APPENDIX 2

MAKING BIODIVERSITY NET GAIN NECESSARY FOR DEVELOPMENTS WHEN GRANTING PLANNING PERMISSION

Policy Context

1. The Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne was adopted in March 2015. Work is progressing on the Local Plan document (detailed policies and site allocations) Making Spaces for Growing Places (MSGP) and this will be submitted for examination to the Planning Inspectorate in early 2019.

2. Nationally, the revised National Planning Policy Framework (NPPF) was published in July 2018. This sets out the need to provide net gains for biodiversity.

Background

3. It is proposed that biodiversity net gain will be delivered within the existing planning and development process. This can be summarised under three different scenarios.

4. In Scenario A, the developer is able to avoid harm and provide biodiversity enhancements on site. In Scenario B, the developer is unable to avoid mitigate and compensate all impacts on site but is able to secure local compensatory habitat creation. In Scenario C, the developer is unable to avoid, mitigate and compensate on site, and unable to find local compensatory habitat to invest in. The tariff is therefore used to fund cost-effective habitat creation projects according to local and national conservation and natural capital priorities.

5. When assessing potential development sites, habitat surveys will identify habitats and their condition as is already done for much development. This helps to identify opportunities for enhancement as part of green infrastructure as well as possible constraints.

6. The design of schemes would proceed as normal, but better informed by figures for biodiversity losses and gains. A standard biodiversity metric would be populated with habitat information from the site assessment and landscape plans. This could help demonstrate at an early stage that harm has been avoided as far as possible and that new green infrastructure will be of good environmental quality. The metric could also help to anticipate the costs of achieving net gain to factor these into land purchase where possible. The Government sets out that existing planning protection for the environment would not be weakened and the principle of avoiding harm first

(known as the “mitigation hierarchy”) will continue to ensure that preventing damage to nature will always be prioritised, wherever possible.

7. If net gain cannot be achieved on site, the metric would provide the right information to discuss habitat enhancement. The tariff rate would offer a guide for the upper limit of habitat compensation costs, alongside information from growing habitat creation markets.

8. When preparing local plans, local authorities can identify opportunities for habitat improvement that would benefit local people and support nature recovery. They would be able to choose to bring improvement sites forward themselves or work with other providers.

9. When developers and local planning authorities are consulting with the local community prior to submitting a planning application, it will be possible to use biodiversity net gain figures and habitat enhancement measures to explain the benefits and costs of a development proposal more transparently. With clearer expectations, developers will be able to submit planning applications with greater confidence that proposals can be supported on biodiversity grounds.

10. For local authorities, transparent figures for biodiversity losses and gains can be quickly checked and provide confidence that impacts will be positive. Figures will also indicate the environmental quality of green infrastructure as part of development design.

11. As part of the planning permission, developers would sign up to predictable conditions, obligations or a tariff payment to secure biodiversity net gain. The availability of a tariff would prevent planning permission from being delayed by net gain requirements, and local authorities will be able to demonstrate that positive impacts to help improve the environment for local communities have been secured.

Consultation

12. The consultation document has been examined, discussed and commented on by relevant officers in the Council. This report has been drafted in consultation with Portfolio Holders and relevant departments in the Council.

Alternative Options

13. The options around the implementation of the proposals have been considered and discussed

Implications of the recommended option

14. Resources

a) **Financial Implications –** There are no financial implications arising from this report.

b) **Human Resources Implications –** There are no human resource implications arising from this report.

c) **Property Implications -** There are no property implications arising from this report.

15. Risk Management Implication –There are no risks associated with this report.

16. Equality and Diversity Implications – There are no equality and diversity implications arising from this report

17. Crime and Disorder Implications – There are no crime and disorder implications arising from this report.

18. Health Implications – There are no health implications arising from the report

19. Sustainability Implications – There are no sustainability implications arising from the report.

20. Human Rights Implications - There are no human rights implications arising from this report.

21. Area and Ward Implications - None

Background papers
https://consult.defra.gov.uk/land-use/net-gain/supporting_documents/netgainconsultationdocument.pdf

Annex

GATESHEAD COUNCIL RESPONSE TO CONSULTATION ON MAKING BIODIVERSITY NET GAIN NECESSARY FOR DEVELOPMENTS WHEN GRANTING PLANNING PERMISSION

1. Should biodiversity net gain be mandated for all housing, commercial and other development within the scope of the Town and County Planning Act?

This would be a good aim, although it may need to be limited to certain developments. It may be difficult to administer biodiversity net gain for small developments such as householder development and development permitted under the General Permitted Development Order.

2. What other actions could government take to support the delivery of biodiversity net gain?

Three main actions:

1. Arrangements with developers to deliver net gain outside the planning system, such as setting up a national programme which developers would sign up to.

2. Corporate offsetting: a natural capital protocol for existing businesses should set out requirements for natural capital assessments, monetary valuations and approach to delivering compensatory measures working with local authorities, wildlife trusts, catchment partnerships, Local Nature Partnerships (LNPs) and Natural England (NE) etc.

3. Requirement for all Local Planning Authorities (LPAs) to have access to an in-house ecologist.

3. Should there be any specific exemptions to any mandatory biodiversity net gain requirement (planning policies on net gain would still apply) for the following types of development? And why?

a. House extensions
b. Small sites
c. All brownfield sites
d. Some brownfield sites (e.g. those listed on brownfield, or other, land registers)

House extensions should be exempt – given the high number of applications and the relatively low impact of them on biodiversity. However, exemption from biodiversity net gain for house extensions should not affect the requirement for considering potential impacts on protected species (e.g. bats).

It would be difficult to exempt all brownfield and small sites as these often have high biodiversity value and its monetary value should be recognised and considered in a

transparent way within viability assessments, and then reflected within the eligibility criteria for regeneration funding streams. This is important to deliver sustainable brownfield regeneration with high quality green infrastructure and biodiversity net gains within the local regeneration area.

In Gateshead there are significant challenges in bringing brownfield land forward for development due to low land values and contamination of the ground from historic industry and coal mining. This can bring the viability of bringing such sites forward into question. In addition, some brownfield sites support significant ecological interest, including rare and/or threatened species (e.g. great crested newt, reptiles and priority butterflies such as dingy skipper, grayling, small heath and wall). In some instances, the cost of avoidance, mitigation and/or offsetting impacts on biodiversity can also affect the viability and deliverability of brownfield land.

Examples of development on brownfield land requiring the payment of a financial contribution for offsite ecological compensatory measures to address biodiversity losses include:

- Tor Coatings – Follingsby Park - £21,450
- Innovation Village – Marigold Avenue - £22,000
- Langley Holdings – Saltmeadows Industrial Estate - £22,335

It should be noted that in those limited instances where a developer contribution is required to achieve no-net loss of biodiversity; this must be reasonable, proportionate and follow the guidelines set out in British Standard 42020:2013 Biodiversity – Code of Practice for planning and development & the Chartered Institute for Ecology and Environmental Management – Guidelines for Ecological Impact Assess (2016).

4. Are there any other sites that should be granted exemptions, and why? For example, commercial and industrial sites.

Changes of use that involve no external works.

5. As an alternative to an exemption, should any sites instead be subject to a simplified biodiversity assessment process?

This may be a good solution for small sites that are being developed by SMEs and where the LPA ecologist has determined the site to be of negligible/very low biodiversity value.

6. Do you agree that the Defra metric should allow for adjustments to reflect important local features such as local sites? Should the Defra metric consider local designations in a different way?

Yes, the Defra metric should allow for adjustments to reflect important local features. However, Local Sites should be considered in the context of the hierarchy of designated sites as set out in the NPPF and local planning policies.

7. Should local authorities be required to adopt a robust district level licensing approach for great crested newts, where relevant, by 2020?

Yes, subject to the necessary resources being available to support the process.

8. For what species is it plausible to use district level or strategic approaches to improve conservation outcomes and streamline planning processes? Please provide evidence.

Potentially common reptile species and some priority invertebrate species e.g. dingy skipper butterfly.

9. Are there wider elements of environmental net gain that could be better incentivised? If so, please specify which, and any benefits that such incentives could provide.

- Green infrastructure provision to support: climate change mitigation and resilience (flood management through use of natural flood measures, catchment management and SuDS; carbon capture in woodland planting), health and wellbeing benefits, air quality mitigation.

- Land management to improve soil structure, flood management and biodiversity.

- Water quality improvements (chemical, biological and geomorphological) and water resource management.
- Better waste management to reduce marine pollution.

10. Is the Defra biodiversity metric an appropriate practical tool for measuring changes to biodiversity as a result of development?

In the absence of a more effective measure, yes.

11. What improvements, if any, could we most usefully make to the Defra metric?

Built in flexibility which allows for regional, sub-regional and regional circumstances/priorities to be taken in to consideration.

Allow for impacts on ecological connectivity, species/species assemblage and secondary/indirect impacts to be considered/addressed.

12. Would a mandatory 10% increase in biodiversity units be the right level of gain to be required?

Yes, with a facility for LPAs to increase this where appropriate/justifiable, for example, for development occurring within a strategic Wildlife Corridor identified within a Local Plan.

13. In clearly defined circumstances, should developers be allowed to pay through the tariff mechanism without fully exhausting on-site and local compensation opportunities?

Yes, but only where this has been identified/confirmed as being appropriate within a strategic document (e.g. Local Plan, Area Action Plan) and where supported by a robust evidence base.

14. Would this be an appropriate approach to directing the location of new habitat?

Potentially, yes. However, identifying the most appropriate location(s) for habitat creation, restoration and enhancement should be undertaken as part of the strategic planning process (not the development management process) and should be underpinned by a robust evidence base.

15. How could biodiversity assessments be made more robust without adding to burdens for developers or planning authorities?

The current system allows for the scope and method of biodiversity assessment to be determined according/appropriate to the site/proposed scale/nature of development (e.g. Preliminary Ecological Appraisal - Ecological Impact Assessment). This seems appropriate and is not considered to place an un-reasonable burden on developers. NB Inaccurate/unreliable ecological survey information produced by non-specialists could/is likely to result in lengthy/costly delays in the planning process, as well as, poor outcomes for biodiversity.

16. Should a baseline map of broad habitats be developed?

Yes. Some LPAs already have phase 1 habitat maps although in many instances these are likely to require updating and digitising (e.g. converting to GIS shapefiles). Additional resources would be required to support this.

17. Should this be applied, as a minimum baseline, to:

a. Net gain calculations for all development?
No.

b. net gain calculations in cases of suspected intentional habitat degradation?
Yes.

18. What other measures might reduce the risk of incentivising intentional habitat degradation?

Significant delays in planning process, refusal of planning permission, naming and shaming.

19. How can the risks of penalising landowners making legitimate land use change decisions before deciding to sell their land for development be mitigated?

Production of a register which requires landowners to inform the LPA/provide details/justification of proposed land use changes involving a period of consultation and requiring a written response although this would lead to increased resource requirements for LPAs.

20. The provision of compensatory habitats will need to be guided by habitat opportunity maps. At what scale should these maps be developed?
a. Locally (e.g. local authority or National Character Area)
b. Nationally (i.e. England) as a national framework to be refined, updated and amended locally.

Locally and potentially sub-regionally by the LPA/neighbouring LPAs in consultation with Wildlife Trust, etc.

21. What other measures should be considered to identify biodiversity and natural capital priorities?

- S.41 Natural Environment and Rural Communities (NERC) Act habitats and species of conservation importance lists
- Local/County Biodiversity Action Plans.
- LPA Local Plan evidence base, potentially including submissions from key partner organisations, stakeholders and special interest groups.
- Green Infrastructure Delivery Strategy and Action Plan.
- Strategic Flood Risk Assessments, Local Flood Risk Management Strategies and Lead Local Flood Authority (LLFA)/EA flood alleviation and environmental programme, Catchment Management Plans, River Basin Management Plans.
- Public health strategies.
- Air Quality Management Plans.
- Climate change resilience strategies.

In addition to the above the following issues are likely to be critical in guiding the provision of compensatory habitats:

- Land availability
- Security of deliverability
- Long-term retention of compensatory habitats/biodiversity net gain

22. Would mandating net gain through the planning system be enough to stimulate the growth of a market for biodiversity units?

Potentially – although demand may fluctuate across the country.

23. What further measures would help to ensure that the market provides:

a. Sufficient biodiversity units for development?
b. Cost-effective biodiversity units?

Support with start-up costs.
Guaranteed regular income.
Tax incentives.

24. Should there be a minimum duration for the maintenance of created or enhanced habitats?

Yes.

25. If so, what should the minimum duration be?

a. Less than 25 years
b. 25 to 30 years
c. Longer than 25-30 years
d. Permanent

Created, restored or enhanced habitats should be retained in perpetuity, although funding for their positive management could extend over a shorter period (e.g. 25 to 30 years). After this time such sites could potentially become eligible for funding through agri./environment schemes e.g. environmental stewardship.

26. Would conservation covenants be useful for securing long term benefits from biodiversity net gain or reducing process and legal costs?

Potentially. The success of them would depend on how they would be drafted and enforced and the resources to do this.

27. What safeguards might be needed in the implementation of conservation covenants?

Use of rent charges to secure funding for future maintenance.

Resources to cover the cost of monitoring by a suitably qualified independent assessor, enforcement and legal costs.

28. Does this proposed range for tariff costs fit with the principles set out in this section?

Unsure. It is not clear whether the tariff costs reflect total/real world costs required to facilitate the creation, restoration and/or enhancement of replacement habitat(s).

29. Would this proposed range for tariff costs provide opportunities for cost-effective habitat banks and compensation providers to compete?

Unsure for the reasons above.

30. Do you agree with the proposed principles for setting the tariff rate, as set out in this section? Please suggest any other factors that should be taken in to account.

Other factors that should be taken into account are project management (including planning and delivery), administration, legal fees and potential land purchase.

31. How should the tariff revenue be collected?
a. Locally (e.g. through a local authority)
b. Nationally (e.g. through Natural England or another national body)
c. Other, please specify

Locally through the LPA.

32. How should the tariff revenue be spent?
a. Locally (e.g. through a local authority)
b. Nationally (e.g. through Natural England or another national body)
c. Through a blended model, allowing spending at both levels
d. Other, please specify

Locally through LPA with the facility for resources to be directed at a sub-regional level, where appropriate and where agreed by neighbouring authorities/stakeholders.

33. If tariff revenue is collected and spent nationally, should spending prioritise areas which have contributed the most through biodiversity net gain tariff payments?

No. This approach is unlikely to maximise the potential for delivering positive gains for biodiversity and is likely to result in the 'sterilisation' of high value development land.

34. What further measures will help to prevent burdens on local authorities increasing?

Allowing for the full cost to LPAs of administrating/delivering mandatory net gains to be recovered through the tariff/developer contributions.

35. How could the proposals be refined to manage any negative impacts on the scale and delivery of other developer contributions (e.g. through Section 106 or Community Infrastructure Levy payments)?

Phased implementation to allow realistic land purchase prices to be negotiated/re-negotiated.

36. Would you, as a planning authority stakeholder, prefer any net gain tariff revenue to be paid through:
a. local authority administration?
b. a nationally managed funding scheme (which could then reinvest in local habitat schemes best aligned with national strategic environmental priorities)?

Local authority administration. A nationally managed funding scheme is not considered to be practicable and would likely result in a loss of biodiversity at a local, sub-regional level.

37. How could the proposed net gain process be improved for developers?

Phased implementation.

38. What other steps, considerations or processes in environmental planning could be integrated within a net gain approach?

Environmental Impact Assessment.

39. Would any particular types of development (e.g. commercial, industrial, public sector, local infrastructure) be disproportionately affected by a mandatory biodiversity net gain requirement?

Unlikely.

40. Do you agree that the proposal for staggered transitional arrangements would help to ensure smooth implementation of biodiversity net gain policy?

Yes.

41. Would the existing dispute resolution process provide the best way to overcome any disagreement over whether net gain is achieved?

Yes.

42. Would an additional arbitration or approval process be necessary? If so, please specify why.

No.

43. Are there any issues or measures, other than those outlined, that we should take into account when considering how to monitor biodiversity net gain?

It should be ensured that the monitoring is carried out independently to prevent any bias.

44. Should local authorities be required to provide information about habitat losses and gains?

Yes, although this would be an additional burden to LPAs which would require adequate resourcing.

45. What technological or other innovative mechanisms could facilitate the delivery and monitoring of biodiversity net gain?

Increased/improved use of GIS systems.
Potential role for local records centres.