

TONBRIDGE & MALLING BOROUGH COUNCIL
HOUSING AND PLANNING SCRUTINY SELECT COMMITTEE

26 September 2023

Report of the Director of Planning, Housing and Environmental Health

Part 1- Public

Matters for Recommendation to Cabinet - Key Decision

1. BIODIVERSITY NET GAIN PROTOCOL

This report presents the Biodiversity Net Gain (BNG) Protocol which will help provide guidance for applicants/agents and decision makers on how BNG should be taken into account within development process. It seeks approval to utilise in decision-making purposes.

1.1 Background

1.1.1 Biodiversity Net Gain (BNG) is an approach to development, and/or land management, that aims to leave the natural environment in a measurably better state than it was beforehand.

1.1.2 Under the Environment Act 2021, all major planning permissions granted in England (with a few exemptions) will have to deliver 10% BNG from November 2023. Applying BNG to small sites applications has been delayed until April 2024. We are expecting further detailed guidance from government to provide clarification of a range of outstanding issues.

1.1.3 The adopted Development Plan does not contain a policy on BNG, and although the emerging Local Plan will include a policy to set out the council's expectations/approach, this will not be adopted by November 23. Therefore, to prepare the council for mandatory BNG, a BNG Protocol has been developed to provide guidance for applicants/agents and decision makers on how BNG should be taken into account within development process, for both major and minor planning applications.

1.2 The Protocol

1.2.1 The BNG Protocol sets out the council's interim policy position on BNG in advance of the adoption of the new Local Plan (anticipated 2026) and will form a material consideration to be taken into account by decision makers when determining planning applications from November 2023.

- 1.2.2 Nationally, the delivery of BNG onsite (within the development boundary) is the preferred solution. However, when a development cannot achieve the full BNG requirement either wholly or partly onsite, then the applicant will need to secure off-site units either on land they own away from the development, or on land where they have bought biodiversity units. If a shortfall in the units required to achieve at least 10% BNG remains, having explored onsite and offsite options, an applicant may purchase statutory biodiversity credits from government as a last resort, but these could be delivered anywhere in the country.
- 1.2.3 The BNG Protocol has been developed by officers in the Planning Policy team, with input from Development Management colleagues, whilst also having regard to work prepared by the Kent Nature Partnership (KNP) is included in **Annex 1**. The Protocol aims to go beyond national policy and provide a Tonbridge and Malling tailored approach where expectations are that any offsite units associated with development in the borough, are to be provided within Tonbridge and Malling prior to consideration of sites outside of the borough and sign-post applicants to the Kent BNG Register to help identify local solutions. The Kent BNG Register has been developed by the Kent Wildlife Trust, in collaboration with KCC and the Districts, to establish an online forum where landowners can identify local land available for purchase for BNG units, and applicants can search for available opportunities. This is currently being tested and is due to be operational from November 2023. Other habitat banks are available; however, the aim of the Kent BNG Register is to identify local opportunities.
- 1.2.4 Although delivering offsite BNG outside of the borough would not be grounds for refusal, the Protocol identifies that opportunities for delivery within the borough should be explored in the first instance. Such an approach aims to retain as much biodiversity gain within the borough as possible.
- 1.2.5 Secondary legislation and numerous pieces of detailed guidance are still awaited from government on key aspects of BNG. However, to be ready for BNG becoming mandatory in November, the Protocol has needed to be progressed in the absence of all of the necessary information. The outstanding information was anticipated during Spring 23, however is now anticipated that this will be published by government prior to November. Therefore, the Protocol may need to be updated to reflect the most up-to-date position as set out in the second recommendation below.

1.3 Financial and Value for Money Considerations

- 1.3.1 There will be direct financial and value for money considerations associated with the application of the protocol as described in this report. These costs relate to staff time within the Planning Policy team in relation to the preparation of the protocol and Development Management in the application of the protocol. These costs will be met from existing budgets. DEFRA have allocated a series of grants to allow local authorities to prepare for BNG. Between 2021/22 and 2023/24 the

council has been awarded £63,661, of which £53,614 is ring fenced for BNG. The table below sets out grant spend/commitment to date:

| | |
|-------------------------------------|---------|
| Green Infrastructure Strategy | £10,047 |
| BNG Officer (hosted by KCC) | £5,024 |
| BNG Register | £3,015 |
| KCC Ecological Advice Service (EAS) | £3,059 |
| Officer time | £3,275 |

1.4 Legal Implications

1.4.1 Local Planning Authorities are required to reflect the provisions of the Environment Act, 2021. This includes the introduction of BNG. This means that all major planning permissions granted in England (with a few exemptions) will have to deliver 10% BNG from November 2023.

1.5 Risk Assessment

1.5.1 The planning policy team maintains and updates a risk register. Not having an adopted local approach to BNG could mean that there may be a higher risk that offsite BNG associated with development within Tonbridge and Malling, could be delivered outside of the borough.

1.5.2 Delays to the expansion of, or unsuccessful recruitment to, the Kent EAS by November presents a risk in the ability to access the technical ecological expertise needed to support BNG implementation.

1.5.3 Delays to the publication of the secondary legislation and remaining government guidance on BNG presents a risk as the Protocol has needed to be prepared in the absence of all of the necessary information and may need to be amended/updated.

1.6 Equality Impact Assessment

1.6.1 The decisions recommended through this report do not have relevance to the substance of the Equality Act 2010.

1.7 Recommendations

HPSSC is asked to recommend to Cabinet:

1.7.1 APPROVAL of the BNG Protocol for decision-making purposes

1.7.2 DELEGATE to the Director of Planning Housing, and Environmental Health in consultation with the Cabinet Member for Planning any minor amendments or updates to the Protocol in response to updates from government.

Background papers:

Annex 1- BNG Protocol

contact: Jenny Knowles
Principal Planning Officer
(Policy)

Eleanor Hoyle

Director of Planning, Housing and Environmental Health