

**Environment and Communities
Committee**

28 September 2023

**Biodiversity Net Gain Supplementary
Planning Document**

Report of: Jane Gowing, Interim Director of Planning

Report Reference No: EC/22/23-24

Ward(s) Affected: All

Purpose of Report

- 1 This report seeks approval to consult on the final draft of the Biodiversity Net Gain Supplementary Planning Document (BNG SPD).
- 2 The document provides guidance on policies held in the Development Plan and contributes to reducing our impact on our environment by improving biodiversity and natural habitats in the borough.

Executive Summary

- 3 This report seeks approval to publish and consult on the final draft Biodiversity Net Gain Supplementary Planning Document (“SPD”) along with its Report of Consultation, for a period of a minimum of four weeks.
- 4 Cheshire East Council’s Corporate Plan sets out three aims. These are to be open, fair, and green. In striving to be a green Council, a key objective is to enhance and protect the environment in Cheshire East and support sustainable development whilst addressing the climate emergency. As such, this SPD sets out guidance on policies contained in the Local Plan Strategy and Site Allocations and Development Policies Document that will support delivery of this ambition. Specifically, the document provides advice on how development is expected to make a positive benefit to habitats in the borough, and how Biodiversity Net Gain will be secured to contribute to the overall Vision for the Council to be open, fair, and green.

- 5 The initial draft of the BNG SPD was published for consultation between the 17 May 2021 and 14 June 2021. It has been amended in response to comments received during that consultation. The report of consultation summarises the feedback and explains how comments have been addressed (Appendix 1).
- 6 A screening exercise has been carried out to determine whether the final draft BNG SPD gives rise to the need for further Sustainability Appraisal or Appropriate Assessment (under the Habitats Regulations). This screening assessment was consulted upon and concludes that further assessment is not necessary (Appendix 3).
- 7 The advice held in the final draft SPD provides additional planning policy guidance on the implementation of Local Plan Strategy (LPS) policies SE3 'Biodiversity and Geodiversity', IN2 'Developer Contributions', and the Site Allocations and Development Policies Document, policies ENV1 'Ecological Network', and ENV2 'Ecological Implementation'. Once adopted, the SPD will be a material consideration in decision making and support the delivery of key policies in the Local Plan Strategy.

RECOMMENDATIONS

The Environment and Communities Committee is recommended to:

1. Agree to the publication of the final draft BNG SPD (appendix 2) and report of consultation (appendix 1) for public representations for a period of a minimum of four weeks.
2. Publish the associated Strategic Environmental Assessment and Habitats Regulations Assessment Screening Report ("SEA") (appendix 3).
3. Publish the associated Equalities Impact Assessment Screening Report ("EQIA") (appendix 4).

Background

- 8 Cheshire East Council's Corporate Plan sets out three aims. These are to be open, fair, and green. In striving to be a green Council, a key objective is to enhance and protect the environment in Cheshire East and support sustainable development whilst addressing the climate emergency. As such, this SPD sets out guidance on policies contained in the Local Plan Strategy that will support delivery of this ambition by providing guidance on how development is expected to make a positive benefit to habitats in the borough.

- 9 Biodiversity net gain is the securing of an increase in the extent and value of habitats, through the development process and this SPD provides guidance on the process that applicants should follow to achieve this.
- 10 Environment Act 2022 introduces a requirement for all development to deliver a biodiversity net gain. This requirement comes into effect from November 2023. Cheshire East Council have been developing an approach to BNG for some time and are already requiring BNG contributions from development.
- 11 One of the key objectives of the LPS is for the Plan to support the conservation and enhancement of biodiversity, ecological and geological assets in the borough. The LPS includes policy SE3 (Biodiversity and Geodiversity) which sets out how development should seek to enhance biodiversity, identifies the type of sites that are likely to have high biodiversity and geodiversity value, and establishes a requirement that all development must 'aim to positively contribute to the conservation and enhancement of biodiversity and geodiversity'. The policy includes additional requirements for submission of construction management plans, landscaping, green infrastructure, and open space proposals in certain circumstances.
- 12 This SPD aims to give greater clarity to developers, landowners, communities, and decision makers on the issues of biodiversity and geodiversity in the development process. The final draft Biodiversity Net Gain SPD provides additional guidance to applicants on how they should respond to the policy requirements in the LPS and SADPD. It also 'signposts' sources of information, including relevant documentation and Council services.
- 13 The final draft SPD has been jointly prepared by Strategic Planning and the Environmental Planning Team and has also been informed by input from the Development Management team.
- 14 The SPD contains several updates relating to how biodiversity should be addressed in a planning application. Specifically, the SPD includes guidance on how applicants should assess habitats on their sites, the process through which the Council expects design solutions to be assessed and how biodiversity metric calculations should be used to demonstrate that applicants preferred approach will deliver a net-gain in biodiversity.
- 15 Subject to the approval of the recommendations of this report, the SPD will be consulted on in accordance with the Council's Statement of Community Involvement for a period of four weeks.

- 16 Once adopted, the effectiveness of this SPD will be monitored as part of the Authority Monitoring Report, using information from planning applications and decisions. The outcome of this ongoing monitoring work will help inform future decisions about the SPD

Consultation and Engagement

- 17 It is proposed that the final publication draft SPD will be subject to a minimum of four weeks consultation. Following this, all comments will be considered, and reported back to the Environment and Communities Committee to consider, prior to adoption of the SPD.
- 18 Public consultation on the initial draft BNG SPD took place between the 17 May 2021 and 14 June 2021. A total of 296 comments were received from 43 parties. A summary of all the key issues raised alongside a proposed Council response is attached in Appendix 1. Several key issues were raised including:
- (a) It may be prudent for the Council to delay the progression of the Biodiversity Net Gain SPD until the Environment Bill is passed into law. This would enable the Council to reflect the requirement to deliver a 10% net gain in biodiversity within the SPD, rather than providing only limited guidance beyond that set out in the Local Development Plan.
 - (b) Progress on the SPD should be postponed until after the SADPD is adopted.
 - (c) The SPD should emphasise that off-site provision should only be sought in exceptional circumstances.
 - (d) The Council must seek to fully understand the consequences of applying the BNG SPD as drafted, in terms of viability, site capacity and overall strategy/objectives of the LPS.
 - (e) We support the proposal that final guidance should incorporate guidance on small sites.
 - (f) CEC (Cheshire East Council) should commit to bring forward a portfolio of off-site projects on land it controls or influences. This would reduce the pressure on developers to provide their own off-site projects.
 - (g) The SPD requires amendment to stipulate that BNG should not increase the risk of bird-strike hazard within 13km of the airport.
- 19 Several amendments have been made to the document in the light of comments made, including:

- (a) The circumstances under which the Council will seek to levy net gain.
- (b) Revised advice on employing the DEFRA Metric.
- (c) References and clarity regarding the approach regarding Manchester Airport and other airport safeguarding measures.
- (d) Revisions to provide greater clarity to the development management process and the Councils approach to small sites.

Reasons for Recommendations

- 20 An SPD is not part of the statutory development plan. It is a recognised way of putting in place additional planning guidance and a material consideration in determining planning applications in the borough.
- 21 Providing clear, detailed guidance up front about policy expectations should enable applicants to better understand policy requirements. The SPD should assist applicants when making relevant planning applications, and the Council in determining them.
- 22 Providing improved guidance on BNG, particularly through the advice related to how on-site delivery should be designed and how off-site contributions should be calculated allows site promoters to select a range of policy compliant approaches to improve habitats and biodiversity.
- 23 Providing such guidance should assist the Council to reduce our impact on our environment by improving biodiversity and natural habitats in the borough.

Other Options Considered

- 24 The Council could choose not to prepare a SPD on BNG or not progress the first draft document to completion. Any relevant planning application would continue to be assessed against existing planning policies. However, this would not allow the Council to provide additional practical guidance on this matter or give clarity to the approach that should be employed by all parties in a consistent way that gives certainty to applicants and decision makers.

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Option	Impact	Risk
Do not nothing	The BNG SPD could not progress through the stages required by legislation and therefore could not be adopted.	The improved outcomes that could be achieved through additional guidance on how developers are

	<p>The Councils preferred approaches for assessment of BNG and how to calculate and implement investment would not be set out.</p>	<p>expected to address policies of the local plan, would not be achieved.</p> <p>Whilst 10% BNG would still be a legal requirement, a lack of guidance on the approach to how this should be achieved could result in a compromised solution, applied inconsistently.</p>
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Implications and Comments

Monitoring Officer/Legal

- 27 The Planning and Compulsory Purchase Act 2004 (as amended) and the Town and Country Planning (Local Development) (England) Regulations 2012 provide the statutory Framework governing the preparation and adoption of SPDs. These include the requirements in Section 19 of the 2004 Act and various requirements in the 2012 Regulations including in Regulations 11 to 16 that apply exclusively to producing SPDs.
- 28 Amongst other things, the 2012 regulations require that an SPD contain a reasoned justification of the policies within it and for it not to conflict with adopted development plan policies.
- 29 The National Planning Policy Framework and the associated Planning Practice Guidance also set out national policy about the circumstances in which SPDs should be prepared.
- 30 SPDs provide more detailed guidance on how adopted local plan policies should be applied. They can be used to provide further guidance for development on specific sites, or on issues, such as design. SPDs are capable of being a material consideration in planning decisions but are not part of the development plan.

Section 151 Officer/Finance

- 31 There are no significant direct financial costs arising from consultation on the SPD. The costs of printing and the staff time in developing the SPD are covered from existing budgets of the planning service.
- 32 In the longer-term the collection of financial contributions toward BNG, in lieu of on-site delivery, will generate income that will be specifically ring fenced toward investment in BNG at locations across the borough. Income will be received via S106 legal agreements and may only be spent within the terms specified in the agreement, i.e., on securing biodiversity net gain. Investment in BNG will be monitored and reported on periodically.

Policy

- 33 The SPD will provide guidance on existing development plan policies related to the delivery of biodiversity net gain from development sites. The SPD will give additional advice to applicants on how they can demonstrate they have complied with relevant policies of the development plan related to this matter.

<p>An open and enabling organisation</p> <p>n/a</p>	<p>A Council which empowers and cares about people</p> <p>n/a</p>	<p>To reduce our impact on our environment.</p> <p>To improve biodiversity and natural habitats in the borough.</p> <p>Better guidance on BNG helps the Local Planning Authority secure delivery of improved design and habitats in new development schemes.</p> <p>It helps the authority collect the full number of financial contributions required, to invest in habitat and biodiversity at locations across the borough.</p>
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Equality, Diversity, and Inclusion

- 34 The Council has a duty under Section 149 of the Equalities Act to have due regard to the need to: eliminate discrimination; advance equality of opportunity between persons who share a “relevant protected characteristic” and persons who do not share it; foster good relations between persons who share a “relevant protected characteristic” and persons who do not share it.
- 35 The final draft BNG SPD provides guidance on securing biodiversity net gain from new development. The SPD is consistent with the LPS and

SADPD which were themselves the subject of an Equalities Impact Assessment (EQiA) as part of an integrated Sustainability Appraisal. The initial draft SPD was supported by an EQiA. An updated version of the draft BNG SPD EQiA has been prepared (appendix 4) and will be published alongside the draft SPD for comment.

Human Resources

- 36 The subject matter of the report does not give rise to any particular risk management measures because the process for the preparation of an SPD is governed by legislative provisions (as set out in the legal section of the report).

Risk Management

- 37 The subject matter of the report does not give rise for any particular risk management measures because the process for the preparation of an SPD is governed by legislative provisions (as set out in the legal section of the report).

Rural Communities

- 38 The final draft Biodiversity Net Gain SPD seeks to provide further guidance on the provision and management of habitats and ecologically valuable sites in the borough, some of which may be located in rural communities. Overall, a positive impact is anticipated as funds from BNG contributions are invested in rural areas.

Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)

- 39 The final draft SPD seeks to provide additional guidance on the provision of habitats in the borough. The appropriate provision of habitats can help support sustainable communities, especially where small scale landscaping and habitat creation is carefully provided and integrated with recreation and green space. In a limited way this creates a positive impact on these groups.

Public Health

- 40 The final draft SPD will contribute to the delivery of habitats and ensure a managed approach to investment in the built and rural environments that can have a positive impact on public health by supporting the ecosystem services that underpin our society. It is expected the BNG is primarily delivered on site, therefore a greater positive impact is expected in urban areas, across all age groups.

Climate Change

- 41 The final draft SPD highlights the importance of biodiversity, habitats, and green space in addressing and mitigating the impact of climate change. Creating and restoring habitats that have been degraded can have a significant role to play in creating carbon sinks ensuring the survival of species and mitigating the impacts of climate change.

Access to Information	
Contact Officer:	Tom Evans Neighbourhood Planning Manager Tom.Evans@cheshireeast.gov.uk 01625 650023
Appendices:	Appendix 1: Draft BNG Report of Consultation Appendix 2: Final Draft BNG Supplementary Planning Document Appendix 3: SEA / HRA Screening Report Appendix 4: Draft Equalities Impact Assessment Screening Report
Background Papers:	N/A