

Report to Cabinet

6 December 2023

Subject:	Biodiversity Net Gain and Local Nature Recovery Strategy for Sandwell
Cabinet Member:	Cabinet Member for Regeneration and Growth Councillor Peter Hughes
Director:	Director of Regeneration and Growth Tony McGovern
Key Decision:	Yes
Contact Officer:	Strategic Planning and Transportation Manager – Andy Miller andy_miller@sandwell.gov.uk Senior Planning Policy Officer – Samantha Holder samantha_holder@sandwell.gov.uk

1 Recommendations

1.1 That approval be given to:

- a) the adoption of the Black Country Local Nature Recovery Map and Strategy (Appendix 1) for planning purposes, including strategic delivery of biodiversity net gain in Sandwell;
- b) the establishment of six areas of Council-owned land to act as biodiversity net gain habitat banks, as set out in the draft Sandwell Local Plan and in time for the start of the mandatory requirement for biodiversity net gain on development sites (Appendix 2);
- c) Authorise the Leader of the Council and the Cabinet Member for Regeneration and WMCA, in consultation with the Director of Regeneration and Growth, to:



- i. authorise completion of Conservation Covenants between the Council and an appropriate responsible body for the delivery of these sites as detailed in this report; and
 - ii. secure the addition of these sites to the national Biodiversity Gain Site Register;
 - d) the submission of Biodiversity Net Gain grant claims and establishment and spend of supplementary budgets in line with the grant funding conditions.
- 1.2 That future authority for any additional working on the drawing-up and delivery of biodiversity net gain habitat banks and associated projects be delegated to the Cabinet Member for Regeneration and WMCA and the Director responsible for Regeneration and Growth, in consultation with the Cabinet Member for Leisure and Tourism and the Director responsible for Leisure and Tourism.

2 Reasons for Recommendations

- 2.1 To explain the implications of the Local Nature Recovery Strategy (LNRS) and biodiversity net gain (BNG) elements of the Environment Act 2021 for development, planning and the emerging Sandwell Local Plan.
- 2.2 To approve adoption of the Sandwell element of the Black Country Local Nature Recovery Map and Strategy for planning purposes.
- 2.3 To approve the addition of six Council-owned sites (habitat banks) to the national BNG register.

3 How does this deliver objectives of the Corporate Plan?

	<p>People Live Well and Age Well</p> <p>The delivery of an improved environment will support the emerging SLP's emphasis on the creation of a pleasant and healthy environment within which people can take additional exercise and benefit from cleaner air and a greener borough.</p>
	<p>Quality Homes in Thriving Neighbourhoods</p> <p>The use of the Local Nature Recovery Strategy to identify areas in need of additional ecological and environmental improvement, and the delivery of specific habitat banks to</p>



	support BNG provision in those areas will improve the attractiveness and amenity of neighbourhoods. Provision of BNG habitat banks will aid in the provision of new houses across the Borough and will help prevent delays in their delivery.
	A Connected and Accessible Sandwell Delivering linked environmental improvements will also help maintain and improve pedestrian, cycle and wildlife routes into and out of the urban areas, as many of the linear routes used by residents will also run through areas of open space and green networks.

4 Context and Key Issues

Local Nature Recovery Network and Strategy

- 4.1 It is a requirement of the Natural Environment and Rural Communities (NERC) Act 2006 that all public bodies must have regard to biodiversity conservation when carrying out their duties and functions. The Nature Recovery Network (NRN) is a major commitment in the Government's *25-Year Environment Plan (2018)* designed to help wildlife recover by providing more habitat, in better condition and across larger areas that are more closely connected, as set out in *Making Space for Nature (2010)*.
- 4.2 The Environment Act 2021 (the Act) introduces mandatory Local Nature Recovery Strategies (LNRS) to support spatial planning for nature and reverse the national decline in biodiversity. LNRS will be prepared for 48 areas that will effectively cover the whole of England and which are intended to help deliver the NRN.
- 4.3 Responsible authorities, chosen by the Government to prepare LNRSs, are required to work with stakeholders across the public, private and voluntary sectors to:
- map the most valuable existing areas for nature;
 - agree nature recovery priorities;
 - agree what actions should be taken to recover nature and where.

Local Nature Recovery Strategy (LNRS) evidence for Sandwell



4.4 During 2021-2022, the Birmingham and Black Country Wildlife Trust was commissioned by the four Black Country authorities to prepare “*Black Country Local Nature Recovery Map and Strategy: An Emerging Approach*” (BC LNRS) as evidence to support the emerging Black Country Plan (which has now been replaced by the SLP in Sandwell).

4.5 The BC LNRS sets out a comprehensive habitat baseline for the Black Country, developed using satellite imagery and existing survey data. Using this baseline, a Local Nature Recovery Opportunity Map (Sandwell section - Appendix 1) was produced, which reflects how ecological value varies across the area and the strength of connections between habitats. This Map defines:

- Core Landscapes - the most valuable habitats, which are a priority for protection and restoration; and
- Priority Network Restoration Zones – linking Core Landscapes together into a coherent network for nature recovery.

As shown on the map there are three Core Landscapes in Sandwell (Sandwell Valley, Stour Valley and the Rowley Hills) and several Priority Network Restoration Zones across the borough.

4.6 In June 2023, the Government appointed the West Midlands Combined Authority (WMCA) as the public authority responsible for producing an LNRS for the wider West Midlands area, to include the Black Country’s own strategies. The West Midlands LNRS will be an evidence-driven spatial plan for nature recovery and natural environment outcomes, developed through an ongoing process of consultation, including with local authorities, and will be finalised by early 2025. However, in the interim, LNRS evidence is needed to support the introduction of biodiversity net gain in January 2024 and the preparation of the Sandwell Local Plan during 2023-25.

4.7 The BC LNRS followed the methodology being developed for national LNRS at the time. As a result, the West Midlands LNRS to be produced during 2023-25 is likely to reflect most of the methodology, evidence and outputs produced for the Black Country’s own strategy.

Therefore, it is proposed that Sandwell Council adopt the BC LNRS to use for planning purposes, including the strategic delivery of biodiversity net gain in Sandwell, whilst awaiting finalisation of the West Midlands LNRS. This approach is in accordance with current national advice.



4.8 Adoption of the LNRS would not supersede or alter the current system of protections for designated nature conservation sites in Sandwell, including Sites of Importance for Nature Conservation, Sites of Local Importance for Nature Conservation and Local Nature Reserves. The priority areas identified in the LNRS do not currently have any specific protections through local or national policy. However, upon adoption, these designations would become a material consideration when determining planning applications and may acquire greater weight when the Levelling Up and Regeneration Bill is enacted (due in late 2023).

Biodiversity net gain

4.9 The Act also requires certain types of development to achieve a minimum of 10% biodiversity net gain, primarily on-site or (if this is not possible) off-site in the vicinity, to be secured for at least 30 years.

4.10 Biodiversity net gain (BNG) is an approach to development and land management, that aims to leave the natural environment in a measurably better state than it was beforehand. Biodiversity net gain delivers measurable improvements for biodiversity by creating or enhancing habitats to replace any lost through the development of a site and then to create additional habitat equivalent to an uplift of 10% of the original value of the development site. Biodiversity net gain can be achieved on-site, off-site or through a combination of on-site and off-site measures.

4.11 The 10% uplift must be calculated using a national biodiversity metric that has been produced by Natural England. This uplift is measured in “units”, identified in the BNG Metric. There are three types of biodiversity units, which are calculated in three separate ‘modules’ of the metric (area units, hedgerow units and watercourse units). Off-site biodiversity units can be sold, i.e. ‘1 unit of modified grassland costs £xx’.

4.12 Certain developments, such as householder applications and proposals affecting an area of less than 25m², are exempt from the need to deliver BNG. For certain other minor developments (e.g. fewer than ten houses or a non-residential site of less than 1ha), a simpler metric can be used, which may not require the developer to employ a qualified ecologist. BNG will apply to all eligible planning applications submitted for major



developments from January 2024 onwards, and minor developments from April 2024 onwards (dates to be confirmed).

BNG in Sandwell

- 4.13 There is an opportunity to maximise the potential for any off-site BNG to be delivered within Sandwell. To achieve this, sites appropriate for BNG delivery within the borough could be identified and BNG delivery secured through a legal agreement, to protect the site from development for a minimum of 30 years. These sites must also be added to a national Biodiversity Gain Site Register (BGSR), which will be managed by Natural England.
- 4.14 The legislation is very clear that BNG should be secured on the development site itself. However, where developers can demonstrate clearly and robustly that the total amount of BNG cannot be delivered on-site, they can deliver it off-site. Again, off-site delivery should firstly take place as close to the development site as possible.
- 4.15 Local authorities like Sandwell will be able to use their own land to offer offsite biodiversity units to developers and will need to calculate appropriate biodiversity unit prices for offsite gains delivered on its land. The prices will need to be sufficient to cover the costs of creating or enhancing the habitat and maintaining it for a minimum of 30 years. Council land used for BNG must be registered on the biodiversity gain sites register, measured using the standardised biodiversity metric and legally secured for at least 30 years.
- 4.16 These sites are often referred to as habitat banks. They are areas of land that have been identified and assessed for their potential ecological value to deliver environmental projects that will generate the equivalent of a certain number of BNG units. Developers who cannot provide all their BNG onsite are then able to effectively purchase the number of units they need, secured through a legal agreement.



Delivering off-site BNG within Sandwell in this way will help retain ecological value and habitat improvements within the borough and maximise related benefits for residents and local wildlife.

- 4.17 It is important to point out that developers are not required to buy units on Sandwell Council-owned sites; they can choose how and where to meet their requirements without needing to use these habitat banks. However, given the relative lack of suitable habitat creation opportunities in urban areas in Sandwell, and the marginal viability of some of the development sites that will come forward, it is considered prudent to establish this option and identify suitable projects as attractive alternatives for developers should they wish to use them.
- 4.18 National guidance also states that there is an option for developers to buy national BNG credits, sold by the government, as a very last resort. This will effectively mean those contributions can be used to support biodiversity projects anywhere in England. However, if local habitat creation opportunities are available, these will generally provide a cheaper option for the developer; the national credits have been deliberately priced at a much higher rate than local BNG units will be, to prompt developers to consider more local options.

Unit costs

- 4.19 Work will be undertaken on costing the units being made available once suitable projects have been identified. There is no standard cost for a BNG unit, as different types of habitat will require different levels of expenditure. The fee for a BNG unit is intended to pay for the delivery and maintenance of habitat on it over 30 years. As a very broad indication, the Land Trust charity (who manage open space for community benefit) have stated that in their experience biodiversity units are costing between £10 - £25,000 per unit.
- 4.20 Local councils will not be able to levy a tariff system (i.e. a general fee) to pool money for investment in nature elsewhere at some future point. The monies generated by the sale of BNG units are ringfenced to deliver those identified uplifts in ecological value; the covenant is a legal agreement that will set out what outcomes the identified habitat site will be expected to deliver.



However, setting the fees for units at the right level will mean that the Council will not be required to fund these additional improvements itself, and the projects will be in addition to its current programme of improvement works.

This will ensure that biodiversity in Sandwell will increase measurably over time from what was originally envisaged.

Proposed BNG habitat bank locations in Sandwell

4.21 Six Council-owned sites have been identified (shown on the map in Appendix 2) where BNG delivery would support the aims and objectives of the LNRS, and where management of parts of the site for nature conservation purposes for at least 30 years would be compatible with on-going use as public open space. For each site, an ecological survey has been completed, to establish a biodiversity baseline, and a broad menu of biodiversity improvements has been developed. It is proposed to add these sites to the national Biodiversity Gain Site Register (BGSR) as and when this is required to deliver off-site BNG.

4.22 The six sites in question are in the following locations (Appendix 2):

- Hill House Farm
- Hill Farm Bridge Fields
- Menzies Open Space
- Tibbington Open Space
- Tividale Park
- Warrens Hall Park

For clarification, several other sites have also been assessed and identified as suitable sites, but these were chosen as they provide the widest geographical spread of sites across the borough, as well as including the two “highest scoring” sites, able to provide potentially the greatest number of BNG units (Hill House Farm and Hill Farm Bridge Fields). Details of the additional sites that were assessed will be retained and can be considered for BNG purposes in the future if required; the listed sites are the ones that have been included as potential BNG allocations in the draft Sandwell Local Plan.



Legal agreements

- 4.23 To establish the proposed habitat banks, the Council will need to enter one or more Conservation Covenants with an independent “*responsible body*”. Conservation Covenants are private, legally binding agreements with clauses to be agreed between the land owner and the responsible body. The role of the responsible body is to receive periodic monitoring reports and ensure that BNG is secured and delivered for at least 30 years on the identified sites, providing a significant degree of transparency to the process. Councils cannot be their own responsible bodies, on the grounds of impartiality. Responsible bodies can be public sector bodies or charity involved in conservation, or a private sector organisation with a conservation focus.
- 4.24 Given current uncertainties regarding the nature, content and timing of the Conservation Covenants, it is proposed that Cabinet grant delegated authority to approve the detail of and sign Conservation Covenants, and to add the identified sites (or parts of them) to the BGSR, at appropriate points in the future.

Future working and delivery

- 4.25 Work will need to begin shortly on identifying suitable schemes / projects to provide viable BNG units for sale to developers once the requirement for BNG comes into force early next year. Consultants for the Council have already undertaken a study that identifies the number of units potentially available at each site and includes suggested interventions for the identified spaces, which could form the evidentiary basis for consideration of projects.
- 4.26 Members may wish to delegate the agreement for the development and delivery of suitable BNG projects to the offices of the Member and Director for Regeneration and Growth, in consultation with the Member and Director for Leisure and Tourism.

5 Alternative Options

- 5.1 The following alternative options have been considered:
- Option one would be to make no preparations for the introduction of statutory biodiversity net gain. This would result in missed opportunities to direct biodiversity net gain to locations of strategic value for nature recovery and which would benefit residents, and



an inability to progress the Sandwell Local Plan, which is needed to support the regeneration of the Borough.

- Option two would be to implement the recommendations of this report. This would allow statutory biodiversity net gain to be directed towards locations of strategic value for nature recovery and which would benefit residents, and preparation of the Sandwell Local Plan, which is needed to progress the regeneration of the Borough.

5.2 Option two has been selected, to maximise the delivery of statutory biodiversity net gain in strategic locations for nature recovery and for the benefit of residents and to support significant objectives of the emerging Sandwell Local Plan and its approach to delivering sustainable development.

6 Implications

Resources:	<p>The Government has provided Section 31 grant to help local planning authorities prepare for mandatory BNG in the planning system. In both 2022- 2023 and 2023 – 2024, DEFRA made available a ring-fenced grant of £26,807 to Sandwell to help implement BNG. Any additional burdens following the commencement of statutory BNG will presumably be subject to further consideration in the future.</p> <p>In line with national guidance and legislation, developer contributions should cover the full cost of delivering and maintaining off-site BNG for at least 30 years, including monitoring and legal costs.</p> <p>The delivery of BNG, including providing support, analysis and monitoring over time will require specialist advice to be available to the Council, given the nature of the input required. This will require either the appointment of a Council ecologist, to advise on this and related environmental and ecological matters, or the contracting-out of the requirement to a private consultancy on a retainer basis. This will be kept under review and reported back to Cabinet if required</p>
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Legal and Governance:	The legal context is set out in the body of the report, in line with the appropriate delegation and in line with the constitution. The delivery of BNG is a mandatory requirement once the secondary legislation is agreed, and the Council will be required to manage its agreement and delivery.
Risk:	Having habitat banks in place will enable the Council to ensure that developers have the option to deliver required BNG within Sandwell and the risk of losing such investment to projects outside the borough will be reduced.
Equality:	Having an adopted Local Nature Recovery Map and Strategy in advance of preparation of a WMCA LNRS provides supporting evidence for preparation of the emerging Sandwell Local Plan. An equalities impact assessment will be produced for each iteration of the Plan as part of the Sustainability Appraisal. The content of the BC LNRS is a material planning consideration in the determination of planning applications to be weighed in the balance alongside the Council's duties under the Equalities Act.
Health and Wellbeing:	Having a mechanism that allows for biodiversity improvements to be located close to where people live, and where they exercise and relax, will help to improve environmental issues such as air quality. It may also encourage them to visit areas that have been managed for wildlife and habitat and which have been made more attractive as a result. This in turn will help improve people's mental and physical health.
Social Value:	Delivery of improved habitats and environments will support community health and wellbeing by creating opportunities for people to connect with nature and undertake group activities such as walking and exercise together. Opportunities for additional jobs in maintenance and upkeep of such areas may also be created.
Climate Change:	The recommendations set out in this report support the Council's Net Zero ambitions. Delivery of LNRS and BNG will contribute towards climate change mitigation



	and adaptation measures, and meeting net zero targets, through nature-based solutions
Corporate Parenting:	No implications for Corporate Parenting.

7 Appendices

Appendix 1 – Sandwell Local Nature Recovery Network Map

Appendix 2 – Sandwell Biodiversity Net Gain Habitat Banks (proposed)

