
Subject:	ENVIRONMENT ACT 2021
Meeting and Date:	Cabinet – 3 June 2024
Report of:	Roger Walton, Strategic Director (Place and Environment)
Portfolio Holder:	Councillor Edward Biggs, Portfolio Holder for Planning and Built Environment
Decision Type:	Non-Key Decision
Classification:	Unrestricted

Purpose of the report: To set out the Council’s duties brought in through the Environment Act 2021 and make recommendations on how they should be taken forward in relation to the Biodiversity Duty, including Local Natural Recovery Strategies and Biodiversity Net Gain.

- Recommendations:**
- a) To acknowledge the work being carried out by Dover District Council to comply with the Biodiversity Duty.
 - b) To agree the Biodiversity Duty Objectives and associated initial actions set out in Appendix 1 and proposed reporting timescales.
 - c) To delegate authority to the Strategic Director (Place and Environment) to progress the delivery of the objectives and initial actions.
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1. Summary

- 1.1 This report sets out how Dover District Council is meeting the enhanced Biodiversity Duty that was introduced in the Environment Act 2021, recommending a set of objectives and initial actions to deliver on the duty and timescales for future reporting requirements.
- 1.2 It also identifies Dover District Council’s role as a ‘supporting authority’ for the Kent and Medway Local Nature Recovery Strategy, which will further support the Council’s response to the Biodiversity Duty.
- 1.3 The report also explains the requirements for mandatory biodiversity net gain which are to be delivered through the planning process, provides an update on how this is being implemented within the Planning and Development Service and requests delegated authority to carry out actions necessary to implement and deliver the requirements of biodiversity net gain locally.

2. Introduction and Background

- 2.1 The Government published its Environment Improvement Plan in January 2023, which sets out the Government’s plans for significantly improving the natural environment. By 2030, the Government has committed to halting the decline in species abundance and protect 30% of land in the UK. By 2042 the Government has committed to increasing species abundance by at least 10% from 2030; restoring or creating at least 500,000ha of a range of wildlife habitats and reduce the risk of species extinction.

2.2 The Environment Act, providing a new framework for environmental protection, was granted royal assent in November 2021. The Act covers a wide range of targets, plans and policies for safeguarding and improving the environment. The report covers the following three areas:

- Strengthened Biodiversity Duty on public authorities
- Requirement for Local Nature Recovery Strategies
- Mandatory Biodiversity Net Gain for planning applications

3. **Strengthened Biodiversity Duty on Public Authorities**

3.1 The Environment Act 2021 amends section 40 of the Natural Environment and Rural Communities Act 2006, imposing on all public authorities a 'strengthened' duty to conserve and enhance biodiversity through the exercise of their functions.

3.2 The Council is required under legislation to take four key steps to meet its Biodiversity Duty:

1. Consider what action it can take to conserve and enhance biodiversity when exercising its functions
2. Determine which policies and specific objectives are appropriate to comply with the duty
3. Act to deliver our policies and achieve our objectives
4. Publish a biodiversity report on actions taken and future plans to conserve and enhance biodiversity

3.3 The strengthened Biodiversity Duty came into force in January 2023, and DDC was required to have considered what it can do to conserve and enhance biodiversity (point 1 above) by 1 January 2024, with policies and specific objectives (point 2 above) agreed as soon as possible after this.

3.4 Local authorities and local planning authorities must also publish a biodiversity report to fulfil the duty. The end of the first reporting period is 1 January 2026 (with the report having to be published within 12 weeks of that date). After this, the end date of each reporting period must be within 5 years of the end date of the previous reporting period.

3.5 The biodiversity report must include:

- A summary of the action, the Council has taken to comply with the Biodiversity Duty.
- The policies and objectives the Council has set to meet our Biodiversity Duty.
- The actions the Council has completed, either alone or in partnership with others, that benefit biodiversity.
- An explanation as to how the Council has taken account of the Local Nature Recovery Strategies, protected site strategies and species conservation strategies.
- How the Council plans to comply with the Biodiversity Duty in the next reporting period (5 years).
- The actions the Council has carried out to meet biodiversity net gain (BNG) obligations.
- Details of BNG resulting, or expected to result, from biodiversity gain plans Dover District Council has approved.
- Detail how the Council plans to meet BNG obligations in the next reporting period.

- 3.6 Aside from including details of the biodiversity net gains secured and delivered through planning decisions, which is a statutory reporting requirement, it is up to the Council how compliance with the Biodiversity Duty is achieved. Government guidance suggests that local authorities can consider the conservation and enhancement of biodiversity across a range of functions, including in development plans and decisions, on the land and buildings the Council owns and manages, in community engagement and in reviewing internal policies and procedures.
- 3.7 For the first consideration of what actions may be taken to comply with the duty, it is recommended that the initial focus should be led by the Place and Environment Directorate where existing work is already taking place to deliver on the duty and where the most potential to further this exists. This directorate includes the planning service, (which is responsible for delivering Biodiversity Net Gain), Corporate Property and Parks, Open Spaces and Countryside,(including White Cliffs Countryside Partnership, where potential exists on Council land and property holdings) and Investment, Tourism and Growth which has potential to deliver on the duty within Council project delivery. Consideration will also be given to wider Council processes and potential actions developed prior to the end of the first reporting period.
- 3.8 Appendix 1 (Biodiversity Duty Objectives and Initial Actions) of this report identifies proposed Council objectives for meeting the Biodiversity Duty. These have been informed by the relevant DEFRA guidance on 'Complying with the Biodiversity Duty'. Appendix 1 also includes a review of existing Council plans, strategies and operations identifying actions that are already taking place to meet the duty.
- 3.9 The following objectives are proposed:
1. To ensure Dover District Council contributes to the preparation of, and implementation of, the following relevant strategies:
 - Local nature recovery strategies
 - Species conservation strategies
 - Protected site strategies.
 2. To secure biodiversity conservation and enhancement through planning approvals, including Biodiversity Net Gain where appropriate.
 3. To ensure biodiversity is considered within Council Plans, Policies and Strategies and decision-making, where relevant.
 4. To consider the potential for Council owned or managed land and buildings to conserve and enhance biodiversity.
 5. To promote (and identify opportunities for) biodiversity in the Council's work with partnerships, communities and volunteers, including engaging with the public and other stakeholders to educate, advise and raise awareness of biodiversity.
- 3.10 For each objective, a set of initial actions are proposed. These are short term actions which can be commenced before the end of the reporting period, which also include continuing with actions that are already being carried out. The objectives and initial actions will be reviewed and updated, along with reporting on the progress on the initial actions for the first reporting period.

- 3.11 An initial review of the Council's plan and strategies has been carried out which highlights existing policies and actions that are already taking place.
- 3.12 The Corporate Plan's (2023 – 2028) strategic priorities contribute to compliance with the biodiversity duty, and contain a specific reference to supporting biodiversity in greenspaces, parkland and wider countryside.
- 3.13 It is recommended that as relevant Council plans and strategies are reviewed, opportunities for including measures to conserve and enhance biodiversity are considered.
- 3.14 Actions in relation to Local Plan, Supplementary Planning Documents and Guidance and implementation of Biodiversity Net Gain are already being progressed, as well as the production of a Green Infrastructure Strategy. The proposed outcomes and actions set out in the Green Infrastructure Strategy are considered to significantly deliver on the Council's enhanced duty. The Strategy includes actions in relation to Council owned land and the role of White Cliffs Countryside Partnership. More detail is provided in relation to Local Nature Recovery Strategies and Biodiversity Net Gain objectives and actions below.

4. **Local Nature Recovery Strategies**

- 4.1 The Environment Act 2021 also introduced Local Nature Recovery Strategies (LNRS). LNRS map nature recovery actions. They target actions in locations where they are most needed and where they provide the best environmental outcomes. The strategies intend to help to join up national efforts to reverse the decline of biodiversity and support the evidence needed under the biodiversity duty.
- 4.2 The Environment Act 2021 establishes two mechanisms to support the delivery of LNRSs – 1) mandatory biodiversity net gain (BNG) and 2) the strengthened biodiversity duty on public authorities. Section 105(1) of the Environment Act 2021 requires 'responsible authorities' in England to establish LNRSs, which will identify where action to achieve BNG will have the most impact and encourage action locally through the way net gain is calculated.
- 4.3 Kent County Council has been appointed as the 'responsible authority' leading on the preparation of the LNRS in Kent and is working with stakeholders, including DDC, as a 'supporting authority', to establish shared priorities for the delivery of nature recovery and environmental improvements. '[Making Space for Nature in Kent and Medway](#)' will develop the Local Nature Recovery Strategy (LNRS) that will cover the whole county. After it is published, the Council will have to "*have regard to*" the LNRS and could consider adopting the LNRS. Defra and DLUHC are currently working on guidance for how local authorities should 'have regard' to LNRSs. This will also clarify how having regard to LNRS will work alongside existing requirements in the NPPF to consider nature recovery in Local Plans.
- 4.4 The LNRS for Kent will:
- Agree priorities for nature's recovery.
 - Map the most valuable existing areas for nature.
 - Map specific proposals for creating or improving habitat for nature and wider environmental goals.
- 4.5 The engagement and consultation process for the LNRS has begun and information has been provided to inform the LNRS process. The Council will continue to contribute

and will seek to include positive actions in the Strategy. This will contribute to how the Council demonstrates how the Biodiversity Duty has been fulfilled.

5. **Mandatory Biodiversity Net Gain for Planning Applications**

5.1 Biodiversity net gain (BNG) is an approach to development that aims to leave the natural environment in a measurably better state than it was in beforehand. A minimum 10% biodiversity net gain has been a mandatory requirement for planning applications submitted since the implementation dates of January 2024 (major applications) and April 2024 (minor applications). There are a limited number of exemptions to the requirements, including the following; householder applications, variations to existing planning permissions, self-build and custom building applications and development that does not impact on priority habitat and impacts less than:

- 25 square metres (5m by 5m) of on-site habitat
- 5 metres of on-site linear habitats such as hedgerows

5.2 BNG can be delivered on-site or off-site, or with a combination of the two. The biodiversity metric calculations are weighted towards on-site or close-by delivery of BNG. For off-site delivery, this is dependent on there being suitable habitat units available. Where on-site delivery is not possible and biodiversity units cannot be sourced, statutory credits will be available to buy.

5.3 BNG habitats will have to be secured, managed, and monitored for at least 30 years via planning obligations or conservation covenants (a new legal framework for securing sites for conservation, stemming from the Environment Act). For on-site BNG, and for off-site BNG secured in s.106 agreements, the Council will be responsible for monitoring and enforcement.

5.4 This is a new and emerging area of practice, with a significant amount of the relevant legislation and guidance having been published by the government only recently, and which is contained within a complex statutory framework. The implementation of the requirements will take time to establish and will need to be regularly reviewed.

5.5 Objective 2 of the Biodiversity Duty Objectives and Initial Actions (Appendix 1) sets out the actions that have already been taken to prepare for BNG and future actions which are planned to take place. This includes the joint funding, (using grant funding from DEFRA) with other Kent LPAs, of a BNG Officer based at KCC who we are working with to prepare guidance, procedure notes and training for Officers and Members.

Monitoring Fees

5.6 It is necessary to carry out a review of S106 monitoring fees to ensure that the cost of the future monitoring of BNG requirements is covered by developers. These costs include checking compliance of development with the terms of the deed, ecological review of delivery and management of BNG and potential set up fees for Habitat Banks (see below). The fees will be dependent upon the scale and nature of the BNG that is being secured and it is therefore proposed that the Council should develop a local calculator that enables these factors to be considered and an appropriate contribution to be calculated. This will require an update to the fees and charges schedule in relation to S106 monitoring, and is set out as an initial action (2.9) in Appendix 1.

Off-Site BNG Provision in the District

- 5.7 To smooth the transition to mandatory BNG and ensure that off-site BNG is not directed out of the district/county, leading to a further depletion in local biodiversity, there needs to be a local supply of off-site BNG units available, through Habitat Banks. Habitat banks are area of land where habitat creation or enhancement achieves an uplift in biodiversity value. This uplift can be sold to developers and allocated to their proposals, to meet BNG requirements.
- 5.8 Discussions are already taking place with local landowners to deliver Habitat Banks in the District. To ensure this process is managed appropriately, internal processes are being developed, and it is considered necessary to develop local criteria for Habitat Banks to ensure they can deliver the BNG units and that appropriate arrangements are in place for management and monitoring.
- 5.9 In addition to other landowners delivering BNG units in the district, there is potential for DDC land to be used to deliver Habitat Banks for BNG units. There is also potential for, and particularly in respect to small- and medium-sized developments, small numbers of off-site biodiversity units to be required, and it may be difficult for developers to secure these small amounts when the BNG market is in its infancy. By making Council land available for this purpose, DDC could help to ensure development is not held up. The creation of Habitat Banks on Council land could also help to provide a higher amount of BNG within the district (rather than it being secured in locations outside the district/county), while also promoting habitat management for biodiversity in accordance with the Biodiversity Duty. It also has the potential to deliver an income stream for the Council (however further work is required to understand how and if this could work in practice) and would provide a clear option for developers, therefore also contributing to delivery.
- 5.10 The creation of Council owned Habitat Banks would be subject to future consideration and decisions, with a lot to investigate to establish how and whether this could work in practice, in respect of the legal, procedural, financial, monitoring and resource implications around delivery. Nevertheless, DEFRA grant funding is currently enabling the White Cliffs Countryside Partnership to carry out an initial review of two Council owned sites to understand the potential for delivery of BNG units. This will provide a good starting point, should members agree to the initial action set out under Objective 4, to undertake a review of Council landholdings.

6. **Next Steps**

- 6.1 The “Biodiversity Objectives and Actions” will be published on the Council website and work will continue to implement the initial set of actions, including those in relation to the Local Nature Recovery Strategy and Biodiversity Net Gain.
- 6.2 The first Biodiversity Report will be prepared following the end of the initial reporting period (1st January 2026). The Objectives and Actions will be reviewed and updated as part of this process and brought to Cabinet for consideration.
- 6.3 Following the initial reporting period, the statutory minimum requirement is that the next reporting period should be no longer the five years. A proposed length of reporting period will be considered at the time of the production of the first Biodiversity Report and options brought to Cabinet for consideration at that time.

7. **Identification of Options**

7.1 **Option 1** – Agree to the Objectives and Actions set out in Appendix 1 of the report (including the BNG S106 Monitoring Fees Calculator) and the reporting timescales.

7.2 **Option 2** – Agree to a different and/ or reduced set of objectives and initial actions.

7.3 **Option 3** – Agree to the Objectives and Actions set out in Appendix 1 of the report but a different reporting timescale.

8. **Evaluation of Options**

8.1 The biodiversity duty is a statutory duty introduced by the Environment Act 2021 and is therefore mandatory for the Council to follow the steps in demonstrating compliance with the Biodiversity Duty. Options exist in relation to how far the Council wishes to go in terms of the scope of biodiversity preservation and enhancement and the reporting period the Council wishes to implement.

8.2 In terms of the scope of the actions and objectives, those set out in Appendix 1 have been developed to ensure that the duty is being met, and in the short term focus on where this can take place within existing resources. This is recommended as the most appropriate option to take at this stage, as further work is required to understand any additional resource requirements that may be needed.

8.3 In terms of timescales for reporting, an alternative would be for the monitoring period to follow other monitoring periods that the Planning and Development Department follow, thereby aligning with other processes. This would require the monitoring period to end in March, with the report being published within 12 weeks of that date. Although there is some cross over and duplication in the monitoring reporting between these activities, this option is not recommended by officers, as it is not normally possible to get the Authority Monitoring Report published within 12 weeks. Having a different timescale would spread workload across the year, which is preferable. It is therefore recommended that a monitoring period with a year end of December is the most appropriate.

9. **Resource Implications**

9.1 This decision does not itself result in an increase or decrease in revenue expenditure. The delivery of the proposed objectives and initial actions are to be carried out within existing Officer resource. Some of the initial actions require consideration and identification of resources.

9.2 There have been additional costs to the Council in preparing for BNG, which have been covered by grant funding from DEFRA. The grant for 2024/25 of £26,807 is accounted for within the revenue budget and will assist with implementing BNG.

9.3 It is likely that further additional costs will be associated with the implementation of BNG, however these are currently unknown. The initial actions involve consideration of resources. It is expected that additional resource will be required to monitoring BNG, however this is expected to be covered by S106 monitoring fees paid for by the developer.

10. **Climate Change and Environmental Implications**

10.1 The Biodiversity Duty and the Objectives and Actions have the potential to contribute positively to the Council's climate change commitments, and the Climate Change

Strategy incorporates objectives and actions which contribute towards the Biodiversity Duty.

11. **Corporate Implications**

- 11.1 Comment from the Director of Finance (linked to the MTFP): Accountancy has been consulted and has no further comment to add. (SK)
- 11.2 Comment from the Principal Planning Solicitor: The Principal Planning Solicitor has been consulted in the preparation of this report and has no further comment to make.
- 11.3 Comment from the Equalities Officer: This report detailing the Council's duties brought in through the Environment Act 2021, and recommendations on how these should be taken forward in relation to the Biodiversity Duty, does not specifically highlight any equality implications. In discharging their duties members are required to comply with the public sector equality duty as set out in Section 149 of the Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15/section/149>

12. **Appendices**

- 12.1 Appendix 1 – Proposed Biodiversity Duty Objectives and Initial Actions

13. **Background Papers**

[Complying with the biodiversity duty - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

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