

Name of meeting: Scrutiny Panel

Date: 6<sup>th</sup> October 2020

Title of report: Draft Biodiversity Net Gain Technical Advice Note

|  |  |
|--|--|
| <b>Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?</b> | Yes - The Technical Advice Note will have an effect on all wards                 |
| <b>Is it in the <u>Council's Forward Plan (key decisions and private reports)</u>?</b>   | No   |
| <b>Is it eligible for call in by Scrutiny?</b>   | Yes  |
| <b>Date signed off by <u>Strategic Director</u> &amp; name</b>   | David Shepherd 28.09.2020  |
| <b>Is it also signed off by the Service Director for Finance IT and Transactional Services?</b>                                    | Eamonn Croston 24.09.2020  |
| <b>Is it also signed off by the Service Director for Legal Governance and Commissioning Support?</b>                               | Deborah Wilkes 25.09.2020  |
| <b>Cabinet member <a href="#">portfolio</a></b>  | <b>Give name of Portfolio Holder/s</b><br>Cllr Peter McBride<br>Cllr Cathy Scott |

**Electoral wards affected:** All

**Ward councillors consulted:** Cllr Peter McBride, Cllr Cathy Scott and Cllr Manisha Kaushik were briefed at the Regeneration Portfolio Holder Briefing (1<sup>st</sup> September 2020), Planning Committee Chairs (Cllr Steve Hall and Cllr Terry Lyons) were briefed on Thursday 10<sup>th</sup> September. All are supportive of this document being prepared for public consultation.

**Public or private:** Public

**Has GDPR been considered?** Yes. The draft Technical Advice Note does not contain any personal data.

### **Purpose of the report**

- To highlight the scope of the draft Biodiversity Net Gain Technical Advice Note and allow questions and comments. Details of the scope and content of the Note will be presented at the Scrutiny session.
- To note the timeline for next steps for consultation on the Technical Advice Note and the approval process.

## **1. Summary**

The revised National Planning Policy Framework 2019 (NPPF) requires development to secure measurable net gains for biodiversity (paragraph 170) and Local Plan policy LP30 requires development proposals to “provide net biodiversity gains through good design by incorporating biodiversity enhancements and habitat creation”. Proposals to mandate the majority of developments to demonstrate a 10% Net Gain for Biodiversity were announced in July 2019 and are intended to be enacted through the (currently draft) Environment Bill expected to be published later this year.

The draft Technical Advice Note will provide detailed advice on how Biodiversity Net Gain should be achieved by development within Kirklees in accordance with Local Plan policy LP30 (Biodiversity and Geodiversity) in the intervening time prior to the introduction of the Environment Bill. It will provide important certainty for elected members, officers and external parties such as the local community and developers.

The presentation will set out the general scope and content of the document and allow for questions and comments. Note that the draft document is not appended to this report as Scrutiny comments will be considered in finalising the draft Biodiversity Net Gain Technical Note which will then be subject to public consultation in mid-October 2020.

Following public consultation, approval for the Technical Guidance Note will be sought from Cabinet. Following approval, the Technical Guidance Note will be given weight as a material consideration in the planning applications process but will carry less weight than a Supplementary Planning Document (SPD).

At a later date, once the Environment Bill is passed, the intention will be to progress this to become an SPD including any changes required through the Environment Act. At the relevant time it will therefore be subject to the formal process for a Supplementary Planning Document.

The adopted Local Plan policy LP30 (Biodiversity and Geodiversity) which provides the policy basis for this guidance note is attached at Appendix 1.

## **2. Information required to take a decision**

Paragraph 170 of the National Planning Policy Framework (NPPF) 2019 requires development to secure measurable net gains for biodiversity. Paragraph 22 of the planning practice guidance on the natural environment confirms the definition of biodiversity net gain as an approach that “delivers measurable improvements for biodiversity by creating or enhancing habitats in association with development”. Paragraph 25 of the same guidance also identifies the use of a biodiversity metric as a pragmatic way to calculate changes in biodiversity value.

The draft Biodiversity Net Gain Technical Advice Note will provide clarity for applicants on how to achieve biodiversity net gain through development within Kirklees and supports national and local legislation. It will set out clear guidance on how biodiversity should be considered throughout the development process, including the utilisation of Defra’s Biodiversity metric to demonstrate a 10% net gain in biodiversity which is due to be mandated by the Environment Bill.

The current government ambitions on house building and infrastructure are likely to accelerate land use change, with implications for biodiversity and the natural environment. Placing biodiversity at the heart of planning and development will support Kirklees local

policy to protect and enhance biodiversity and provide net biodiversity gains through good design, as well as the wider government agenda on house building and infrastructure.

The draft technical advice note will be split into two main sections, **Section A: General Guidance for Developers** and **Section B: Guidance for Ecologists**. These will be split further into the following parts:

1. **Introduction** - The importance of consideration of biodiversity and the natural environment by development, the purpose of the technical note and the legislative context underpinning the guidance.

## **Section A**

2. **Biodiversity Net gain Approach** - The approach to achieving a biodiversity net gain through development, including technical information on how the biodiversity metric calculates the ecological value of a site pre and post-development, the application of the mitigation hierarchy and exceptions when the biodiversity metric may not be used (such as when irreplaceable habitats or designated sites are present).
3. **Kirklees Approach** - Guidance specific to how biodiversity net gain is to be delivered and determined within Kirklees. This includes the percentage gain expected, the type of development the guidance applies to and the level of information required to support a planning application in order to demonstrate a biodiversity net gain. This section also outlines the acceptable options available to applicants should a development fail to achieve biodiversity net gain on-site.
4. **Other Clarifications** - Further information on how outline applications are to be considered, the implications of actions to reduce the baseline biodiversity value of a site and how minor planning applications may demonstrate a biodiversity net gain.

## **Section B**

5. **Introduction** - Technical information regarding determining the strategic significance of habitats within Kirklees and relevant guidance documents.
6. **Level of Information Required** - Detailed information regarding the scope of documents required to demonstrate biodiversity net gain and the professional standards that these should meet.
7. **Habitat Creation and Enhancement** - Information on the principles for new habitat creation in terms of 'in-kind' trading and keeping these realistic and achievable. Further details are provided on maintaining woodland cover and ecological functions and habitat provisions inside residential garden curtilages.

### **3. Implications for the Council**

The main implication for the council in producing the Biodiversity Net Gain Technical Advice Note is that it will provide greater clarity and consistency for developers, agents, other stakeholders and development management to facilitate the determination of planning applications. It will also encourage applicants to consider biodiversity early in the planning process which is likely to improve outcomes for biodiversity within Kirklees.

- **Working with People**

The publication of the technical advice note will allow communities to understand the council's expectations with regard to the delivery of biodiversity net gains by major development applications. Net gains in biodiversity are likely to provide improved 'ecosystem services' which provide a number of benefits to the

community including aesthetic, spiritual, educational and recreational. The council will undertake public consultation on this document in accordance with the Statement of Community Involvement (SCI). There is the intention to follow the formal process of preparing an SPD once more clarity is published through the Environment Act.

- **Working with Partners**

The Biodiversity Net Gain Technical Note will enable developers, agents and statutory consultees to understand the council's expectation with regard to the delivery of biodiversity net gain through development.

- **Place Based Working**

The Biodiversity Net Gain Technical Advice Note will highlight whether a biodiversity net gain can be delivered on site and the requirement to offset losses off-site. Where biodiversity is to be delivered off-site, the use of the biodiversity metric in addition to utilising information on Kirklees natural resources will ensure that biodiversity offsetting is undertaken in strategically significant locations to provide benefits to the local area. The purchase of 'Biodiversity Credits' to collect a commuted sum from development has the potential to fund habitat creation or restoration in areas where they will have the greatest benefits within the district.

- **Climate Change and Air Quality**

The Biodiversity Net Gain Technical Advice Note will improve outcomes for biodiversity through development and therefore strengthen 'ecosystem services'. Green infrastructure is an effective way to increase carbon offsetting and reduce air pollution. In addition, by providing effective 'wildlife corridors' to create resilient and coherent ecological networks this will allow biodiversity greater adaptation to climate change.

- **Other (e.g. Legal/Financial or Human Resources)**

- Legal - once the Biodiversity Net Gain Technical Guidance has been subject to public consultation, the Local Planning Authority will consider the guidance as a material consideration in planning applications decision making. It will not, however, carry the weight of a Supplementary Planning Document (SPD). Once the Environment Bill is enacted, the intention is to follow the statutory process to produce an SPD.
- Financial - The Local Plan is the statutory development plan for Kirklees and includes policy LP30 (Biodiversity & Geodiversity) which requires a net biodiversity gains through good design as a core principle of all development proposals in the district. The production of this guidance note and the assessment of planning applications in relation to Biodiversity Net Gain are within existing budgets.
- Human resources – existing staff resources have been used to produce the guidance note and will be used to assess submissions received alongside planning applications
- An Integrated Impact Assessment has also been undertaken which is attached at Appendix 2

#### **4. Consultees and their opinions**

Cllr Peter McBride, Cllr Cathy Scott and Cllr Manisha Kaushik were briefed on the Biodiversity Technical Advice Note on Tuesday 1<sup>st</sup> September 2020. Planning Committee Chairs (Cllr Steve Hall and Cllr Terry Lyons) were briefed on Thursday 10<sup>th</sup> September. All consultees were supportive of the document being prepared for public consultation.

Early engagement with West Yorkshire Ecological Services, adjoining local authorities and Yorkshire Wildlife Trust has been undertaken to inform the scope and content of the draft

Technical Advice Note. Internally the document has been prepared with input from Development Management, Planning Policy and Parks & Open Spaces officers.

A Strategic Environmental Assessment (SEA) Screening has not been undertaken by the council as this screening process is requirement when following the statutory process of producing an SPD. As stated above, the formal SPD process will occur at a later date.

## 5. Next steps and timelines

It is intended the Council will consult on the draft Biodiversity Net Gain Technical Advice Note in mid-October 2020 for a period of six weeks. The consultation will be carried out in accordance with Statement of Community Involvement. Following the consultation, all comments will be considered, enabling any changes to be incorporated in the final Biodiversity Technical Advice Note. It will be a decision for Cabinet to approve the guidance at that stage.

The next steps:

- **Public consultation** on the draft Biodiversity Net Gain Technical Advice Note – proposed for mid-October 2020
- **Anticipated Cabinet** decision on approval of the Biodiversity Net Gain Technical Advice Note – Early 2021

## 6. Officer recommendations and reasons

- Scrutiny Panel to note the scope of the draft Technical Advice Note and provide feedback during the Scrutiny Panel session.

Reason: Scrutiny Panel requested to have early input into the content of the draft guidance as part of the quality places agenda.

## 7. Cabinet Portfolio Holder's recommendations

Cllr Peter McBride, Cllr Cathy Scott and Cllr Manisha Kaushik were briefed on the Biodiversity Net Gain technical Advice Note on Tuesday 1<sup>st</sup> September 2020. All were supportive of the document being prepared for public consultation

## 8. Contact officer

Amy Reddick (Biodiversity Officer, Conservation & Design Team)  
[Amy.Reddick@kirklees.gov.uk](mailto:Amy.Reddick@kirklees.gov.uk)  
(01484) 221000

## 9. Background Papers and History of Decisions

- Local Plan adopted 27<sup>th</sup> February 2019 ([www.kirklees.gov.uk/localplan](http://www.kirklees.gov.uk/localplan))
- Local Plan Examination Library (<https://www.kirklees.gov.uk/beta/planning-policy/local-plan-examination-library-2017.aspx>)
- Draft Environment Bill 2019-21 (<https://services.parliament.uk/Bills/2019-21/environment/documents.html>)

## 10. Service Director responsible

Karl Battersby  
Strategic Director for Economy and Infrastructure  
E-mail: [karl.battersby@kirklees.gov.uk](mailto:karl.battersby@kirklees.gov.uk)  
Tel: (01484) 221000

## **APPENDIX 1: EXTRACT FROM THE KIRKLEES LOCAL PLAN STRATEGY AND POLICIES (Adopted 27<sup>th</sup> February 2019)**

### **Policy LP30**

#### **Policy LP30 Biodiversity & Geodiversity**

The council will seek to protect and enhance the biodiversity and geodiversity of Kirklees, including the range of international, national and locally designated wildlife and geological sites, Habitats and Species of Principal Importance and the Kirklees Wildlife Habitat Network.

#### **South Pennine Moors**

Proposals which may directly or indirectly compromise achieving the conservation objectives of a designated or candidate European protected site will not be permitted unless the proposal meets the conditions specified in Article 6 (3) - (4) of the Habitats Directive.

#### **Statutory Designated Sites**

Statutory designated sites, including the South Pennine Moors Special Protection Area (SPA) and Special Area for Conservation (SAC) and Sites of Special Scientific Interest, are already highly protected through existing laws and legislation. In accordance with legislation, the Council will seek to ensure that harmful impacts to these areas as a result of development proposals are avoided.

Development proposed within or outside a designated Site of Special Scientific Interest, likely to have an adverse effect on the site's special nature conservation features, will not normally be permitted. Exceptionally development will be allowed where the benefits of the development clearly outweigh the impacts on the site's special conservation features and measures are provided to mitigate harmful impacts.

#### **The Dark Peak Nature Improvement Area**

Proposals that contribute to the aims and objectives of the Dark Peak Nature Improvement Area will in principle be supported, subject to other policies in this plan. Development likely to have an adverse impact on the aims and objectives of the NIA will not be permitted.

#### **Local Designated Sites & Important Local Ecological Features**

Proposals having a direct or indirect adverse effect on a Local Wildlife Site or Local Geological Site, Ancient Woodland, Veteran Tree or other important tree, will not be permitted unless the benefits of the development can be clearly shown to outweigh the need to safeguard the local conservation value of the site or feature and there is no alternative means to deliver the proposal. In all cases, full compensatory measures would be required and secured in the long term.

#### **Habitats and Species of Principal Importance**

Proposals will be required to protect Habitats and Species of Principal Importance unless the benefits of the development clearly outweigh the importance of the biodiversity interest, in which case long term compensatory measures will need to be secured.

#### **Biodiversity and Development**

Development proposals will be required to:-

- (i) result in no significant loss or harm to biodiversity in Kirklees through avoidance, adequate mitigation or, as a last resort, compensatory measures secured through the establishment of a legally binding agreement;

- (ii) (ii) minimise impact on biodiversity and provide net biodiversity gains through good design by incorporating biodiversity enhancements and habitat creation where opportunities exist;
- (iii) (iii) safeguard and enhance the function and connectivity of the Kirklees Wildlife Habitat Network at a local and wider landscape-scale unless the loss of the site and its functional role within the network can be fully maintained or compensated for in the long term;
- (iv) (iv) establish additional ecological links to the Kirklees Wildlife Habitat Network where opportunities exist; and
- (v) (iv) incorporate biodiversity enhancement measures to reflect the priority habitats and species identified for the relevant Kirklees Biodiversity Opportunity Zone.

## APPENDIX 2: Integrated Impact Assessment



# EIA STAGE 1 – SCREENING ASSESSMENT

## PROJECT DETAILS

**Name of project or policy:**  
Biodiversity Net Gain in Kirklees Technical Note

**Directorate:** Housing and Growth  
**Senior Officer responsible for policy/service:** Mathias Franklin, Acting Head of Planning and Development

**Service:** Planning  
**Lead Officer responsible for EIA:** Steven Wright, Planning Policy Group Leader

**Specific Service Area/Policy:** Biodiversity & Geodiversity  
**Date of EIA (Stage 1):** 24/09/2020

**Brief outline of proposal and the overall aims/purpose of making this change:**

The draft Biodiversity Net Gain Technical Advice Note provides clarity for applicants on how to achieve biodiversity net gain through development within Kirklees and supports national and local legislation. It sets out clear guidance on how biodiversity should be considered throughout the development process, including the utilisation of Defra's Biodiversity metric to demonstrate a 10% net gain in biodiversity which is due to be mandated by the Environment Bill.

## ASSESSMENT SUMMARY

| Theme       | Calculated Scores |        |       |            |          |       | Stage 2 Assessment Required |
|-------------|-------------------|--------|-------|------------|----------|-------|-----------------------------|
|             | Proposal          | Impact | P + I | Mitigation | Evidence | M + E |                             |
| Equalities  | 0                 | 4.5    | 4.5   | 0          | 4        | 4     | No                          |
| Environment |                   | 3.9    | 3.9   | 0          | 6        | 6     | No                          |

## NATURE OF CHANGE

| WHAT IS YOUR PROPOSAL?   | Please select YES or NO |
|--|-------------------------|
| To <b>introduce</b> a service, activity or policy (i.e. <b>start</b> doing something)  | NO                      |
| To <b>remove</b> a service, activity or policy (i.e. <b>stop</b> doing something)  | NO                      |
| To <b>reduce</b> a service or activity (i.e. <b>do less</b> of something)  | NO                      |
| To <b>increase</b> a service or activity (i.e. <b>do more</b> of something)  | NO                      |
| To <b>change</b> a service, activity or policy (i.e. <b>redesign</b> it)   | NO                      |
| To <b>start charging</b> for (or increase the charge for) a service or activity (i.e. ask people to <b>pay</b> for or to pay more for something) | NO                      |

| WHAT LEVEL OF IMPACT DO YOU THINK YOUR PROPOSAL WILL HAVE ON...      | Level of Impact<br>Please select from drop down |
|--|---|
| Kirklees <b>employees</b> within this service/directorate? (overall) | Positive  |
| Kirklees <b>residents</b> living in a specific ward/local area?      | Positive  |
| Please tell us which area/ward will be affected:                     | All wards                                       |
| <b>Residents</b> across Kirklees? (i.e. most/all local people)       | Positive  |
| Existing <b>service users</b> ?                                      | Neutral   |

| Each of the following <b>groups</b> ?  |  | Please select from drop down |
|--|--|------------------------------|
| <i>(Think about how your proposal might affect, either positively or negatively, any individuals/communities. Please consider the impact for both employees and residents - within these protected characteristic groups).</i> |  |                              |
| ...age   | What impact is there on Kirklees <b>employees</b> /internal working practices? | Neutral                      |
|  | What impact is there on Kirklees <b>residents</b> /external service delivery?  | Neutral                      |
| ...disability  | What impact is there on Kirklees <b>employees</b> /internal working practices? | Neutral                      |
|  | What impact is there on Kirklees <b>residents</b> /external service delivery?  | Neutral                      |
| ...gender reassignment   | What impact is there on Kirklees <b>employees</b> /internal working practices? | Neutral                      |
|  | What impact is there on Kirklees <b>residents</b> /external service delivery?  | Neutral                      |
| ...marriage/ civil partnership   | What impact is there on Kirklees <b>employees</b> /internal working practices? | Neutral                      |
|  | What impact is there on Kirklees <b>residents</b> /external service delivery?  | Neutral                      |
| ...pregnancy & maternity   | What impact is there on Kirklees <b>employees</b> /internal working practices? | Neutral                      |
|  | What impact is there on Kirklees <b>residents</b> /external service delivery?  | Neutral                      |
| ...race  | What impact is there on Kirklees <b>employees</b> /internal working practices? | Neutral                      |
|  | What impact is there on Kirklees <b>residents</b> /external service delivery?  | Neutral                      |
| ...religion & belief   | What impact is there on Kirklees <b>employees</b> /internal working practices? | Neutral                      |
|  | What impact is there on Kirklees <b>residents</b> /external service delivery?  | Neutral                      |
| ...sex   | What impact is there on Kirklees <b>employees</b> /internal working practices? | Neutral                      |
|  | What impact is there on Kirklees <b>residents</b> /external service delivery?  | Neutral                      |
| ...sexual orientation  | What impact is there on Kirklees <b>employees</b> /internal working practices? | Neutral                      |
|  | What impact is there on Kirklees <b>residents</b> /external service delivery?  | Neutral                      |
| ...those in poverty or low-come  | What impact is there on Kirklees <b>employees</b> /internal working practices? | Neutral                      |
|  | What impact is there on Kirklees <b>residents</b> /external service delivery?  | Neutral                      |

...unpaid carers

What impact is there on Kirklees **employees**/internal working practices?

Neutral

What impact is there on Kirklees **residents**/external service delivery?

Neutral

| WHAT LEVEL OF IMPACT DO YOU THINK YOUR PROPOSAL WILL HAVE ON...                             |                      |                     | Level of Impact              |
|---|----------------------|---------------------|------------------------------|
|   |                      |                     | Please select from drop down |
| Kirklees Council's <b>internal practices</b> ?  |                      |                     | Positive                     |
| Lifestyles of <b>those who live and work</b> in Kirklees?                                   |                      |                     | Positive                     |
| <b>Practices of suppliers</b> to Kirklees council?  |                      |                     | Positive                     |
| <b>Practices of other partners</b> of Kirklees council?                                     |                      |                     | Neutral                      |
| Each of the following <b>environmental themes</b> ? (Please select from the drop down list) |                      |                     |                              |
|   | People               | Partners            | Places                       |
| ...clean air (including Climate Changing Gases)   | Neutral<br>Score: 2  | Neutral<br>Score: 2 | Positive<br>Score: 1         |
| ...Clean and plentiful water  | Neutral<br>Score: 2  | Neutral<br>Score: 2 | Neutral<br>Score: 2          |
| ... Wildlife and habitats   | Positive<br>Score: 1 | Neutral<br>Score: 2 | Very Positive<br>Score: 0    |
| ...Resilience to harm from environmental hazards  | Neutral<br>Score: 2  | Neutral<br>Score: 2 | Neutral<br>Score: 2          |
| ... Sustainability and efficiency of use of resources from nature                           | Neutral<br>Score: 2  | Neutral<br>Score: 2 | Neutral<br>Score: 2          |
| ...Beauty, heritage and engagement with the natural environment                             | Positive<br>Score: 1 | Neutral<br>Score: 2 | Positive<br>Score: 1         |
| ... Resilience to the effects of climate change   | Neutral<br>Score: 2  | Neutral<br>Score: 2 | Positive<br>Score: 1         |
| ...Production, recycling or disposal of waste   | Neutral<br>Score: 2  | Neutral<br>Score: 2 | Neutral<br>Score: 2          |
| ... Exposure to chemicals   | Neutral<br>Score: 2  | Neutral<br>Score: 2 | Neutral<br>Score: 2          |

## HOW ARE YOU USING ADVICE AND EVIDENCE/INTELLIGENCE TO HELP YOU?

Please select YES or NO

### Equality Themes

|   |     |
|---|-----|
| Have you taken any <b>specialist advice</b> linked to your proposal? (Legal, HR etc)?                                       | Yes |
| ...employees?   | Yes |
| Do you have any <b>evidence/intelligence</b> to support your assessment (in section 2) of the impact of your proposal on... | Yes |
| ...Kirklees residents?  | Yes |
| ...service users?   | No  |
| ...any protected characteristic groups?   | No  |

Please list your **equalities** evidence/intelligence here [you can include hyperlinks to files/research/websites]:  
 The Technical Advice Note provides interim guidance to help implement Local Plan Policy LP30 in accordance with national planning policy legislation and its use by development management employees will have a positive impact in facilitating the process to determine planning applications. As the technical note aims to improve biodiversity post-development this is likely to provide improved 'ecosystem services' which provide a number of benefits to the community including aesthetic, spiritual, educational and recreational therefore these benefits may be enjoyed by all residents regardless of characteristic group.

|  |                              |
|--|------------------------------|
|  | Please select from drop down |
| To what extent do you feel you are able to mitigate any potential negative impact of your proposal outlined on the different groups of people? | FULLY                        |
| To what extent do you feel you have considered your Public Sector Equality Duty?   | FULLY                        |

### Environmental Themes

|   |     |
|---|-----|
| Have you taken any <b>specialist advice</b> linked to your proposal?  |     |
| ...Kirklees Council practices?  | Yes |
| Do you have any <b>evidence/intelligence</b> to support your assessment (in section 2) of the impact of your proposal on... | Yes |
| ...resident and worker lifestyles?  | Yes |
| ...Practices of Supplier to Kirklees Council?   | No  |
| ...Practices of other Kirklees Council partners?  | No  |

Please list your environmental evidence/intelligence here [you can include hyperlinks to files/research/websites]:  
 The Technical Advice Note sets out Kirklees' approach on how biodiversity net gain is to be achieved by development until the Environment Act is passed. It will be used by the council's development management teams in determining planning applications and by developers and their specialist consultants in order to create well designed schemes. It seeks to ensure biodiversity is considered early in the development process which is likely to improve outcomes for biodiversity within Kirklees by ensuring valuable habitats are retained, enhanced and created post-development and managed for a sufficiently long-term.

|  |                              |
|--|------------------------------|
|  | Please select from drop down |
| To what extent do you feel you are able to mitigate any potential negative impact of your proposal on the environmental issues identified? | FULLY                        |