

# Corporate Policy and Resources Committee

15<sup>th</sup> April 2024



<b>Title</b>	Biodiversity Net Gain Habitat Banks
<b>Purpose of the report</b>	To make a decision
<b>Report Author</b>	<i>Gina Cook - Climate Change Officer, Projects</i> <i>Anna Fjortoft – Biodiversity Officer, Neighbourhood Services</i>
<b>Ward(s) Affected</b>	All Wards
<b>Exempt</b>	No
<b>Exemption Reason</b>	n/a
<b>Corporate Priority</b>	Environment
<b>Recommendations</b>	To approve the creation of Habitat Banks on identified Spelthorne Borough land, for the purpose of Biodiversity Net Gain.
<b>Reason for Recommendation</b>	Spelthorne Borough Council (SBC) have a statutory duty to meet the new Biodiversity Net Gain requirements (Environment Act 2021). There is an opportunity for Spelthorne Borough Council to put our sites (which will be called Habitat Banks) on the National Register for offsite habitat units. By proposing land within the borough, there will be an increased opportunity to keep biodiversity enhancements within the borough boundary and to positively benefit from this.

## 1. Summary of the report

What is the situation	Why we want to do something
<ul style="list-style-type: none"> <li>Biodiversity Net Gain (BNG) is a new statutory requirement for developers to meet, where they must achieve a minimum of 10% BNG uplift for any new development.</li> <li>This must be achieved on-site for a development where possible. If not, the remainder can be achieved off-site.</li> </ul>	<ul style="list-style-type: none"> <li>As a local authority, we can provide our own land as Habitat Banks for the purpose of BNG.</li> <li>Developers will be able to purchase habitat units from our Habitat Banks. The sale of these units will pay for the creation and ongoing maintenance of improved or new habitats on our sites for 30 years.</li> <li>If there is no land within the borough boundary on the register for</li> </ul>

<ul style="list-style-type: none"> <li>Landowners, including the Council, can put their land on the National Register for developers to purchase habitat units. This will create additional enhanced habitat and increased biodiversity within the Borough.</li> <li>Developers are purchasing habitat units, but the landowner and the management of site still remains with SBC. The purchase of units is solely for improving or creating habitat, where developers cannot meet net gain on their development site.</li> </ul>	<p>developers to purchase, they will have to purchase habitat units from other landowners outside of the borough. Therefore, Spelthorne will not benefit from enhanced biodiversity.</p>
<p><b>This is what we want to do about it</b></p>	<p><b>These are the next steps</b></p>
<ul style="list-style-type: none"> <li>To complete preparation of Habitat Banks at Spelthorne sites and upload them to the National Register once legal agreements are in place.</li> </ul>	<ul style="list-style-type: none"> <li>To complete Habitat Bank preparations, if approved for use by CPRC.</li> </ul>

- 1.1. Biodiversity Net Gain (BNG) became mandatory for major development on 12<sup>th</sup> February 2024, and mandatory for small site developments on 2<sup>nd</sup> April 2024. Future development will have to meet the minimum requirement of 10% BNG. This means developers have to leave the environment in a better state than prior to development.
- 1.2. There is an opportunity for Spelthorne Borough Council (SBC) to put land on the National Register for offsite habitat units. Each site registered will then be known as a Habitat Bank. Development is incentivised to keep offsite biodiversity gain as close to the development site as possible, through the statutory biodiversity metric calculator. This provides an assessment of costs associated with a site's development in terms of provision for biodiversity. Therefore, developers will be looking to purchase units as close to site as possible, to keep the overall cost to a minimum as costs rise with distance from the development site.
- 1.3. In the emerging local plan, there is a policy requirement for developers to purchase offsite habitat units within the borough where possible. As we are a predominantly urban borough, the areas of opportunity we have for offsite habitat units are more limited than other districts and boroughs in Surrey. By proposing our own land for Habitat Banks, we have the opportunity to create important areas of improvement for biodiversity in Spelthorne.

## 2. Key issues

## **2.1. Nature decline and Local Authority statutory duty**

- 2.1.1. Over the last century, the state of nature in the UK has seen a significant and alarming decline due to increased demands, including population increase, agricultural intensification, pollution, climate change and development. This has resulted in deteriorated and fragmented habitats.
- 2.1.2. The Surrey Nature Partnership have reported that the likely local rate of species loss is higher in Surrey than the UK average.
- 2.1.3. The Environment Act 2021 introduced a number of new duties for local authorities, which are of relevance to nature recovery and biodiversity, and this includes mandatory BNG.

## **2.2. Mandatory BNG can be met through onsite, offsite, statutory credits, or a combination of these mechanisms**

- 2.2.1. **Onsite:** wherever possible BNG should be achieved onsite via the creation or enhancement of habitat
- 2.2.2. **Offsite:** where BNG cannot be achieved onsite, the loss in biodiversity will need to be 'offset' by creating new habitat somewhere else (as near as possible to the development, as per the biodiversity metric). This can be achieved by:
  - (1) The developer provides offsite habitat units themselves on other land they own.
  - (2) The developer can purchase offsite habitat units from a Habitat Bank on the Natural England BNG register.
  - (3) Statutory credits are a last resort option and sold by Natural England on behalf of Secretary of State. The money will not be ringfenced locally, so could be spent anywhere in England.

## **2.3. Preparing SBC land as a Habitat Bank**

- 2.3.1. In order to generate habitat units for the Borough and to produce a Habitat Bank the following steps must be completed:
  - Have a baseline ecological survey and plan showing existing habitat types and conditions, measured using the statutory biodiversity metric.
  - Have a habitat management and monitoring plan (HMMP) showing the capital work, management prescriptions for the 30 years and timeline of monitoring.
  - Have described the likely resulting habitats after 30 years.
  - Have the generated habitat units calculated using the statutory biodiversity metric.
  - Have a legal agreement securing the land and the HMMP for at least 30 years.
  - Be registered on the National Register.

## **2.4. SBC's preparation for off-site land registration**

- 2.4.1. We have proactively identified potential sites for SBC to register and begun preparations. This has been funded using a portion of the Government BNG grant which must be used to prepare locally for mandatory BNG.
- 2.4.2. We have surveyed and baselined three sites. The sites are Long Lane recreation ground, Halliford park and Laleham park *North*. All three sites have had biodiversity metric analyses, and HMMPs are being progressed and are expected to be completed in April. The sites are expected to be ready to be added to the register in May.
- 2.4.3. For the three parks, enhancements do not impact the normal use of the park and are expected to increase park-user's experience of the sites. The enhancements proposed will create habitat units through improving the woodland condition and the addition of a plot of wildflower meadow at Long Lane recreation ground (see appendix 1 for more details).
- 2.4.4. Due to the 30-year legal agreement, which prevents BNG sites to be used for anything other than this purpose, we have initially only selected parks. This is because parks are not in line for development.
- 2.4.5. We are currently working with the legal team to carry out all due diligence (including a title review, usual searches and enquiries) for sites prior to registering them to the National Register. This will reveal and identify any constraints for these sites.
- 2.4.6. Further suitable sites for Habitat Bank creation are also being considered, and will also be subject to due diligence checks.

### **3. Options analysis and proposal**

#### **3.1. Option 1 (recommended): To approve the creation of Habitat Banks on identified Spelthorne Borough land**

- 3.1.1. To work towards completing the remaining steps to put the SBC Habitat Banks on the National Register, so we can incentivise as much offsite habitat units in the borough as possible. The works can be carried out post purchase of habitat units, as long as BNG guidance is followed. Legal agreements will have to be in place to secure them for a 30-year period including monies for development and maintenance.
- 3.1.2. The Biodiversity Officer will work with the Parks Team, to ensure the requirements of the HMMPs are met, similarly to how they currently do with wildflower meadows in the parks. Together, the HMMP and unit pricing calculations will set out the yearly management required and associated costs and money will be drawdown over the 30 year period. It will be drawdown in a similar manner to the existing Countryside Stewardship Grant for SSSI sites in the borough, which provides a spending plan guide per year but is flexible.
- 3.1.3. To continue to identify further areas of opportunity for Habitat Bank locations across the Borough that can be secured for a 30-year period. Legal agreements will have to be in place for this.

#### **3.2. Option 2 (not recommended): Do nothing**

- 3.2.1. This will result in a lack of habitat units that developers can purchase, unless other landowners are considering putting habitat units on the register. If developers are unable to achieve onsite BNG, they will have to purchase

habitat units outside of the borough, and we won't gain the benefits of improved biodiversity in the borough.

3.2.2. There are currently no other Spelthorne sites on the National Register from other landowners.

### **3.3. Option 3 (not recommended): Do not continue progressing current identified land as Habitat banks and instead find alternative land**

3.3.1. This would result in starting the process again of identifying alternative Habitat banks, commissioning new ecological baseline site surveys, using biodiversity metric to identify units and work on HMMPs to prepare sites.

3.3.2. This option would be more time consuming, especially depending on the ecological survey calendar for when surveys must be conducted e.g. summer for wildflowers. If we miss a window, we may have to wait another year.

3.3.3. Additionally, this would result in using funds from the next Government BNG grant, which could go towards other BNG preparations.

## **4. Financial implications**

4.1. The selling of habitat units will provide an income for the Council to both create meaningful habitat and manage it over a 30-year period. The unit pricing will include both the creation or enhancement of the habitat and maintenance of the habitat for the 30 year period. A plan for how management funds will be drawdown over the 30 years will be created based on HMMPs.

4.2. The price of the habitat unit is decided by the landowner, in this case SBC. When deciding on the pricing of the units, it must be ensured that the cost will cover the creation and management of the habitat over the 30-year period, the monitoring fees, and inflation. SCC and ecologists are assisting in the unit calculations.

4.3. The price of habitat units is still to be calculated. This will vary depending on the type of habitat being created, as well as factoring in the cost of the 30-year monitoring and management period. For example, 1 unit of grassland habitat will be less than 1 unit of woodland, due to the type of habitat.

4.4. Indicative costs from DEFRA and other Local Authorities suggest that units could be sold anywhere from £20,000 to £40,000.

4.5. Initial conversations have been had with SCC and other Surrey districts and boroughs about a standardised pricing across the county, to remove competition between each other. As the cost of habitat work may vary depending on other site-specific factors, SCC's standardised pricing calculator will act as a template but we will adjust pricing for specific sites to ensure we fully cover costs, when appropriate.

## **5. Risk considerations**

5.1. There is a risk that if we do not have any land on the register, and there is none available from other landowners in the borough, developers will be forced to purchase units outside of the Spelthorne Borough boundary. This means we will not benefit from enhanced biodiversity in Spelthorne.

## **6. Procurement considerations**

- 6.1. There are no procurement considerations at this time. However, there may be future considerations when work needs to be carried out on Habitat Banks to create and monitor habitat.

## **7. Legal considerations**

- 7.1. To be eligible for registration on the gain site register, land must be secured for 30 years for off-site BNG by one of two legal mechanisms. The first are planning obligations with local planning authorities (LPAs) under section 106 Town and Country Planning Act 1990 (the Act). The second legal mechanism is conservation covenants.
- 7.2. A conservation covenant is a private, voluntary agreement between a landowner and a “responsible” body, such as a conservation charity, government body or a local authority. It delivers lasting conservation benefit for the public good. A covenant sets out obligations in respect of the land which will be legally binding not only on the landowner but on subsequent owners of the land. Currently none are yet possible because there are no ‘responsible bodies’ which must be the counterparts to such agreements.
- 7.3. To secure land with a section 106 agreement the following options are available:
  - 7.3.1 Special purpose vehicle:

The LA can set up a special purpose vehicle and enter a section 106 agreement with them. The special purpose vehicle will carry out the habitat enhancement work and the LA must check that they meet their responsibilities.
  - 7.3.2 Enter an agreement with the county or district council:

If the LA is not a unitary authority, they can enter a section 106 agreement with the county council. The LA will carry out the habitat enhancement work and the county council must check that they meet their responsibilities.
  - 7.3.3 Lease the land to a tenant:

The LA can lease their land to a tenant and enter a section 106 agreement with them. The tenant will carry out the habitat enhancement work and the LA must check that they meet their responsibilities.
- 7.4. Officers are currently working closely with the County Council to explore option of entering into agreements with them. Considering all available options, this seems to be the most straightforward and quickest course of action to enable the sites to be put on the register.

## **8. Other considerations**

- 8.1. Mandatory BNG is a new requirement and there is a high level of uncertainty for all local authorities on how this will work in practice.

## **9. Equality and diversity**

- 9.1. The climate and biodiversity emergency and its impacts will affect all of us. However, many of the effects will be disproportionately felt by those residents and communities who are most vulnerable. By registering land within the

borough for BNG, habitat units can be purchased by developers and we will see nature recover locally.

- 9.2. Additional benefits of implementing habitat units on Spelthorne Borough land seeks to address building resilience to the impacts of climate change through natural solutions and increased health benefits that come with increased biodiversity e.g. improved air quality and community health and wellbeing through enjoyment of flowers and increased wildlife.

## **10. Sustainability/climate change implications**

- 10.1. The climate and biodiversity emergencies are intrinsically linked. The positive implications of BNG will also have positive impacts on the climate agenda. This includes improving our mitigation of climate change, such as through natural carbon sinks. It also has the opportunity to provide reduced risk from environmental hazards, such as increased flooding events.

## **11. Timetable for implementation**

- 11.1. If Option 1 is chosen, sites to be added to National Register as soon as fully prepared.

## **12. Contact**

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**Background papers: There are none.**

## **Appendices:**

Appendix 1 – Habitat Bank Proposal Details