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By virtue of paragraph(s) X of Part 1 Schedule 1 of the Local Government Act 1972.

Environment and Communities Committee

18 July 2024

Ecology and Biodiversity Net Gain Supplementary Planning Document

Report of: Peter Skates, Interim Executive Director – Place

Report Reference No: EC/39/23-24

Ward(s) Affected: All

Purpose of Report

- 1 This report seeks approval to adopt the Ecology and Biodiversity Net Gain Supplementary Planning Document (E&BNG SDP).
- 2 The document provides guidance on policies held in the Development Plan, and on the implementation of policies related to Ecology matters and the management of Biodiversity Net Gain. It contributes to reducing impact on our environment by supporting improvements to biodiversity and natural habitats in the borough.

Executive Summary

- 3 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.
- 4 As such, this SPD sets out guidance on policies contained in the Local Plan Strategy (LPS) and the Site Allocations and Development Policies Document (SADPD) that support these aims and, provides further guidance and clarity on how Biodiversity Net Gain will be applied in Cheshire East.

- 5 Since the publication final draft of the BNG SPD, government has also published further regulations and guidance on how Biodiversity Net Gain should be implemented. The SPD has therefore been updated to take account of the additional guidance, as well as to accommodate changes implemented in response to feedback from the previous consultation.

RECOMMENDATIONS

The Environment and Communities Committee is recommended to:

1. Consider the Report of Consultation (Appendix 2); the Strategic Environmental Assessment and Habitats Regulations Assessment Screening Report (Appendix 3); and the Equalities Impact Assessment Screening Report (Appendix 4)
2. Adopt the Biodiversity Net Gain Supplementary Planning Document (Appendix 1)
3. Delegate to the Head of Planning the authority to make minor non-material changes and corrections to the SPD prior to publication.

Background

- 6 The Environment Act 2021 introduces a requirement for all development to deliver a biodiversity net gain. This requirement came into effect from November 2023. Cheshire East Council have been developing an approach to BNG for some time and have been requiring BNG contributions from development by virtue of policy SE3 of the LPS.
- 7 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.
- 8 The Biodiversity Net Gain SPD provides additional local 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.

- 9 The SPD has been jointly prepared by Strategic Planning and Environmental Planning Teams and has also been informed by input from the Development Management team.
- 10 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.
- 11 In November 2023, Government introduced multiple secondary legislation related to BNG. The following regulations came into effect from 12th February 2024:
 - (a) The Biodiversity Gain (Town and Country Planning) (Consequential Amendments) Regulations
 - (b) The Biodiversity Gain Site Register (Financial Penalties and Fees) Regulations
 - (c) The Biodiversity Gain Site Register Regulations
 - (d) The Biodiversity Gain Requirements (Exemptions) Regulations
 - (e) The Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations
 - (f) The Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations
- 12 The above regulations and guidance provide advice on multiple areas of BNG and this adoption version of the Ecology and BNG SPD has been altered to take account of the guidance provided. The Ecology and BNG SPD does not seek to duplicate the regulations but does now signpost to them in various parts of the document and adds some further local guidance on a number of matters including:
 - (a) Providing guidance on local thresholds to determine whether on-site BNG contributions are 'significant'
 - (b) Clarifying that BNG 30-year management plans should be presented on templates prepared by Natural England
 - (c) Clarifying that net gain plans should be submitted using the Natural England standard template

- (d) Explaining the necessary legal arrangements between habitat providers, the Local Planning Authority, and applicants
- 13 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

- 14 The first draft of the BNG SPD was published for consultation during May 2021 and the final draft SPD was consulted on during October and November 2023, receiving 150 comments from 23 consultees.
- 15 The Environment Act was brought into effect in November 2021 and established the basis to secure Biodiversity Net Gain from development. Secondary legislation was then required to establish the detailed elements of how BNG should be secured, providing practical measures that enable the law to be enforced and to operate in the planning system.
- 16 Therefore, the SPD has been developed concurrently alongside the national roll-out of BNG and the document has been amended in response to the publication of national guidance and comments received during our own consultations.
- 17 The consultation was promoted via direct email notification to consultees held on the councils local Plan Consultation database. This source includes statutory consultees, local town and parish councillors, all members, special interest groups, developers and members of the public. The document was also promoted via press release and social media updates.
- 18 Multiple changes have been made to the document in response to the consultation feedback. The report of consultation summarises the feedback received (Appendix A), and the changes made to the document.
- 19 A screening exercise has been carried out to determine whether the Ecology and BNG SPD gives rise to the need for further Sustainability Appraisal or Appropriate Assessment (under the Habitats Regulations). This screening assessment was consulted upon at both stages and concludes that further assessment is not necessary (Appendix C).

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 adopt the SPD. 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 how contributions will be approached 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	<p>The Ecology and BNG SPD could not progress through the stages required by legislation and therefore could not be adopted.</p> <p>The Councils preferred approaches for assessment of BNG and how to calculate and implement investment would not be set out.</p>	<p>The improved outcomes that could be achieved through additional guidance on how developers are 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>

Implications and Comments

Monitoring Officer/Legal

- 26 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.
- 27 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.
- 28 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.
- 29 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.
- 30 As with the previous round of consultation, any public consultation should comply with the 'Gunning Principles':
 - (a) proposals are still at a formative stage - A final decision has not yet been made, or predetermined, by the decision makers
 - (b) there is sufficient information to give 'intelligent consideration' - The information provided must relate to the consultation and must be available, accessible, and easily interpretable for consultees to provide an informed response
 - (c) there is adequate time for consideration and response - There must be sufficient opportunity for consultees to participate in the consultation.
 - (d) 'conscientious consideration' must be given to the consultation responses before a decision is made. Decision-makers should be able to provide evidence that they took consultation responses into account.

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 and value 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 Ecology and 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 Ecology and BNG SPD EQiA has also been prepared (appendix 4).

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 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 for habitat creation.

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

- 39 The 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 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 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 and Acting Environmental Planning Manager. Tom.Evans@cheshireeast.gov.uk
Appendices:	Appendix 1: Ecology and BNG Supplementary Planning Document Appendix 2: Ecology and BNG Report of Consultation Appendix 3: SEA / HRA Screening Report Appendix 4: Equalities Impact Assessment Screening Report
Background Papers:	N/A

Appendix 1

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