

## **Biodiversity net gain**

### **Department for Environment, Food and Rural Affairs**

#### **RPC rating: fit for purpose**

#### **Description of proposal**

Currently, the negative environmental, social and economic impacts from property development are not fully accounted for in developers' decisions. This leads to loss and damage of habitat, biodiversity and other environmental goods. The Department states that the current planning system is not considered to provide a level playing field for developers to deliver biodiversity net gain.

The main aim of the measure is to deliver habitat creation and enhancement whilst ensuring the policy is simple, certain and efficient for developers to follow. Biodiversity net gain is defined in the IA as an overall increase in habitat area and/or quality following a new development.

The Department's chosen approach is to mandate net gain using a specified biodiversity metric. The habitats are to be managed for up to 25-30 years and must satisfy a 10% net gain in biodiversity points before they are granted planning permission by local planning authorities (LPAs), the developer would then have the option between several different actions to deliver net gain.

The proposal will be mandated for new developments, including buildings and structures for any use, including commercial, industrial, institutional, leisure, and housing or other accommodation, where planning permissions from LPAs are required. Exemptions include specific development on infrastructure land by providers or nationally significant infrastructure, householder development and some brownfield sites. The Government has also proposed leniency for smaller sites, to prevent possible disproportionate cost and process burdens such as having to undertake new habitat surveys.

The duty to ensure compliance with net gain lies with LPAs, who will use existing powers to validate and scrutinise applications.

#### **Impacts of proposal**

### Costs to developers

The net direct cost to developers of the proposal is estimated at £199m. To calculate this, the Department uses a study taken from a joint RSPB, National Trust and Wildlife Trusts project to assume costs for on-site and off-site habitat creation are £900 per ha for site surveys and £19,698 per ha for creation and 30 years maintenance respectively. The assumption for £900 per ha is based on estimates from NE that conducting a Phase 1 habitat survey on a 1 ha site would take 1-1.5 days of an ecologist's time and a half day for writing the report. 97% of developers are sole proprietors or micro businesses, constituting roughly 35,000 developers. The Department assumes that these micro developers, who employ 80,000 members of staff, would require one member of staff to be trained resulting in familiarisation costs of £6.3m in year one. The Department states that this is a highly conservative assumption as some developers will use contractors with the necessary expertise to support net gain delivery.

### Benefits to developers

The Department states that through the implementation of this proposal, developers will benefit from certainty and a level playing field, resulting from a standardised approach across LPAs. The Department also expects that the streamlined approach could result in savings for developers as a survey found that developers rated the overall complexity and associated costs of dealing with this as the most significant extra cost in the planning process, this isn't however, monetised due to lack of data and evidence.

### Indirect benefits to market participants

It is also possible that there will be indirect benefits through biodiversity banks and others who are cost-effective at creating habitat would be able to sell excess habitat at a price to provide a profit. This could also result in developers being incentivised to produce habitat greater than required by their biodiversity units liability. However, there is insufficient evidence to monetise this assumption.

### Government costs and benefits

The Department estimates the total annual cost to local government at £6.4m, with £1.1m of this associated to spatial planning. The Department identified the costs to central government through consulting with Natural England (NE). NE estimates that the majority of staff would be advisors at an SEO grade and a small proportion would be managers at Grade 7. The total ongoing cost to central government is, therefore, at £3.1m with an initial £0.5m capital cost.

### Wider benefits

The benefits of this proposal are local and national habitat delivery and the accompanying natural capital benefits, which will contribute to delivering a clear benefit to people and local communities. This will also help the government achieve ambitions set out in the 25-year environment plan published by Defra in January 2018. The Department is able to monetise these benefits of gaining ha on page 52 through a central estimate of £1,395.7m. These benefits do not fall within the 10 year appraisal period, as it is expected that developers take 20 years to create the desired habitat condition.

### **Quality of submission**

The RPC welcomes the level of analysis throughout the impact assessment, especially at the primary legislation stage. The Department has monetised benefits where possible and given reasons when not possible and supported assumptions through consultation and evidence. The RPC considers the analysis sufficient for validating the EANDCB. The Department provides a clear rationale, which is explained thoroughly, and provides some evidence for current market failures. While the Department does well to draw on economic theory to support the market failures, the IA could benefit from a clear link to evidence to support the rationale. The IA does state that there are some examples of net gain already in place voluntarily, but due to a lack of regulation and biodiversity metric, intervention is required. The rationale and proposal are consistent with the department's 25-year environmental plan, to leave the environment in a better position than it was found, for the next generation.

The costs to developers and familiarisation costs (6.5 – 6.5.1) are well calculated and presented. When the IA relies on assumptions or lacks data, the Department provides sufficient justification for its decision. Paragraph 6.5.2 contextualises the cost to developers using accessible tables and sufficient evidence. Each table is broken down and the analysis used is explained well and written clearly.

The proposed update to the current biodiversity metric and scores is clearly explained, with good examples of different scenarios. The assumption of the cost per biodiversity unit at £11,000 is satisfactorily supported using Table A2 in the annex 2.

### **Areas for improvement**

#### Baseline

- The baseline (paragraph 6.2.3) is based on assumptions that would benefit from further strengthening; it is also not clear if these assumptions were supported by evidence drawn from the consultation. The Department argues throughout that it has taken a conservative approach to setting its baseline; the RPC notes that although assuming a lower current achievement of biodiversity net gain will produce an overestimate of business costs, it will also considerably overestimate the benefits of the policy. The Department should set the most appropriate baseline possible, given the available data.
- On page 37, the assumption that 29% of residential developments already deliver net gain is based on evidence that six developers have *some form of habitat mitigation and creation policy*. The Department could improve the IA by explaining more clearly why *some form of habitat mitigation and creation* is taken to mean that all of these developments are achieving full, rather than partial, net gain. The IA also does not appear to consider property density (for example houses with green spaces or flats) of this 29%, which may have an impact on likelihood of offsetting.
- On page 37, the Department assumes that 15% of non-residential developments already deliver net gain, and that although 25% of LPAs are already delivering net gain, the Department has chosen to take the most conservative estimate (15%). The IA would benefit from further explaining how it reached the 25% figure.

### Small and micro business assessment (SaMBA)

The SaMBA provides a thorough overview of the number of small and micro businesses in the market for developers, as well as market share. The Department has sufficiently explored how it could mitigate the disproportionate impacts on small and micro businesses. The mitigations include allowing a simpler survey to be completed by a member of staff and providing guidance on how to use 'off the shelf' measures. However, the IA would benefit from quantifying expected alleviation of burden for small and micro businesses following the mitigations. There is also no mention of small or micro landowners, or small or micro-diversity banks. The IA would benefit from a clarifying point on this.

### Assumptions

On page 36, the Department states that '*evidence from existing biodiversity off-setting schemes suggests that the majority of mitigation will take place onsite*'. Given

that third-party markets are likely to develop in biodiversity units, this may change once prices for offsetting offsite decrease. While the RPC recognises that the Department was unable to gather evidence on the rate of development of these markets, the assumption appears unlikely. The IA should explore the assumption in its sensitivity analysis and explain that the distribution of onsite versus offsite offsetting may change.

Although the Department supports its assumption of pass-through to landowners with a number of sources, it is not clear that the sources provided are definitive, or that the debate is settled in academia. The IA would, therefore, benefit from sensitivity analysis around this.

The IA would benefit from explaining the impact of housing density on developers' ability to offset habitat loss, and whether this is factored into the 'difficulty' category of the biodiversity metric.

### Definitions

The IA would benefit from clearer definitions of industry terms and jargon throughout the IA. For example, it is not entirely clear if non-urban/urban are the same as non-developed/developed. Including clear definitions in an annex could also be helpful in this IA.

### International evidence

The Department mentions international current practice, the evidence derived from which could have been drawn upon to support the rationale for intervention. The Department could also draw on evidence from other schemes such as carbon offsetting.

### Risks

As one of the SaMBA mitigations presented on page 63, the Department states that a qualified person who has worked or is working on the site would be able to survey the site. The Department should recognise the risk of this potentially resulting in the survey being less effective due to bias. This could work against the aim of the policy to create a level playing field. It is also possible for there to be a degree of ambiguity for different LPAs when enforcing and regulating the biodiversity metric and net gain. Inconsistency between LPAs could also undermine the objective to create a level playing field. The IA would benefit from a discussing these risks.

Although the Department assumes developers will create a more distinctive habitat, the IA would benefit from discussing the risk of developers choosing the lowest cost offsetting-schemes, which could result in a lack of diversity in habitat creation.

The IA would benefit from discussing potential distributive impacts of the likelihood of developers building in more urban areas, where on-site offsetting is more difficult (such as London), choosing the offsite (more costly) option, while developers building in less urban areas can more easily offset onsite. The IA would also benefit from considering the effects these distributional impacts could have on equity.

### Departmental assessment

Classification	Qualifying regulatory provision (IN)
Equivalent annual net direct cost to business (EANDCB)	£170.7 million
Business net present value	-£1,469.1 million
Overall net present value	£8,176.2 million

### RPC assessment

Classification	Qualifying regulatory provision (IN)
EANDCB – RPC validated	£170.7 million (2016 prices, 2017 PV)
Business Impact Target (BIT) Score	£853.4 million
Small and micro business assessment	Sufficient

Regulatory Policy Committee