatory requirement for new development requiring planning permission to deliver a 10% net gain in biodiversity value. To deliver this 10% biodiversity net gain (BNG), developers must firstly look to achieve this on-site but if this cannot be achieved, they can provide BNG on sites elsewhere that have been formally registered as such with the Department for Environment, Food and Rural Affairs (DEFRA).
- 1.2 This report considers the opportunities for accommodating off-site biodiversity net gain on Council-owned land and specifically identifies six sites that are proposed to be submitted to DEFRA for registration as well as setting out how these sites can be brought forward as a BNG receptor sites.

## 2 Recommendation(s)

- 2.1 That Members:
- Agree to the use of Council land at Old Kays, Chesham, Hollins Mount, Springwater Park, Outwood and Philips Park as receptor sites for biodiversity net gain and, if legally secured, to submit these to the Department of Food & Rural Affairs for inclusion on their register of biodiversity gain sites;
  - Authorise the Head of Property and Director of Law and Governance in consultation with the relevant portfolio holder to advertise for potential tenants to deliver biodiversity net gain on one or more of the above sites and, if terms can be agreed, sign leases; and
  - Authorise a procurement exercise, in consultation with the relevant portfolio holder, to advertise for a responsible body and delivery partner to deliver biodiversity net gain on one or more of the above sites.

## 3 Reasons for recommendation(s)

- 3.1 To help ensure that the benefits of biodiversity net gain from development in the Borough are secured locally, as opposed to regionally or nationally.

- 3.2 To improve management of and maximise investment in Council-owned greenspace.
- 3.3 To provide flexibility for the Council to utilise the best method for securing each site on a site-by-site basis during a time when the market is still emerging and routes to delivery are in the early stages of development.

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

- 4.1 To take no action. The lack of opportunities for developers to deliver off-site BNG within Bury is likely to result in developers delivering this outside of the Borough meaning that Bury would not benefit from biodiversity enhancements. Furthermore, the Council would lose the opportunity to secure investment in and enhancement of its land.

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

*Name: David Wiggins*

*Position: Service Manager: Strategic Planning and Infrastructure*

*Department: Business, Growth and Infrastructure*

*E-mail: [d.i.wiggins@bury.gov.uk](mailto:d.i.wiggins@bury.gov.uk)*

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## **5 Background**

- 5.1 Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021) requires development requiring planning permission to result in a net gain in biodiversity value of 10%.
- 5.2 The biodiversity net gain (BNG) is measured by a standard metric and there is a raft of regulations and guidance which set out how the system is intended to work.
- 5.3 The purpose of this new mandatory requirement is to halt the decline in biodiversity by 2030 in line with the Governments targets<sup>1</sup> and sits alongside the roll out of Local Nature Recovery Strategies, which will identify opportunities for the creation and restoration of habitats.

## **6 Provision of off-site Biodiversity Net Gain.**

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<sup>1</sup> Environmental Improvement Plan 2023 : <https://www.gov.uk/government/publications/environmental-improvement-plan>

- 6.1 Whilst the guidance includes a mitigation hierarchy that encourages developers to prioritise the delivery of BNG within their developments, it is anticipated that due to site constraints many will be unable to fully achieve this and will therefore look for off-site locations to accommodate their BNG.
- 6.2 Off-site BNG provision can only be located on sites that have been registered with DEFRA<sup>2</sup>. This report refers to these off-site designations as ‘receptor sites’. The Government expects a market of receptor sites to develop over time and ‘biodiversity units’ can be bought by developers to fund biodiversity gain on these registered receptor sites.
- 6.3 As a major landholder, the Council is well placed to provide receptor sites and benefit from the associated investment.

## **7 Biodiversity units**

- 7.1 ‘Biodiversity units’ are a unit of measurement used to quantify the existing biodiversity value of a development site and the subsequent extent of biodiversity enhancement required to achieve a 10% net gain on what will be lost through the development.
- 7.2 Using a DEFRA calculator tool known as the Statutory Biodiversity Metric, landowners can calculate how many biodiversity units they are able to accommodate and at what price. They then need to be either accommodated on site or they can be ‘bought off site’ through the purchase of biodiversity units from receptor sites. Both on and off site BNG units would need to be legally secured for a period of 30 years and they would need to be recorded on the DEFRA register. The funds secured through the purchase of biodiversity units from receptor sites would be used to implement and manage biodiversity gain on that site.
- 7.3 Once created, the provision of the habitat enhancement and maintenance will be audited at regular periods over the 30-year period, and if required, enforced.

## **8 Assessing need and supply of Biodiversity Net Gain in Bury**

- 8.1 The Greater Manchester Ecology Unit has undertaken an assessment of the level of biodiversity units that are likely to be needed in Greater Manchester over the next 15 years taking account of proposed new development in the pipeline.
- 8.2 This Greater Manchester Need and Supply Assessment<sup>3</sup> found that:

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<sup>2</sup> The governments national biodiversity gain sites register: <https://www.gov.uk/guidance/search-the-biodiversity-gain-sites-register>

<sup>3</sup> A summary of the needs and supply assessment can be found at: <https://naturalcourse.co.uk/publications/biodiversity-net-gain-in-greater-manchester-assessment-of-offsite-need-for-and-supply-of-biodiversity-units/bng-needs-and-supply-summary-report/>

- In Greater Manchester, 4,870 off-site biodiversity units are likely to be needed;
- In Bury, 275 off-site biodiversity units are likely to be needed; and
- Bury Council could create an estimated 1,251 biodiversity units across 76 council-owned sites.

8.3 In December 2023, Cabinet noted the ongoing work to identify a number of potential Council-owned BNG receptor sites. Since then, further refinement work has been undertaken and there are considered to be six Council-owned sites which present the best opportunities for accommodating BNG. These sites are at Old Kays, Chesham, Hollins Mount, Springwater Park, Outwood and Philips Park. This is the first group of sites and more could follow if market demands persist and these initial sites are successful.

8.4 Costed management plans have been prepared for these sites and these show that collectively these could deliver 240 units which would go a significant way toward meeting the estimated off-site demand for biodiversity units in Bury. Whilst this is not sufficient to meet the estimated need entirely, it is expected that the market will develop over time and further public and private sites will become available for BNG.

## **9 How can Council-owned land be brought forward as a BNG receptor site?**

10.1 As stated previously, off-site BNG provision can only be located on sites that have been registered with DEFRA. Applications to register a site will need to be accompanied by supporting information, including:

- A legal agreement that secures the land for at least 30 years;
- A completed statutory biodiversity metric tool calculations that set out how many biodiversity units can be accommodated on the site; and
- A habitat management and monitoring plan which sets out how the biodiversity units are to be delivered on the site.

10.2 In terms of any legal agreement, there needs to be separation between whoever delivers BNG and whoever is responsible for auditing its delivery and continued management for at least 30 years. As such, Local Authorities can legally secure off-site gains on their own land by two means:

- a) Section 106 Agreement (S106) - A Local Authority cannot have an agreement with itself so it must have a S106 agreement with a Special Purpose Vehicle (SPV) or a tenant. In this case, the Council would be responsible for making sure the SPV or tenant are delivering the net gain; or
- b) Conservation Covenant - a legally binding agreement to conserve the natural features of land. The agreement would be made between the

Council and a DEFRA designated 'responsible body'. There are 3 ways a conservation covenant can be used:

- The Council carries out the enhancement work and a 'responsible body' would audit/enforce it.
- A 'responsible body' carries out the work and the Council would audit/enforce it.
- A tenant carries out the work and the Council would audit/enforce it.

10.3 The Council must register a S106 or Conservation Covenant with the local land charges register.

10.4 Consequently, to enable the Council to apply for a site to be registered with DEFRA, it will need to either procure a responsible body and delivery partner or advertise for a SPV/tenant.

Responsible body and delivery partner.

10.5 Under this approach, the Council would seek to enter into an agreement with a third party (or consortium) who is a responsible body to secure and deliver conservation covenants on behalf of the Council and so be able to offer BNG credits for sale to developers to secure investment in biodiversity on a Council-owned site.

10.6 There is scope under this approach for a profit share mechanism which could redirect any surpluses to other nature-related projects in the Borough.

10.7 However, it should be noted that there are a limited number of DEFRA approved responsible bodies at present and the fees payable to a responsible body to legally secure the site for BNG are currently unknown.

10.8 To help overcome this issue, the Greater Manchester Combined Authority has applied to DEFRA for responsible body status but their application is yet to be determined. However, should this be approved, this would likely be the approach that would increase income for the Council from the sale of biodiversity units.

10.9 Income from BNG could be maximised if the Council delivered biodiversity enhancements on its own sites under a conservation covenant with a responsible body. However, the Council doesn't currently have the capacity necessary to plan, deliver and maintain the enhancements and this approach would require the recruitment of additional staff. This is something that will remain under consideration as BNG is rolled out in the coming years. In addition, this approach would mean that the Council would take on the risk of successfully delivering the BNG over a 30-year period.

## SPV/tenant

- 10.10 Advertising for potential tenants to manage the delivery of BNG on Council land is the most straight forward option available to the Council and would mean an outside body would take on most of the associated risk.
- 10.11 However, under this approach it is likely that the SPV/tenant would be the main beneficiary of income from the purchase of biodiversity units. Nevertheless, officers are exploring the scope to allow for a similar profit share mechanism to that available to the responsible body approach.
- 10.12 The recommendations seek to retain flexibility on the approach to securing and managing BNG on the Council's proposed Receptor sites. The options available will evolve as the regulations become more engrained within the planning application process.
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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 B.

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

This report considers how best to provide biodiversity net gain on Council-owned sites in the Borough. The purpose of this new mandatory requirement for biodiversity net gain is to halt the decline in biodiversity by 2030 in line with the Governments targets.

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### **Assessment and Mitigation of Risk:**

<b>Risk / opportunity</b>	<b>Mitigation</b>
That Bury does not have available receptor sites to accommodate off-site biodiversity net	Undertaking the necessary work to allow applications to DEFRA to register

gain requirements from development in the Borough.	the six Council-owned sites identified in this report.
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**Legal Implications:**

It is noted that this report anticipates that a procurement process may be required in order to procure a responsible body and delivery partner. It is further noted that the Council may consider a profit share mechanism with the partner. Corporate Procurement should be consulted at an early stage to advise on the compliant procurement and concession contract options available.

Legal Services will provide legal advice and support throughout and should be consulted at an early stage. If the department decide to grant leases to any organisations to deal with Biodiversity Net Gain, this will be dealt with by Property Legal and there will need to be restrictions on use within the leases.

Each plot of land referred to as receptor sites will need a title review to ensure the Council owns the land in question and to ensure there are no restrictions on the use of the land for the intended purpose.

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**Financial Implications:**

There are no financial implications directly arising from the report.

**Appendices:**

*Please list any appended documents.*

*Appendix A – Map of potential Council-owned BNG receptor sites*

*Appendix B – Equality Impact Assessment*

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**Background papers:**

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

Bury Biodiversity Strategy

DEFRA guidance on Biodiversity Net Gain:

<https://www.gov.uk/government/collections/biodiversity-net-gain>

GMCA webpages on Biodiversity Net Gain:

<https://www.greatermanchester-ca.gov.uk/what-we-do/environment/natural-environment/biodiversity-net-gain/>

**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
Receptor sites	Sites which have been registered with the Department for Environment, Food and Rural Affairs (DEFRA) for off-site provision of biodiversity net gain (BNG).
Biodiversity unit	A unit of measurement used to quantify the biodiversity gain or loss of a development site. Biodiversity units can also be known as biodiversity credits. There are three types of biodiversity units: area habitat units, hedgerow units and watercourse units.
Statutory Biodiversity Metric	The biodiversity metric tool is used to calculate biodiversity value for the purposes of biodiversity net gain.
Off-site providers	An off-site provider can create or enhance habitats to generate biodiversity units for developments and allow them to meet their BNG requirement. An off-site provider could be a land manager, a landowner, or an organisation acting as a habitat bank.



LNRS	Local Nature Recovery Strategy
On-site	On-site refers to all land within a red line boundary of a development.
Off-site	Off-site, for the purposes of the biodiversity metric tool, refers to land outside of the on-site boundary, which is dedicated to habitat interventions (habitat enhancement or creation), regardless of proximity or ownership.
Responsible Body	<p>A responsible body is an organization that is designated by the Department for Environment, Food and Rural Affairs (Defra) to create and maintain legally-binding conservation covenants with off-site providers. Responsible bodies are responsible for:</p> <ul style="list-style-type: none"> <li>▪ Monitoring habitat restoration work to ensure it is carried out properly; and</li> <li>▪ Taking enforcement action if there are any breaches of the agreement.</li> </ul>