

BARNSELY METROPOLITAN BOROUGH COUNCIL

REPORT OF: EXECUTIVE DIRECTOR GROWTH AND SUSTAINABILITY

TITLE: Habitat Bank Creation

REPORT TO:	CABINET
Date of Meeting	7 February 2024
Cabinet Member Portfolio	Regeneration and Culture
Key Decision	Yes
Public or Private	Public

Purpose of report

This report seeks authority to create a habitat bank on Council owned land.

Council Plan priority

Growing Barnsley and Sustainable Barnsley

Recommendations

That Cabinet:-

1. Approves the principle of establishing a habitat bank in Barnsley on Council owned land, to be delivered internally by the Council.
2. Delegates authority to the Head of Planning, Policy and Building Control to carry out all necessary arrangements to set up a habitat bank on Council owned land. Arrangements will include, but not exclusively: choice of site(s); legally securing the site(s); the mechanism for determining cost of credits and any future uplift; collecting and receiving payments; and monitoring.

1. INTRODUCTION

- 1.1 The Environment Act 2021, amends the Town and Country Planning Act 1990. It will mean that the majority of new developments will be legally required to demonstrate a minimum biodiversity net gain (BNG) of 10%, and secure those gains for a minimum of 30 years. Biodiversity net gain is a way to contribute to the recovery of nature while developing land. It is making sure the habitat for wildlife is in a better state than it was before development. This was intended to apply from November 2023 for developments in the Town and Country Planning Act 1990, unless exempt. Following a slight delay, Government has recently announced this will apply from 12th February 2024

to major development, with BNG required for small sites from 2nd April, 2024. The glossary includes definitions of major development and small sites.

- 1.2 The National Planning Policy Framework (NPPF) paragraph 174 part d already requires planning decisions to provide net gains in biodiversity. The Local Plan objectives include seeking a net gain in biodiversity and policy BIO1 expects development to conserve and enhance biodiversity. Consultation has taken place on an updated Biodiversity and Geodiversity SPD to require a minimum of 10% Biodiversity Net Gain. A report to adopt the updated SPD is scheduled to be brought to Cabinet and Full Council in February and March 2024 respectively.
- 1.3 Biodiversity net gain is measured using the latest Department for Environment, Food & Rural Affairs (DEFRA) metric (currently version 4.0). Government anticipates that version 4.0 of the metric will be the version that becomes statutory on 12th February 2024. The Biodiversity Metric is a key tool that supports the delivery of Biodiversity Net Gain (BNG). It is used to calculate the baseline biodiversity value of a site and forecast its future biodiversity value.
- 1.4 Creation of a habitat bank provides a way for landowners to create or restore a habitat in advance and 'bank' the resulting biodiversity units. These units (also referred to as credits) can then be purchased by developers in order to comply with the mandatory 10% biodiversity net gain, where this can't be achieved on site.
- 1.5 It is recommended that the Council uses some of its own land to create a habitat bank. This will then enable the Council to 'sell credits' to developers who are unable to meet the 10% biodiversity net gain requirements within their development sites. The benefits of this are that the credits received will give us an opportunity to invest in and improve biodiversity habitats on Council owned site(s). Establishing a habitat bank on council-owned land would also likely assist in our compliance with the strengthened 'biodiversity duty' that the Environment Act 2021 introduces, with a suggested action including managing land to improve biodiversity. This report seeks authority to establish a habitat bank. It is proposed that decisions on the detail of how this is established and legally secured is delegated to the Head of Planning, Policy and Building Control.
- 1.6 We are proposing to create a habitat bank on one site initially. This is a new area of work, and we don't know how resource intensive the process will be. We may also learn from the experience of the first one and be able to improve our process if we decide to create future habitat banks. We intend to monitor the sales of credits and if it is working well, before all credits are sold, we will consider creating another site. The site is likely to only be accessible to the public if there is a Public Right of Way running through the site at present.
- 1.7 If there is no Council owned habitat bank site the other options open to developers are to buy credits from a private company such as the Environment Bank or buy what are called 'statutory credits' from the Government department Defra. They may also be able to buy them on sites

outside of Barnsley. The biodiversity metric allows for off-site mitigation within the same National Character Area as the development site without penalty. The National Character Area, which encompasses the majority of the BMBC local authority boundary is the Nottinghamshire, Derbyshire and Yorkshire Coalfield. This extends to Wakefield, Leeds and parts of Bradford to the north and parts of Derby and Nottingham to the south. The establishment of a council-owned Habitat Bank will increase the likelihood of off-site mitigation remaining within the Borough. Our ideal is for any units needed to offset development to stay within the borough. The creation of our own site will enable this to happen. Appendix 1 shows a map of all the National Character Areas and shows which of those Barnsley falls within.

- 1.8 The creation of a habitat bank will contribute to Healthy Barnsley 2030 ambitions to improve residents' health and wellbeing by enhancing opportunities for communities to connect with nature.
- 1.9 On 29th November, 2023 Government released the draft secondary legislation which provides the detail for the new BNG framework. There are six statutory instruments which will become law when BNG goes live on 12th February 2024. Government has also released some guidance documents. The document most pertinent to this report is the Local Authority Guidance. A link to this has been added to the background papers section of this report.
- 1.10 A steering group of officers from relevant service areas across the authority has been meeting to discuss how this proposal could be delivered. To date the Steering Group has:
- Looked at examples from other local authorities using different delivery mechanisms to determine the appropriate approach for Barnsley.
 - Considered costings to establish a suggested charge per biodiversity 'credit'.
 - Considered a list of potential Council owned and managed sites that could be suitable.
- 1.11 The main delivery mechanisms that are used by other local authorities to secure habitat banks are:
- Use of section 106 planning obligations
 - A special purpose vehicle, setting up a separate arms length organisation (ALMO)
 - Conservation covenants
- 1.12 **Section 106**

Planning obligations are legal obligations entered into to mitigate the impacts of a development proposal. This can be via a planning agreement entered into under [section 106 of the Town and Country Planning Act 1990](#) by a person with an interest in the land and the local planning authority; or via a unilateral undertaking entered into by a person with an interest in the land without the local planning authority as a party. Some authorities have not opted for this due to legal issues that they could not have an agreement with themselves. Some authorities are considering whether they can use Section 106 via a

unilateral undertaking, however this is likely to fall foul of the same legal principle that a party cannot enter into a contract with itself.

1.13 **Special Purpose Vehicle/ ALMO**

An ALMO called a 'special purpose vehicle' could be established. This would effectively be a separate company that would run the site and sell credits to developers. Plymouth Council has taken this route. The downside to a special purpose vehicle is that it is costly to set up and manage.

1.14 **Conservation Covenant**

A conservation covenant agreement is a private, voluntary agreement to conserve the natural or heritage features of the land. It must be for the public good and have a conservation purpose.

A conservation covenant agreement must be between:

- a landowner who holds freehold title of the land or a leaseholder – if you're a leaseholder, you must have a lease of more than 7 years with time remaining on it
- a responsible body

A responsible body can be:

- a local authority
- a public body or charity, where at least some of its main purposes or functions relate to conservation
- a private sector organisation, where at least some of its main activities relate to conservation

There is potential for Barnsley MBC and neighbouring local authorities to register to become a responsible body. If approved, we could then administer and monitor conservation covenants for neighbouring local authorities, and vice versa. Some authorities may not be comfortable with the potential to have to take enforcement against another local authority if conditions of the covenant are not met. Registration of the Council as a responsible body would facilitate it acting as a responsible body for another authority's habitat bank but there would be no requirement to act in this capacity following registration.

Another option that is to be suggested is that SYMCA become the responsible authority for dealing with conservation covenants. If SYMCA apply and are accepted as responsible body they will be able to administer and monitor conservation covenants for the South Yorkshire authorities and would be responsible for reviewing the success of the habitat banks, i.e. establishment of habitats meeting targeted condition, etc.

1.15 On a related issue, we are working with SYMCA and the other South Yorkshire authorities to develop a South Yorkshire Local Nature Recovery

Strategy (SYLNRS). The aim is to have this in place by March 2025. Ideally our habitat bank site(s) will lie within the wider SY LNRS. A future report will be brought to Cabinet with progress on the SY LNRS.

2. PROPOSAL

- 2.1 It is proposed that Council owned land is used to create a habitat bank. The benefit of using Council owned land is that the Council will be able to collect biodiversity credits from developers who are unable to meet the 10% biodiversity net gain requirements within their development sites.
- 2.2 It is proposed that this will be run internally by the Council.
- 2.3 It is considered that the appropriate delivery mechanism for dealing with BNG concerned with development proposals in the district is likely to remain the execution of s106 agreements with the owner of the development site. However where the Council is selling credits from its own habitat bank that likely to involve the execution of a conservation covenant with a partner authority acting as the responsible body and this may be done via a reciprocal arrangement with a neighbouring authority as mentioned above.
- 2.4 It is proposed that the initial charge, per biodiversity credit, is expected to be between £28k - £51k based upon differing prices for Grassland, Woodland and Scrub credits.
- 2.5 Site selection is in progress. It is recommended that Cabinet delegates authority to the Head of Planning Policy and Building Control for the final choice of site (s), and to agree additional sites to be chosen once credits are sold on the original site.
- 2.6 Officers in the Regeneration and Culture Service intend to arrange Member training on the wider subject of Biodiversity Net Gain.

3. IMPLICATIONS OF THE DECISION

3.1 Financial and Risk

- 3.1.1 Consultations have taken place with representatives of the Director of Finance (S151 Officer) who make up part of the Steering Group referenced in paragraph 1.6.
- 3.1.2 Based upon initial calculations costs per BNG credit are expected to be in the range of £28k-£51k dependent on type of BNG (Woodland, Grassland or Scrub). This is in line with current intelligence of other local authorities and DEFRA.
- 3.1.3 The calculations to arrive at this range includes initial costs surrounding Land Purchase, Habitat Creation, Project Development, and Management. It is recommended that the authority monitors and updates this charge as appropriate as more information and certainty around the variables is solidified over the coming months and years. This decision is to be delegated

to the Head of Planning, Policy and Building Control via publishing any revised charges will be made through the annual Fees and Charges Report as part of the Council's budget pack.

- 3.1.4 The cost range has been calculated using information given on potential operating requirements from internal BMBC services including Property & Assets, Neighbourhoods, Planning & Legal with most costs being based on staff & equipment time over the 30 years of managing and monitoring the biodiversity units. It is deemed prudent to include a small contingency in the calculation to cover any other provisions that may be required. In line with industry standards. Future years costs have then been inflated by 3% for Year 2 and then 2% thereafter for the remaining years to assist in futureproofing the charge.
- 3.1.5 As per paragraph 2.3 it is proposed to charge via the Conservation covenant route. DEFRA allows for a differing price range based on the potential land required by developers as well as not being set too high to make the price uncompetitive with the private off-site market.
- 3.1.6 The ALMO option was dismissed from a financial & legal perspective due to higher costs based on the running of an ALMO plus the extra officer time it would take in dealing with additional obligations.
- 3.1.7 There is a financial risk that due to this being a new scheme that costs have been underestimated on the work required, however as explained this is to be reviewed as more information becomes available.
- 3.1.8 BMBC officers will continue to work closely within the Steering Group and Head of Planning Policy and Building Control to update on any costs to ensure final proposed charges & future years charges are accounted for appropriately. No Appendix A required at this stage.

3.2 Legal

This report sets out appropriate measures in light of the emerging law on BNG to enable the setting up of a habitat bank for the authority. This will facilitate the provision of BNG within the Borough and the sale of BNG units on Council owned habitat bank.

3.3 Equality

An EIA has been completed for this project. This concluded that a positive indirect impact is anticipated for everyone in the borough given that improving biodiversity can have a positive impact on climate change mitigation. The EIA is attached as appendix 2 of this report.

3.4 Sustainability

The creation of a habitat bank will have a low to high positive impact on people, place and the environment.

Natural Capital: Where possible, the resources used to create and maintain

the habitat bank will come from renewable sources. Habitat banks will naturally act as carbon sequesters and as part of a wider system, supporting ecological functions, helping to mitigate global warming and climate adaptation. Where waste is identified through the creation of the site, the waste hierarchy will be followed. The creation will have a high positive impact on biodiversity and has the potential to have a low positive impact on air quality.

Human / Social Capital: Subject to the location of the habitat banks, the creation and maintenance of the site is predicted to have a low to high positive impact on quality neighbourhoods and as part of a larger system will support with climate adaptation and mitigation. There is potential to maximise social value by offering a space to support local community groups, training initiatives and promote health and wellbeing. A low positive impact is anticipated on sustainable food production, poverty, peace and justice, learning and skills and the potential for the creation of jobs. In the long term, this can also support with quality homes with access to green space.

Manufactured Capital: Through close monitoring of the procurement process, supply chains and establishing new processes to drive down greenhouse gas emissions in organisational processes, the programme has the potential to have a low to high positive impact through opportunities to create jobs.

Financial Impact: The wheel does not fully articulate the financial impact, however the Council has a public duty to invest responsibly and ethically. The totality of the savings derived from improving the environment, health and wellbeing and economic benefits to the borough will have a positive impact in other areas and reduce impact on services that support people in the borough.



3.5 Employee

There are no employee implications arising from this report.

3.6 Communications

If approved, once the habitat bank is established a communications and marketing strategy will be required to raise awareness and encourage developers to choose to use it where they cannot accommodate the net gain within their development sites.

4. CONSULTATION

- 4.1 Several service areas are represented on the steering group for this project. No public consultation has taken place on this proposal.

5. ALTERNATIVE OPTIONS CONSIDERED

5.1 Do nothing

There are alternative options available for developers to buy biodiversity credits from other organisations. If we don't have a habitat bank on Council owned land, we miss the opportunity to collect monies and improve habitats and biodiversity on Council owned sites. Developers may buy credits from other providers. They may also buy credits on sites outside of the borough, as developers can seek off site mitigation within the same National Character Area as the development site, without penalty within the Biodiversity Metric. . The do nothing option is not recommended.

- 5.2 There is potential for private companies, such as Environment Bank leasing council-owned land to create a habitat bank from which to sell credits to developers. This option would give us less control on what habitats are created.

6. REASONS FOR RECOMMENDATIONS

- 6.1 This is a valuable opportunity to collect monies to improve the habitats and increase biodiversity of some Council owned sites.

7. GLOSSARY

BNG - Biodiversity Net Gain

Major Development - major development is defined in article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015) as development involving any one or more of the following:

(a) the winning and working of minerals or the use of land for mineral-working deposits;

(b) waste development;

(c) the provision of dwellinghouses where—

(i) the number of dwellinghouses to be provided is 10 or more; or

(ii) the development is to be carried out on a site having an area of 0.5

hectares or more and it is not known whether the development falls within sub-paragraph (c)(i);

(d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or

(e) development carried out on a site having an area of 1 hectare or more.

Small Sites - Small sites are developments which do not fall under the meaning of major development (major development is defined in article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015). This means:

- residential development where the number of dwellings is between 1 and 9, or if this is unknown, the site area is less than 0.5 hectares
- commercial development where floor space created is less than 1,000 square metres or total site area is less than 1 hectare development that is not the winning and working of minerals or the use of land for mineral-working deposits
- development that is not waste development.

The statutory biodiversity metric tool needs to be used for any development which meets the definition for major development.

8. LIST OF APPENDICES

Appendix 1: National Character Areas

Appendix 2: Equalities Impact Assessment

9. BACKGROUND PAPERS

<https://www.gov.uk/guidance/biodiversity-net-gain-what-local-planning-authorities-should-do>

If you would like to inspect background papers for this report, please email governance@barnsley.gov.uk so that appropriate arrangements can be made

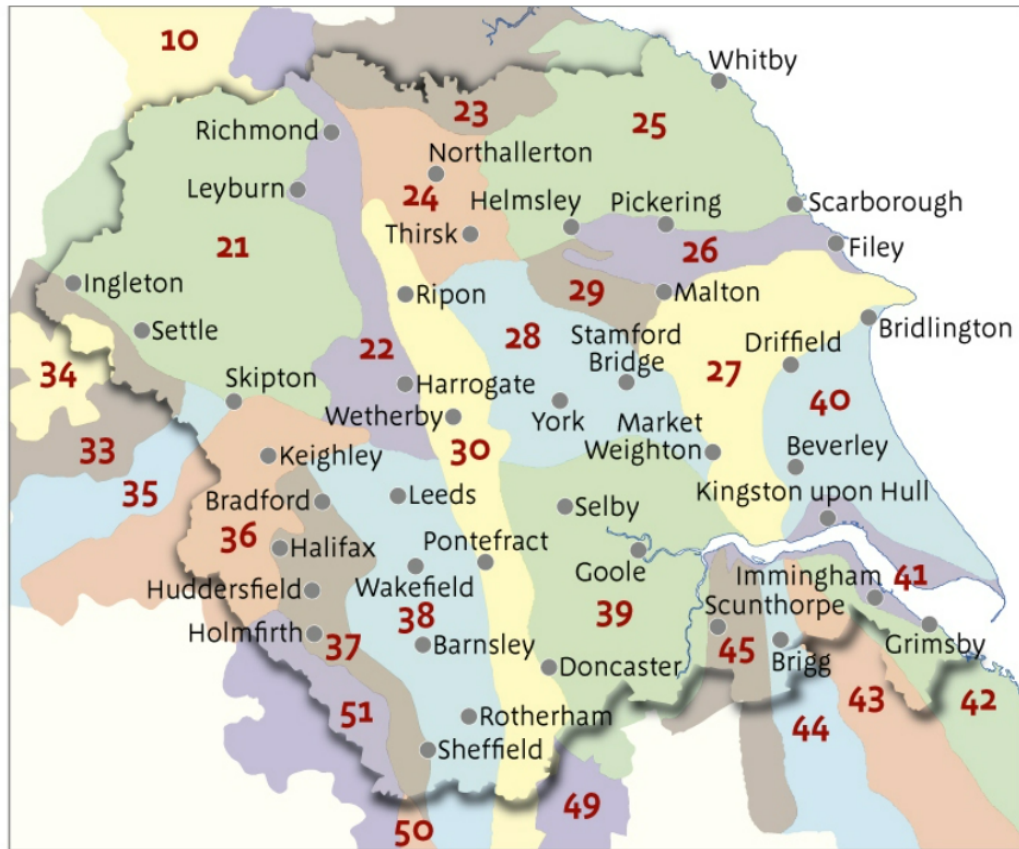
10. REPORT SIGN OFF

Financial consultation & sign off	Senior Financial Services officer consulted and date <i>Ashley Gray – Strategic Finance Business Partner – 07/12/2023</i>
Legal consultation & sign off	Legal Services officer consulted and date Bob Power 19/12/23

Report Author: Paula Tweed
Post: Planning Policy Group Leader
Date: 06/12/23

National Character Areas

NCA in Yorkshire and the Humber



Extract from www.gov.uk

Barnsley falls within:

- 38 - Nottinghamshire, Derbyshire and Yorkshire Coalfield
- 30 - Southern Magnesian Limestone
- 37 - Yorkshire Southern Pennine Fringe
- 51 - Dark Peak