

**TO: EXECUTIVE MEMBER FOR PLANNING AND TRANSPORT
28 OCTOBER 2023**

APPLICATION FOR RESPONSIBLE BODY STATUS

Executive Director of Place, Planning and Regeneration

1 PURPOSE OF REPORT

- 1.1 To seek approval to apply to the Department for Environment, Food & Rural Affairs (Defra) for Bracknell Forest Council to become a Responsible Body (RB) for the purposes of delivering Biodiversity Net Gain (BNG). This will enable the Council to create BNG conservation covenants with landowners.
- 1.2 To set out that this proposal, if accepted, will enable third party landowners to bring forward land to provide biodiversity units to developers.

2 RECOMMENDATION

- 2.1 **That the Executive Director of Place, Planning and Regeneration be delegated to apply to the Department for Environment, Food & Rural Affairs (Defra) for the Council to become a Responsible Body.**

3 REASONS FOR RECOMMENDATION

- 3.1 BNG becomes mandatory for large developments as from January 2024 and for smaller developments from April 2024. RB status will allow Bracknell Forest to agree conservation covenants with landowners who wish to sell biodiversity units to developers. This is beneficial for developers as it may obviate the need for them to purchase expensive statutory credits from the Government. This will also make it easier for landowners in the Borough to secure their land for long term conservation purposes that is for the public good. Conservation covenants may also be used for heritage conservation.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 To not apply for the Council to become a RB. This will mean that the Council will not be able to help third party landowners bring forward land for long term conservation purposes and sell biodiversity off setting units to developers. If there are no (or few) other RBs in the local area this will mean that developers have fewer options for the purchase of offsite biodiversity units and may not be able to meet the minimum 10% mandatory BNG requirement. In this case, the Council will not be able to grant planning permission unless the developers can provide all their biodiversity units on the development site or are willing to purchase statutory credits from the Government which are very expensive and are unlikely to benefit local biodiversity.

5 SUPPORTING INFORMATION

Biodiversity Net Gain

- 5.1 BNG 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.

- 5.2 The Environment Act 2021 sets out the following key components of mandatory BNG:
- Amends Town & Country Planning Act (TCPA)
 - Minimum 10% gain required compared to the baseline condition of the land calculated using the Biodiversity Metric & approval of a biodiversity gain plan;
 - Habitat secured for at least 30 years via planning obligations or conservation covenants;
 - Delivered on-site, off-site or via a new statutory biodiversity credits scheme; and
 - National register for net gain delivery sites.
- 5.3 BNG does not change existing legal protections for important habitats and wildlife species. It maintains the mitigation hierarchy of avoid impacts first, then mitigate and only compensate as a last resort.
- 5.4 BNG becomes mandatory for large developments as from January 2024. These are likely to be applications for 10 dwellings or more, floorspace of 1000sqm or more and applications affecting areas of natural vegetation of 0.5 ha or more. BNG will become mandatory for smaller developments in April 2024. Small sites are defined as:
- (i) For residential: where the number of dwellings to be provided is between one and nine inclusive on a site having an area of less than one hectare, or where the number of dwellings to be provided is not known, a site area of less than 0.5 hectares.
- (ii) For non-residential: where the floor space to be created is less than 1,000 square metres OR where the site area is less than one hectare.
- 5.5 Permitted development is exempt from BNG and further exemptions are likely to include:
- Developments impacting an area under 25m² or five metres for linear habitats such as hedges.
 - Householder applications.
 - Biodiversity gain sites where the land is being enhanced for the purposes of BNG.
- 5.6 Demonstrating BNG requires an approach to measuring biodiversity. The Biodiversity Metric is a habitat-based approach to determining a proxy biodiversity value developed by Natural England. The Biodiversity Metric is designed to provide ecologists, developers, planners and other interested parties with a means of assessing changes in biodiversity value (losses or gains) brought about by development or changes in land management.
- 5.7 The biodiversity gain plan is a document which sets out how a development will deliver BNG and allows the planning authority to check whether the proposals meet the biodiversity gain objective. The Environment Act sets out that the biodiversity gain plan should cover:
- How adverse impacts on habitats have been minimised;
 - The pre-development biodiversity value of the onsite habitat;
 - The post-development biodiversity value of the onsite habitat;
 - The biodiversity value of any offsite habitat provided in relation to the development;

- Any statutory biodiversity credits purchased; plus
- Any further requirements as set out in secondary legislation.

5.8 The Secretary of State is setting up a system of statutory biodiversity credits that will be invested in habitat creation. The biodiversity credits scheme allows the UK government to sell biodiversity credits to developers if the required biodiversity net gains cannot be achieved on-site or through the off-site market. The price of biodiversity credits will be set much higher than prices for equivalent biodiversity gain on the market – with the aim that this will be the last resort.

Responsible Body Status

5.9 The Department for Environment, Food & Rural Affairs (Defra) has recently started the process of allowing local authorities to become an RB. This process is also open to other organisations such as public bodies or charities whose functions relate to conservation.

5.10 Only an RB can create a conservation covenant with a landowner. A conservation covenant agreement is a private, voluntary agreement to conserve the natural or heritage features of the land. This can include buildings on the land. The parts of a conservation covenant agreement which set out what a landowner and RB must or must not do to help conserve the land become legally binding as a conservation covenant. A conservation covenant agreement must both:

- be for the public good; and,
- have a conservation purpose.

5.11 The wider benefits of becoming a RB include delivering for the public good, raising an organisations profile and being able to take advantage of new green market opportunities.

5.12 The main purposes, functions or activities of conservation covenants are:

- conservation or restoration of the natural environment and resources (or the setting of the land)
- conservation of places of archaeological, architectural, artistic, cultural, or historic interest (or the setting of the land)

5.13 A local authority cannot act as both RB and landowner in the same conservation covenant agreement. It can enter into an agreement as a RB with a separate landowner. However, if a local authority wants to enter into a conservation covenant agreement as a landowner it can agree a conservation covenant with a RB other than itself. The Council is exploring reciprocal arrangements with adjacent authorities on this matter.

5.14 In order to create a conservation covenant, the landowner and RB must:

- decide how to achieve a conservation outcome that's for the public good.
- agree on the terms of the conservation covenant, for example how long it lasts for, and set these out in the agreement.
- register the conservation covenant on the appropriate local land charges register, so anyone who acquires the affected land in the future must legally follow the covenant.

- 5.15 To apply for RB Status, the Council must send an application form to Defra. This will enable Defra to check that Bracknell Forest Council meets the criteria to become and remain a RB. These criteria are:
- eligibility (all local authorities are eligible)
 - financial security – that the organisation has a UK bank account, that the organisation’s financial situation is secure, that the organisation has adequate internal fiscal and administrative control for long term financial viability
 - operational capacity and capability – the organisation must have the capacity and capability to manage and enforce the types of covenants it expects to enter into. Checks may include access to relevant expertise (such as ecologists), ability to work with landowners, ability to monitor and enforce legal agreements, and that we have a track record in dealing with environmental or heritage issues.
 - ongoing suitability – once the organisation gains RB Status it must continue to meet the criteria for being one. Defra must be informed if the organisation’s circumstances change and it may no longer meet one or more of the criteria
- 5.16 Defra will aim to inform the Council of the outcome of the request within 12 weeks of receiving the completed application form. If the Council’s application is successful, Defra will add its contact details and main areas of expertise to the list of designated RBs.
- 5.17 As an RB, the Council will need to register any conservation covenants it creates on the appropriate local land charges register. It will also need to submit an annual return by 31 March each year for the conservation covenants it holds. This is not an onerous task. The annual return must include:
- total number of conservation covenants the organisation holds
 - the area of land covered by each conservation covenant

6 Consultation and Other Considerations

Legal Advice

- 6.1 The Council must adhere to statutory requirements under planning and environmental law and policies and must report on the action they have taken to comply with their new biodiversity duties. Local authorities and other eligible organisations can apply to become responsible bodies and use conservation covenants which are designed to secure, and where necessary enforce, positive (and restrictive) land management obligations. Legal work will include title checks, legal agreements and covenants to support the Council’s role as a Responsible Body.

Financial Advice

- 6.2 There are potential costs to the Council in terms of resources and Officer time which are being built into the system to ensure their recovery. This will ensure the sustainable delivery and maintenance of BNG projects and any related revenue burdens are contained within existing budgets.

Other Consultation Responses

- 6.3 The Parks and Countryside Service is working in partnership with the planning and other relevant council functions to set up and deliver BNG over the coming years. Applying for Responsible Body status is a key part of the process.

Equalities Impact Assessment

- 6.4 Not applicable. The report is solely about whether the Council should make an application to become a Responsible Body.

Strategic Risk Management Issues

- 6.5 There are no strategic risk management issues.

Climate Change Implications

- 6.6 The recommendations in Section 2 above are expected to:

Reduce emissions of CO2

The reasons the Council believes that this will reduce emissions is because it helps to protect, enhance and improve biodiversity. This will lead to providing more suitable tree cover and more indigenous species suited to minimising the expected impacts of a warming planet.

Health and Wellbeing Considerations

- 6.7 If the Council is a Responsible Body, this will make it easier for landowners in the borough to secure their land for long term conservation purposes that is for the public good. More land secured for conservation will have positive health benefits on residents.

7 CONSULTATION

Principal Groups Consulted

- 7.1 N/A

Representations Received

- 7.2 N/A

Background Papers:

None

Contact for further information

Julie Gil

Email: julie.gil@bracknell-forest.gov.uk

Tel: 01344 352000