



Report to: Cabinet Meeting: 23 July 2024

Portfolio Holder: Councillor Emma Oldham - Biodiversity & Environmental Services

Director Lead: Matt Lamb, Director for Planning & Growth

Lead Officer: Lisa Hughes, Business Manager Planning Development

| Report Summary | |
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| Type of report | Key Decision, Open |
| Report Title | Planning Development Review of Biodiversity and Ecology Resource |
| Purpose of Report | To provide an update in relation to the implementation of Biodiversity Net Gain and Resource Impacts |
| Recommendations | <p>That Cabinet agree:</p> <ul style="list-style-type: none"> a) Subject to the outcome of Job Evaluation, that the addition of a Biodiversity and Ecology Officer to the Planning Development Business Unit be funded by a corresponding increase in revenue expectations from the BNG income stream identified at paragraphs 1.14-1.16 below; b) Subject to the outcome of Job Evaluation, that the addition of a Biodiversity and Ecology Graduate be funded by BNG income, noting that such a post will only be recruited to if agreed by the Director of Planning and Growth, in consultation with the Director for Resources and Business Manager, Planning Development, based on a review of BNG income being sufficient to cover this additional post on an ongoing basis. |
| Alternative Options Considered | No action could be taken, which would lead to an undeliverable workload with respect to ecological and biodiversity matters. A pause on recruitment pending receipt of additional income has also been considered and discounted on the basis that |

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| | preparatory work needs to be undertaken in advance of receipt of future receipts. |
| Reason for Recommendations | To ensure that the Planning Development Business Unit can continue to lead in adapting to the ongoing and emerging implications from Biodiversity Net Gain (BNG). |

1.0 **Background**

1.1. The post of Biodiversity and Ecology Lead Officer (BELO) was appointed to in July 2023. This was to enable the Council to effectively deal with the future impact of the introduction of mandatory biodiversity net gain (BNG) and associated resources required for up to 30-years and then ongoing. In addition, the post was to assist with all other biodiversity and ecology matters for both the Planning Development and Planning Policy & Infrastructure Business Units.

1.2. Since coming into post, key work associated with BNG undertaken by the BELO has included:

- Critical review and contributions to the Biodiversity Net Gain Framework for Nottinghamshire and Nottingham;
- Provided an update to SLT on 31 October 2023 regarding BNG as the Government announced delays in publishing the secondary legislation and associated guidance required to implement mandatory BNG;
- Investigated software solutions to help with the administrative burden of BNG;
- Started work on reviewing NSDC's own land ownership in relation to BNG;
- Critically reviewed the secondary legislation Dec/Jan and subsequently provided various updates for colleagues, including at SLT/BMs;
- Preparing updates to the Local Validation List for BNG;
- Arranged legal training from FREETHS solicitors for colleagues across teams;
- In light of the secondary legislation, prepared a report for Cabinet recommending the adoption of two BNG related policies prepared by the BELO, the launch of a 'call for sites' exercise for off-site 'habitat banks' and to apply for 'Responsible Body' status (all approved by Cabinet in January);
- Implemented the 'call for sites' exercise (ongoing); and
- Provided training for Members (Planning Committee in particular) on what the legislation means and how it will be implemented, with further sessions arranged.

1.3. The Council has a keen interest in BNG, which includes a desire to increase the percentage gain to 20% at the next Plan Review (which is also currently an aspiration of the BNG Framework for Nottingham and Nottinghamshire), for us to purchase land for the delivery of BNG, as well as support landowners in the District who wish to promote their land for BNG purposes. The Community Plan includes two actions in relation to biodiversity:

- Understand the biodiversity baseline within the district, allowing the development and implementation of a Biodiversity Strategy, 2024 – 2028; and
- Play an active role in biodiversity net gain for the district, including the potential to own our own biodiversity offset sites, as well as looking at how our own developments can contribute.

1.4. The activities to deliver these and the proposed timescales are, respectively:

- Appraise and record the submission of BNG Metrics. Provide a report in accordance with Regulations (to come into force) in terms of content and timing (*commencing January 2024 and ongoing*);
- Review (and have input to) the Nottinghamshire & Nottingham Local Nature Recovery Strategy (LNRS), biodiversity opportunity mapping, local wildlife site data etc., to produce the Biodiversity Strategy (*June to December 2024*);
- Review of Council land to understand opportunities for our schemes as well as for developers. For some sites this would include undertaking essential baseline habitat surveys as part of the review process rather than use external ecologists. Understand the implications (positive and negative) for the Council to manage and maintain land for a minimum of 30 years for BNG (October 2023 to June 2025); and
- Provide a minimum of 10% net gain in accordance with Regulations (*Ongoing for affected developments*).

1.5. A previous report was presented to Cabinet on 4th June 2024 in relation to our Biodiversity Duty. Whilst BNG is only part of that duty, this report is important in relation to the BNG elements of the Community Plan.

1.6. Mandatory BNG is currently in force for all new major applications submitted on or after 12th February and for all other application types submitted on or after the 2nd April. There are excluded developments from the BNG provision such as householders, self-build dwellings and development comprising permitted development.

1.7. Training has been provided to a number of Members regarding the introduction of BNG with a focus of the training upon Members of Planning Committee. Those that attended are aware of the complexities of the legislation, the challenges that lie ahead as well as the resource implications involved, even with just the assessment of the information provided as part of the planning application.

1.8. In addition to the above BNG related work, the BELO has been providing invaluable advice and support to colleagues across the planning team. Reviewing ecology reports, advising in relation to protected species for development proposals, prosecution for planning enforcement where protected species are present and ecological matters relating to a public inquiry for a battery energy storage system in Staythorpe. The benefits of having such 'in-house' ecological expertise are invaluable to the Planning Development team, but there are associated implications in terms of workload for the BELO.

1.9. When the post for biodiversity and ecology expertise was established, the resource for this was based upon what was expected to be within the Regulations (table below). The requirements within the published Regulations are slightly different to what was expected and therefore a further review has been undertaken of resources needed. Additionally, the change in Council Membership has changed the dynamic in relation to the wider aspirations of the Council.

| Year | August 2023- August 2025 | August 2025- 2028 | 2028- 2032 | 2032- 2041 | 2041- 2051 | 2051- |
|-----------------|--------------------------|-------------------|-------------|-------------|------------|------------|
| Resource | 0.78 | 1.33 | 1.78 | 2.38 | 3 | 3.5 |

1.10. This current review takes account of:

- applications submitted and approved during the last 3-years for majors and non-majors requiring mandatory BNG to be provided;
- estimated resource, based on the BELOs knowledge of this field of work, but also noting this is a new piece of work and therefore there will likely be some miscalculation; and
- the ambitions of Members in relation to BNG.

Excluded from calculation are those developments which are allowed at appeal which, unless they are excluded development, would also be required to provide mandatory BNG. Currently, the numbers of allowed appeals is fairly small and therefore the resource impact will also be relatively small in the context of the whole picture.

1.11. The table below shows the number of applications for both the major and non-major categories that would have been subject to BNG provision if the Regulations had been in place in previous years. An average of the 3-years has been taken to understand what the numbers might be annually. These numbers have not taken into account (in the non-major category) those that are known to be custom or self-build, nor the number that are retrospective. These applications are not subject to 10% BNG, although a legal agreement (unilateral undertaking) will still be required to ensure that these are custom or self-build and, if they are not, for net gain to be delivered along with the associated monitoring fee.

| Year | Application Type (Approved) | | Total |
|-----------------------|-----------------------------|--------------------|------------|
| | Major (number) | Non-major (number) | |
| 2021 | 24 | 302 | 326 |
| 2022 | 27 | 269 | 296 |
| 2023 | 18 | 223 | 241 |
| Average Number | | | 287 |

1.12. In relation to the amount of time, with the BELO's knowledge of BNG, the now more evident requirements of the role, and aspirations of Members, an updated review of resources has been undertaken.

- 1.13. As part of the budget setting for this financial year, updated monitoring fees were agreed as well as various tiered charges for advice to developers and their ecologists, as well as for the work associated with the preparation of habitat banks which are a vital component for effective delivery of BNG within the District.
- 1.14. Taking account of the number of applications and monitoring income of £3,000 per application site, it is estimated that up to £861,000 (being 287 applications (obligations) x £3,000) could be received each year. This is anticipated to be at the very upper end of what might be received and is unlikely. If only half this number of applications were received, almost £450,000 would be received. It is currently difficult to make predictions based on applications received since the 12th February and the 31st May due to the need to undertake ecological surveys (a) on or after the 12th February 2024 (legislative requirement); (b) generally during the months of May to September in order for the assessment to be credible; and additionally (c) the number of ecologists qualified and available to undertake surveys is understood to be limited. As well as the above matters likely to have affected the submission of applications, it is also anticipated that the market for off-site mandatory BNG still being at its infancy has had an impact on application numbers. It is expected that when the market becomes more active that the number of applications will rise exponentially. It is known across the country that the number of applications received has dropped considerably.
- 1.15. In addition to the estimated income above, a BNG Grant that has been received from the Department for Environment, Food and Rural Affairs. Further funding is to be received for 2024/25 of £26,807. All grant monies since 2022/23 have been ring-fenced (as part of the grant conditions) to deliver BNG. The following table details the income received and expenditure to date in relation to the grants. The salary budget for the BELO forms part of the Planning Development’s establishment.

| Year | Grant Received £ | Expenditure £ | Residual Balance £ |
|--------------|------------------|---------------|--------------------|
| 2021/22 | 10,047 | 1,320 | 8,727 |
| 2022/23 | 10,000 | | 10,000 |
| 2023/24 | 26,807 | 10,000 | 16,807 |
| 2024/25 | 26,807 | | 26,807 |
| Total | | 10,000 | 62,341 |

- 1.16. It can therefore be seen that there is currently an available balance of £62,341 which could be utilised to cover the cost of an additional resource to support the Lead Officer in delivering the biodiversity and ecology functions, the equivalent of NS12 with the salary and on-costs being £56,324.
- 1.17. It might also be possible, if there is available resource, for the post to be used to support other parts of the Council for services currently outsourced to consultant ecologists. An example would be the preparation of Management Plans for land being managed by the Environmental Services team, including baseline ecological surveys to inform plan development and subsequent monitoring surveys. This could potentially include work associated with the progression of sites towards new Local Nature Reserve declarations. However, time will be needed to understand the resource implications of managing BNG and day-to-day ecological matters for the Planning Development and Planning Policy & Infrastructure Business Units first.

2.0 Proposal/Details of Options Considered

Do Nothing

- 2.1. This is not considered to be an option due to the resource implications as set out within Section 1.0 of this report. To ensure that we meet both our statutory duty of delivering 10% BNG as well as the Council's aspirations in relation to BNG, further resource is considered necessary.

Progression of a new Ecologist Post

- 2.2. It is recommended that a Biodiversity and Ecology Officer post is created who would be able to support the BELO by providing the ecological advice relative to the Environment Act as well as advice relating to protected species, Environmental Impact Assessments, and the Habitat Regulations, for example.
- 2.3. The post will be subject to Job Evaluation to set an appropriate salary. It is expected that the government grant of £62,341 will assist initially without pressure on the general fund. With the forecast income, solely from monitoring of biodiversity net gain, which would be an annual receipt, the post would in effect pay for itself in the longer term.

Graduate Post

- 2.4. This approach would provide additional resource at lower employment costs than those highlighted above and has other benefits for the Council as an employer. It is not considered to be suitable option at the current time but should not be discounted once support has been put in place.
- 2.5. To be successful for the Graduate post, there has to be significant in-house training and mentoring, the benefits of which come with time as experience is gained. If this option were followed at this stage, this training and mentoring would have to be provided by the BELO and would be additional work to that already detailed in this report. Invariably, the benefits that would then arise would be negated by this additional work.
- 2.6. The experience and expertise required to support the work of the BELO is such that this will need to have been acquired either through years of experience working in the commercial ecology sector or in a similar role within another local planning authority. Therefore, even with effective mentoring and training and a graduate, the experience level needed would not be achieved via this option. Given that the benchmark for the experience needed is someone who can fully support the BELO in all aspects of their work, and be able to provide adequate cover whilst the BELO is on annual leave (or off sick), the experience level available from these options would be significantly lower than that required.
- 2.7. However, this post is considered should not be discounted as a potential option in the future as it is expected that there will be a need to consider further expansion of the in-house ecology resource.

Summary

- 2.8. Due to the resource implications to effectively delivery biodiversity net gain, along with the other biodiversity and ecology functions of the department, a qualified officer with a number of years experience is required in the first instance.

2.9. It is not normal practice for further posts to be requested within a report, however due to the anticipated increase in workload which is expected when it starts will rise exponentially with speed, with corresponding income receipts, this report seeks the unusual step of seeking agreement for future posts in advance, subject to resource requirements and income to not put pressure on the general fund unless agreed by a future Cabinet decision.

3.0 Recommendations

3.1. it is recommended that a Biodiversity and Ecology Officer post is added to the establishment and that appointment is made to this post (an assumed scale of up to NS12) as soon as possible.

3.2. It is also recommended that a Graduate Biodiversity and Ecology Officer is appointed to when both the income being received to meet the ongoing salary and on-costs as well as work requirements requiring this additional resource.

4.0 Implications

Human Resource Implications HR2425/1543

4.1 The recommendations in this report would represent an increase to the establishment of 2FTE - one permanent post and one permanent or temporary post (graduate). In 23/24, the Council's establishment increased by 32.29 FTE (including 21.29 permanent FTE), 2 of which were in Planning Development. It does appear, based on the content of this report, that increasing the establishment in this area would support delivery of the objectives of the Community Plan and would assist with some of the priorities of Members.

4.2 It would be unusual to create and evaluate a job description in advance of knowing whether a role will be required given that the requirements of a role may change in time. If this is approved, it is recommended that it would be with the view to recruiting within an agreed timeframe.

4.3 In relation to the graduate role - i.e. available for someone who has already achieved a degree in a relevant area of study, consideration would need to be given as to what further development we would offer to make it a graduate position as opposed to an additional officer.

4.4 If a graduate role is offered on a temporary basis, it is likely to be for longer than 2 years and, therefore, it should be noted that, should we not be able to find continued employment for the individual then they would be eligible for a redundancy payment.

Financial Implications - FIN 24-25/4193

Biodiversity & Ecology Officer (BEO)

4.5 The new Biodiversity & Ecology Officer with oncosts, budgeted for at top of scale and subject to Job Evaluation would be either NS11 £51,882 or if the outcome is N12 then would be £56,324. However, if this position was exponentiated this current financial year, 2024/25 the starting salary would be calculated at £42,243 (¾ of £56,324) or £38,912 (¾ of £51,882) looking to commence from July, 2024.

4.6 Funding for this new position in this current financial year 2024/25 would be from the existing BNG grant income of £79,051 - achieving full funding as stated in paragraph 2.3 and sought to be entered into the MTFP as an established position in Planning Development from 2025/26.

Graduate Biodiversity & Ecology Officer (GBEO)

4.7 If the establishment is increased to also having a Graduate BEO., costs proposed would be in the region of a possible starting salary of NS6 with oncosts and budgeted for at top of scale of £34,861 and would be sought to be entered into the MTFP as an established position in Planning Development from 2025/26.

4.8 However, if this position was exponentiated this current financial year, 2024/25 the starting salary would be calculated at £26,145 (3/4 of £34,861) looking to commence from July, 2024.

4.9 Costing for this position in 2024/25 current financial year would look to being funded from Biodiversity & Ecology grant income of £79,051 also.

4.10 Both positions would require ICT equipment costed at around £2,000 per officer.

4.11 Table below demonstrates the cost of salaries with oncosts against predictable income over the MTFP:

| Post | Grade | 2024/25 | 2025/26 | 2026/27 | 2027/28 |
|---|--------------|----------------|-----------------|-----------------|-----------------|
| Biodiversity & Ecology Officer (BEO) 1FTE – if JE is NS12 | NS 12 - 33 | £42,243* | £59,202 | £62,226 | £65,400 |
| Biodiversity & Ecology Officer (BEO) 1FTE – If JE is NS11 | NS 11 - 30 | £38,912* | £54,539 | £57,328 | £60,258 |
| Graduate BEO (GBEO) 1 FTE | NS 6 - 11 | £26,145 | £34,861 | £36,666 | - |
| ICT Equipment costs | | £4000 | - | - | - |
| POSSIBLE EXPENDITURE (BEO assumed at NS12) | TOTAL | £72,388 | £94,063 | £98,892 | £65,400 |
| Grant Income | | £79,051 | - | - | - |
| Application Income surplus | | - | £350,000 | £350,000 | £350,000 |
| PROPOSED INCOME | TOTAL | £79,051 | £350,000 | £350,000 | £350,000 |

*Calculated at ¾ of the financial year starting July 2024

4.12 Both positions can be funded from Grant Income in 2024/25. If the Graduate position is commenced from 2025/26 this will be funded from the application income surplus predicted of £350,000.

Digital Implications

4.13 A tablet, appropriate software licensing and ICT equipment to facilitate working from home for both the Biodiversity & Ecology Officer post and, in the longer-term, the Graduate Biodiversity and Ecology Officer will be required and costed in the financial implications.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.