



LEE VALLEY REGIONAL PARK AUTHORITY

**REGENERATION AND PLANNING
COMMITTEE**

14 02 2019 AT 12:00

Agenda Item No:

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Report No:

RP/29/19

GOVERNMENT CONSULTATION ON NET GAIN

Presented by the Head of Planning and Strategic Partnerships

SUMMARY

The Government is consulting on proposals for Net Gain for Biodiversity¹ delivered through the development process. Put simply 'Net Gain' is an approach to 'development' that aims to leave the natural environment in a measurably better state than beforehand. The consultation poses a series of questions on whether mandatory biodiversity net gain would streamline planning processes and provide clarity and certainty for developers. Given that part of the Authority's statutory role is for nature conservation the consultation identifies several issues which could be to the advantage of the Authority. A draft response to some of the more relevant questions contained within the consultation is included in Appendix A to this report. This will be submitted in advance of the committee as an officer response to meet the consultation deadline of 10 February 2019.

RECOMMENDATIONS

Members Approve: (1) the response included in the draft letter at Appendix A to this report.

BACKGROUND

- 1 The need to adequately protect biodiversity is becoming increasingly important with the publication of a series of changes to national policy during the last decade. This includes the Lawton Review, 'Making Space for Nature, (2010)' and the Governments Environment Plan (2018). In 2013 the Executive Committee agreed a response to the Government's consultation on Biodiversity Off Setting (Paper E313/13). The National Planning Policy Framework (NPPF 2018) identifies that planning policies and decisions should '.....minimise impacts on and provide net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.'

¹ Net Gain Consultation Proposals DEFRA 2018

- 2 In response the Authority's draft Park Development Framework's strategic policies reflects these requirements at Policies B1-B4 (inclusive) which reference the need to identify sites for potential biodiversity 'off setting' within the Regional Park which may arise through the development process in riparian boroughs. The draft policies also state that new development should be consistent with the Authority's Biodiversity Action Plan and be in accordance with a locally approved or DEFRA endorsed biodiversity assessment metric.
- 3 On a related theme Members of the Park Development Framework (PDF) Panel recently considered a short paper on how the 'competent authorities' of Epping Forest District, Redbridge and Waltham Forest are seeking to ensure adequate mitigation for the Epping Forest Special Area of Conservation from problems arising from recreational pressure and car borne air pollution.

SUBSTANCE OF CONSULTATION PAPER

- 4 The purpose of the consultation is to gauge views on whether Government should introduce mandatory requirements to the planning system to ensure that development delivers biodiversity net gain. The consultation covers three areas:
 - It sets out objectives for a 'Net Gain' policy;
 - In addition to seeking views on Net Gain for Biodiversity it is seeking views on whether the approach could be extended to cover the environment or natural capital and how far this could go; and
 - Whether the proposals for Net Gain on biodiversity should be mandatory for all developments and how this could be delivered.

The suggested approach would be entirely consistent with the operation of the 'mitigation hierarchy' of 'avoiding impacts, minimise impacts, remediation and compensation through habitat creation or restoration' which is a key part of national policy.

- 5 Government intends that the demand for housing growth is not at the expense of biodiversity. The consultation is seeking views on how it could seek 'environmental net gain' in a way which would provide clarity for developers and not frustrate the identification of sites for development. Furthermore, the consultation is considering an extension to the scope of natural capital which could address how natural assets such as clean water and air are included to make them more 'investable' alongside investment in built capital.
- 6 The Regional Park includes 8 Site of Special Scientific Interest (SSSIs) four of which combine together to form the Lee Valley Special Protection Area and Ramsar site. The Authority has a statutory role to play in the delivery and enhancement of nature conservation within its boundary. The Authority works closely with Natural England on both protected sites' management, partnership and agri-environment schemes. With its unique role officers are conscious that many of the challenges identified for development in the Consultation are very real given the Regional Park's location within a major growth or 'Opportunity' area along the Lea Valley. The draft Strategic Policies of the PDF identify with the approach which underpins the Consultation on the need to safeguard Natural Capital.
- 7 Forty five questions are included in the consultation. Draft responses are included to those considered most relevant to the Authority in the letter at

Appendix A to this report.

ENVIRONMENTAL IMPLICATIONS

- 8 There are no environmental implications arising directly from the recommendations in this report.

FINANCIAL IMPLICATIONS

- 9 There are no financial implications arising directly from the recommendations in this report.

HUMAN RESOURCE IMPLICATIONS

- 10 There are no human resource implications arising directly from the recommendations in this report.

LEGAL IMPLICATIONS

- 11 Planning applications referred to this Authority are submitted under the consultative arrangements of Section 14 (4-7) of the Lee Valley Regional Park Act 1966. The Act requires a local planning authority to consult with the Authority on any planning application for development, whether within the designated area of the Park or not, which might affect any part of the Park.
- 12 The Park Act enables the Authority to make representations to the local planning authority which they shall take into account when determining the planning application.

RISK MANAGEMENT IMPLICATIONS

- 13 There are no risk management implications arising directly from the recommendations in this report.

EQUALITY IMPLICATIONS

- 14 There are no equality implications arising directly from the recommendations in this report.

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BACKGROUND REPORTS

DEFRA consultation on Net Gain 2018

PREVIOUS COMMITTEE REPORTS

Executive Committee	E/313/13	Consultation on Government Green paper on Biodiversity off setting	21 November 2013
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APPENDICES ATTACHED

Appendix A Draft response to consultation questions

LIST OF ABBREVIATIONS

PDF	Park Development Framework
SSSI	Site of Special Scientific Interest
NPPF	National Planning Policy Framework

Appendix A to Paper RP/29/19

Draft letter of response

Rt Hon Michael Gove M.P.
Secretary of State for Environment, Food and Rural Affairs
Whitehall
London SW1

Dear Michael

Consultation on Net Gain

The Authority welcomes the opportunity to comment on DEFRA's consultation on Net Gain.

The Lee Valley Regional Park Authority is a statutory authority created by the Lee Valley Regional Park Act 1966 (the Park Act). It has a statutory responsibility to either provide directly or work with partners to provide facilities for sport, recreation, leisure, entertainment and nature conservation throughout the Park. The Park lies in east London extending northwards from the River Thames to Ware in Hertfordshire and comprises 4,000ha of which 1,600ha are owned and managed by the Authority.

The Park includes a mosaic of award-winning facilities and open spaces, including three Olympic Legacy venues and a biodiversity resource of international, national and local importance, some of which is owned and managed by the Authority. The Park attracts approximately 7m visits each year.

The Regional Park includes 8 SSSIs, four of which combine to form the Lee Valley Special Protection Area and Ramsar site. The Authority has a statutory role to play in the delivery and enhancement of nature conservation within its boundary. The Authority works closely with Natural England on both protected sites management, partnership and agri-environment schemes. With its unique role the Authority is conscious that many of the challenges identified in the Paper are very real given the Parks location within a major growth or 'Opportunity' area along the Lea Valley.

The approach suggested by the Consultation could benefit the Regional Park with potential for new investment in its ecology and Natural Capital. A draft set of responses earlier in the month to meet your deadline. The responses are included overleaf to the questions considered most relevant to the Authority have been agreed by the Authority's Regeneration and Planning Committee.

Officers from the Authority would be happy to assist further in this work.

Yours sincerely,

Paul Osborn
Chairman

The Authority's responses to **key questions** are included below:

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

Currently biodiversity net gain is on a voluntary basis, which leads to an inconsistent approach.

A mandatory approach which applies to all local planning authorities and all developments over certain size thresholds could consistently capture small-scale biodiversity losses. It would also create a level playing field and make it easier for developers to understand their commitments and costs upfront. However, the approach must be simple for it to work effectively.

The approach should be statutorily underpinned with clear targets for protecting and restoring biodiversity. A revision is required to the NPPF to inform Local Plans. Its effectiveness should be evaluated on a regular basis, with outputs from the review being used to inform potential modifications to the biodiversity net gain targets.

A net gain approach for biodiversity must be in addition to, and not instead of existing statutory biodiversity protection. It should only apply to developments that do not have an impact on protected areas, as more robust regulations already apply to protected areas, and it must be additional and not an alternative to establishing a robust network of protected areas.

It must not cut across the provisions of the Birds and Habitats Directives: applications affecting the integrity of Natura 2000 sites must be determined in accordance with Article 6(3)/(4) of the Habitats Directive. Likewise, any compensation for development adversely affecting SSSIs only occurs if the decision to grant approval has met the strict tests that are set for development affecting these sites in planning policy. It must not be taken into consideration when assessing the likely impacts of the proposed scheme, including the need to get existing designated sites into favourable conservation status.

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?

The operation of additional metrics to account for Natural Capital would be very difficult to manage. BREEAM rates commercial buildings and it is considered that similar systems could be introduced for large schemes of say over 250 homes. This could accord with the provisions outlined in the Letwin Review¹ on housing delivery where a number of requirements are discussed for large scale development. It is understood that Government will respond to this shortly.

However, extending the approach to embed wider environmental net gain principles in development could enable a better balance to be achieved in terms of creating features that are of value or benefit for **both** people and wildlife. Other environmental benefits could be factored in as identified in Fig 2, page 16 of the Consultation document to meet recreational needs, improve air quality and provide for flood mitigation for example. The net gain concept as outlined suggests a high level of public access as part of habitat creation and

¹ Independent Review of Build Out (The Letwin Review) CM9720 October 2018

improvement, recognising the health and well being benefits of access to natural green space and wildlife, particularly in areas of high growth and development. However increased levels of public access can have a detrimental impact on wildlife and habitats, for example as a result of disturbance, and physical degradation of habitats. Within the Regional Park, despite its emphasis on access to nature, the pressures from continuous growth means that alone, habitat enhancement on key sites will not be sufficient to protect against recreational disturbance of biodiversity. Consideration of the wider elements of environmental net gain as part of development alongside biodiversity net gain would reduce pressure on habitats to satisfy all needs.

It is important however that wider environmental net gain opportunities are not delivered at the expense of the core biodiversity net gain principles.

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

As it is not possible to measure biodiversity as a whole, the net gain approach relies on metrics to measure the extent and condition of habitats as a proxy for biodiversity so this can be compared pre and post development. Metrics must consider the potential value of a site, including the role it may play in connecting habitats. Careful consideration should be given to selection of an appropriate and sufficiently skilled body for the on-going assessment of delivery of the net gain principles.

The Authority supports the use of Metrics to assess the value of Biodiversity and the likely impacts of development. A consistent and robust metric should be employed, although there may be a need for scores to be reviewed based on local ecological expertise. This will also create a level playing field for developers. Incentivising the delivery of compensatory habitat in local or strategic locations is important to maintain the connectivity between local habitats and sufficient habitat to support robust populations of species. Inclusion of species metrics will be essential to delivery of biodiversity net gain by ensuring the value of a site to habitats and species is adequately captured. It is imperative that a robust baseline is established against which net gain can be measured.

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

To be consistent with the essential thrust of this Paper there would have to be a measurable gain. Whilst ten per cent seems reasonable as a minimum there should be an increasing sliding scale of net gain requirements worked out alongside certain circumstances such as 'landscape scale' context of the development.

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

The approach would in practice be 'dogged' by considerable difficulties in seeking a 'like for like' compensation for habitat lost on a new site. This approach would not allow for an assessment on the particular value of individual sites which include areas which form part of a discrete ecological network. Once developed, the network could be severed and the wider ecology which depends in part on this area, being severely impacted. Replacement on another site would be injurious to the areas wider ecology. However, areas such as the Regional Park could benefit considerably if investment in 'units' or their equivalent was considered. This approach would follow the 'proximity' principle and could serve to improve the quality of habitat within 'protected areas' of the Regional Park.

15-19 Baseline Assessments and mapping

In order to deliver a net gain for biodiversity sufficient information needs to be available to measure the value of biodiversity (both habitats and species) before development. Assessment of habitat type, their condition and management is fundamental to the whole process; understanding which habitat types are present on site, their value and function and how they might be used by different species cannot be underestimated if net gain is to be achieved. This does not have to be a complicated procedure and the metric should assist in standardising certain elements of the process, for example, by identifying those elements that contribute to the habitat type. Area wide surveying and satellite or drone related habitat mapping may have a role but this will not replace the skills and knowledge deployed by a trained surveyor. Assessment will also rely on site visits as well as the availability and accuracy of data about the population conservation status of species. The difficulties in achieving this should not be underestimated. It is important that baseline and monitoring data be held in an accessible and impartial organisation, the Local Environmental Records Centres will play a key role in the delivery of this.

24-25 Should there be a minimum duration for the maintenance of created or enhanced habitats?

The long-term security of new or enhanced habitats is fundamental, so they are protected from any loss or deterioration. This could be through the use of planning conditions or obligations. Other options include conservation covenants and management agreements. A clear and agreed understanding of what is meant by 'in perpetuity' is also required, as new habitat will take time to establish and the viability and benefit of each habitat will undoubtedly vary depending on its qualities and location.

There must be a robust legal agreement that sets out clear responsibility for implementation, appropriate management and monitoring in order to secure and maintain the biodiversity value of offsets. A responsible authority needs to be identified to oversee the administration of the scheme and verify effective delivery.

Sn 106 agreements could be used as the basis of agreement. The Governments recent consultation on 'pooling' arrangements and the introduction of a strategic infrastructure tariff could, if adopted inform this process.

28 - 33 Calculating and collecting the tariff

It is difficult to know how the tariff should be collected effectively; the ecological boundaries may not marry to administrative boundaries of a local planning authority and may align more effectively with landscape scale conservation initiatives such as Nature Improvement Areas or Local Nature Partnerships.

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?

The critical issue is whether the provisions identified in the Consultation should sit outside those for other areas of 'development costs' linked to mitigation. For example, in securing 'Net Gain', would this be at the expense of affordable housing requirements secured as part of a package of planning obligations or is it considered that Net Gain should sit outside the broader areas of negotiations involved in other aspect of social policy when applications for planning permission are negotiated. To have some weight, and to be consistent with the essential thrust of this consultation and the Lawton Review these proposals need to sit over and beyond other considerations.

Whilst this approach could support 'like for like' replacement of habitats it is unclear which 'party' to negotiations would bear the cost of maintenance. Habitats change over time and their value is often derived from physical circumstances found at each site. Recreating them is one thing but maintaining them in that state is another and the costs of management has to be factored in. Who would pay?

