

1.0 Preamble

- 1.1. It seems that Southwell are trying to pre-empt (possibly inadvertently) the secondary legislation which will be required to mandate biodiversity net gain. Therefore, my overarching advice would be for Southwell (if possible) to wait until this, and the associated guidance, has been published and peer reviewed regarding its interpretation. There would then be a clearer view of what will be covered by legislation, and where the scope will be for local authorities and neighbourhood plans, to capture conservation, enhancement and subsequent gains for biodiversity which might be considered desirable/necessary, but which fall outside of any legislative requirement. I would consider that taking this route would be the best way for Southwell to achieve enhanced gains for biodiversity at a local level, rather than just trying to capture/repeat legislative requirements or NSDCs policies.
- 1.2. It's debatable whether local planning policy needs to include policy that reflects legislative requirements. However, a sceptical view might be that the Government may never get around to introducing the required secondary legislation (very unlikely), or that successive governments might remove/replace the legislation (always a possibility). The recent Government announcement reversing their stance on nutrient neutrality serves to remind how quickly things can be changed. Therefore, LPAs and Neighbourhood Plans might want to safeguard against this, albeit probably unlikely, scenario by including the requirement for mandatory net gain in local policies. However, the wording would be tricky, as in this scenario it would be unlikely that there would be a nationally adopted and maintained biodiversity metric that could be relied upon for the necessary calculations. Even if this was the rationale for including mandatory net gain in local policy, it would be better informed if drafted after the secondary legislation and guidance was available.
- 1.3. It's my understanding that:
 - a. A neighbourhood plan should align with strategic local plan policies and then focus on influencing development that sits outside of these policies; and
 - b. Planning applications within an area covered by a neighbourhood plan must be determined in accordance with the development plan (i.e., Policy DM7 Biodiversity and Green Infrastructure, and Core Policy 12 Biodiversity and Green Infrastructure for NSDC).

The following comments are made on this basis and are referenced against the Southwell Neighbourhood Plan with DRAFT CHANGES – May 2023.

2.0 Policy E3 – Green Infrastructure and Biodiversity **Introductory Paragraphs**

[5.15]. No comment to make.

[5.16]. I suggest that '*... to foster plant and animal (wildlife)...*' would be better as '*... to foster wildlife habitats and species in the parish and achieve gains for biodiversity*'.

Reason: It is important to highlight habitats which are composed of plant species rather than just 'plant'.

[5.17]. I suggest the following:

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‘This policy is part of a multi-faceted approach towards conserving the natural environment and the character of Southwell, which is accessible via its extensive and attractive Rights of Way network’.

Reason: The Rights of Way network is something that sits within the wider landscape or ‘Green Infrastructure’ but its importance is probably that it provides accessibility to the natural environment which the policy seeks to protect and enhance.

[E3.1]

- 2.1. This paragraph appears to try and capture the legislation regarding the timing of determining baseline biodiversity values for the purpose of mandatory biodiversity net gain, and accounting for deliberate ‘trashing’ of sites to reduce their baseline biodiversity value.
- 2.2. How this will work is that the applicant and the Local Planning Authority can agree the date for the pre-development biodiversity value of onsite habitats (i.e., the baseline). If there has been no agreement the baseline value date is then deemed to be the date that the planning application has been submitted.
- 2.3. This does not remove the ‘anti-trash’ safeguard embedded in the Environment Act 2021. If any activity has taken place between 30 January 2020 and the date agreed by the applicant with the LPA for the pre-development baseline value (i.e., the date that the baseline survey was undertaken), or in the absence of an agreed date, the date of the planning application, and those activities were not consented under a planning permission, and they reduce what the application site’s baseline biodiversity value would have otherwise been on the agreed date, then the pre-development onsite biodiversity value must be calculated as what it would have been immediately prior to those activities taking place.
- 2.4. This flexibility is quite important as in some situations some clearance of vegetation might be required to facilitate site investigations that are needed to develop a proposal and meet validation checks. The flexibility to allow applicants to agree a date with the LPA enables the biodiversity value to be captured without unnecessary disputes regarding potential ‘trashing’ actions.
- 2.5. In the situation where it has been considered that deliberate ‘trashing’ has taken place, calculating the baseline value can be very difficult as this will mostly be reliant on aerial photography which doesn’t give the accuracy required to make an accurate judgement.
- 2.6. There are inherent problems with the ‘anti-trashing’ guidelines, particularly as time advances and it will become harder to determine what the baseline value was, and whether the actions were a deliberate act to reduce the biodiversity value.
- 2.7. There should be no reason to specifically identify Local Wildlife Sites as the policy is attempting to capture vegetation manipulation in advance of submitting a development proposal, so this should be a catch-all on any area of land, irrespective of any designation.
- 2.8. As this will form part of the legislation it’s debatable whether this needs to be included within Policy E3, or any local planning policy. However, there are some scenarios where mandatory net gain will not apply. The following are currently excluded but the secondary legislation (expected before the end of November 2023) is expected to specify further exemptions:

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- Permitted development;
- Marine development;
- Development where the baseline biodiversity score is zero (i.e., the site is formed entirely by sealed surfaces which have a zero baseline value); and
- Where the work will be temporary and will be restored within two years as measured by the Biodiversity Metric version 4.0.

2.9. Therefore, if local planning policy (or neighbourhood plan policy) wants to include currently excluded types of development within a biodiversity net gain policy I think it can do this, and then inclusion of wording to account for baseline values and anti-trashing would be appropriate as it wouldn't be covered by the legislation. If that's the case, the wording I have suggested for E3 below would need further modification.

2.10. Also, on the assumption that paragraph [E3.1] of the policy would be an extension of the existing NSDC policies, and the application type would be one that would fall outside of the mandatory net gain legislation, there wouldn't be a need for NSDC to agree the timing for the baseline value with the applicant, or a requirement to check for deliberate trashing, so I'm unsure how the Southwell NP would/could deal with this? If it formed part of Policy E3 within an adopted version of the Neighbourhood Plan, would it be NSDC's obligation to do this as part of its duty?

2.11. Assuming that Southwell want to keep the essence of what they are trying to capture, and safeguard against the secondary legislation not being introduced, I would suggest that the following wording would achieve this and give flexibility for changes in the legislation and also provide a basis for future changes if Southwell want to capture development types that will be exempt from mandatory net gain. However, it's worth re-iterating that this would be best left until after the end of November 2023 to see if the legislation appears, and if it does, to be better informed by that legislation. Otherwise, it will invariably require further modification to be fit for purpose.

Policy E3

E3.1 All development required by relevant legislation to provide a measurable, minimum net gain for biodiversity at a level set by that legislation, and calculated using a 'metric' the use of which is mandated by the relevant legislation, will be required to demonstrate delivery of at least the required minimum biodiversity gain in accordance with the legislation.

E3.2 If activities have taken place between 30 January 2020 and the date agreed with Newark and Sherwood District Council for the baseline biodiversity value calculation, or in the absence of any such agreed date, the date of the planning application, which have reduced the baseline biodiversity value of the application site from what it would otherwise have been, then the pre-development value will be taken as the value immediately prior to those activities. This will be determined using historic aerial imagery and any other relevant published information.

E3.3 The required net gain should be maximised onsite, with any shortfall delivered offsite, either within the Newark and Sherwood District, or as a last resort outside of the District.

E3.4 All development required by relevant legislation to provide a minimum biodiversity gain should be supported by an appropriate management plan, approved by Newark and Sherwood District Council, setting out objectives, management prescriptions, responsibilities, and a monitoring and reporting procedure.

Explanatory

On publication of enabling secondary legislation to mandate a minimum biodiversity net gain requirement, current legislation (i.e., Environment Act 2021), will require the baseline biodiversity value of a development application site to be determined either at a date agreed between the applicant and Newark and Sherwood District Council or in the absence of any such agreement, the date of the planning application. The legislation includes provision to prevent deliberate actions to reduce the baseline biodiversity value.

It is considered that in addition to the biodiversity gain plan required by the Environment Act 2021, additional detail will be required for the management and monitoring of on-site biodiversity gains.

[E3.2]

2.12. This is not logical. If a site has been degraded for the purpose of reducing its baseline biodiversity value, the 'anti-trashing' rule will account for this. Otherwise, what this paragraph means is that the developer would be expected to replant features at a ratio of 2:1, only for the application to then be considered against what its baseline value was prior to the 'trashing', making the 2:1 ratio irrelevant. Also, it is impossible to retain features at a ratio of 2:1. This section is not only very poorly worded, but also potentially irrelevant.

[E3.3]

2.13. This replicates Core Policy 12 but I consider it takes it further by indicating that only applications that protect and possibly enhance the biodiversity value of LWS, LNRs and priority habitats and species would be supported. I think that this is potentially unhelpful for the purposes of the overall objectives of Core Policy 12. This is because LWS are a non-statutory designation and therefore there is no legal requirement for owners to manage their LWS specifically to protect or enhance their biodiversity interest. Also, I'm not sure how well the LWS in the District have been monitored, or to what extent there has been engagement with LWS owners to encourage sympathetic management. In many districts there are LWS that have not been looked at for decades and their original interest has been lost. In some instances, better gains for wildlife can be made from losing part of a LWS to development, but then securing long-term favourable management for the remainder of the site as a planning condition. I think that para. [E3.3] potentially restricts the opportunity to do this.

[E3.4].

2.14. This is just repeating the legislation, so is it needed? The suggested re-wording under Paragraph 2.11 above would encompass this?

2.15. The legislation will require a Biodiversity Gain Plan (BGP) to be submitted and approved by the LPA and development cannot legally commence until the BGP has been approved. However, the BGP will potentially be different from a management plan as the current 'working draft' template does not include a requirement for detailing management prescriptions etc. for on-site net gain, but if offsite gains are involved, it does require the offsite approved Habitat Management and Monitoring Plan to be provided as part of the BGP.

2.16. I think that to be able to discharge their statutory duties LPAs will need a Habitat Management and Monitoring Plan for the proposed onsite gains as well, and potentially these will need to be conditioned as currently the detail for these doesn't appear in the working draft template for the BGP. So there might be merit here for a paragraph to capture which I have suggested at E3.4 under para 2.11.

[E3.5].

2.17. Same as above, but poorly worded as it doesn't make a clear distinction between on-site and off-site gain, or the option to use the national register.

E3.1.

2.18. This is irrelevant, as in this situation the development would be illegal and unable to proceed.

E3.2.

2.19. Mirrors Core Policy 12. I would be uncomfortable having a policy that becomes specifically tied to Natural England Standing Advice, as this is 'catch-all' advice and not always appropriate. This paragraph appears to seek additional benefits beyond what might be required to deliver mandatory net gain. This is to be encouraged as the 'biodiversity metric' is a proxy for providing enhancements for species and there are many options for delivering benefits for biodiversity which cannot be included in the 'biodiversity metric' calculation, and which are not specifically stipulated in NSDC's policies DM7 and CP12. The Neighbourhood Plan could require certain features in the parish's developments and thereby ensure local benefits for biodiversity that cannot be ensured through other means. So a suggested wording to capture this would be:

E3.5 In addition to the requirement for development proposals to deliver measurable gains for biodiversity, and the need to give due regard to designated sites, irreplaceable habitats and priority habitats and species as required by Newark and Sherwood District Council Adopted Core Strategy Core Policy 12, development with the parish will be required to provide specific enhancements for species via the following:

A) Residential development involving a single dwelling:

- *The provision of a single integrated bat roosting box*

B) Residential development involving 4-5 dwellings:

- *The provision of an integrated bat roosting box on 2 dwellings and the provision of an integrated bird nesting box on a further 3 dwellings; and*

- *Boundaries to be permeable for European hedgehog, by the provision of suitable holes in walls and close-board fencing to create a 'hedgehog highway' through residential gardens.*

C) Residential development involving 10 or more dwellings:

- *Integrated bat roosting boxes to be provided on 20% of the dwellings; and*
- *Integrated swift boxes in minimum groups of 3 to be provided on 10% of the dwellings; and*
- *Integrated bird nesting boxes for species other than swifts to be provided on 10% of the dwellings; and*
- *Soft landscaping schemes to demonstrate how the use of native species, or non-native species that are known to be beneficial to wildlife in the UK, have been maximised.*

Advisory

The provision of suitable features to support roosting bats and nesting birds cannot be included in the calculations for biodiversity gain, despite their known value to provide enhancement for species. Their inclusion with developments therefore needs to be secured by other means.

Migratory swifts have been in decline for many decades, with this decline particularly acute in the past two decades. Whilst all the reasons for this decline are still unknown, the loss of nest sites in buildings due to changes in building design and building regulations is considered a contributing factor. Whilst uptake of artificial nest sites for swifts is variable, they have been successful in many areas, and if not used by swifts, they are equally suitable to support other bird species.

Hedgehogs are a species of principal importance for conservation, but have long been in decline. Recent studies have indicated that the urban population is now stable and might be recovering. Urban areas, including residential gardens are thought to provide a suitable refuge and initiatives to improve habitats for hedgehogs and create habitat connectivity by providing small holes at the base of fences is considered to have helped to halt population declines in urban areas.

The use of native plant species, or non-native plant species and ornamental varieties known to be of value to wildlife in the UK, will increase the value of landscaping for a wide range of species.

Evidence that the design and location of the required enhancements are appropriate should be provided, and for developments of more than 1 dwelling, this should be via a report produced by a competent ecologist.

[E3.7]

- 2.20. I think the wording is too subjective as what defines the features to be of 'merit'. Also it appears to be contradictory, saying that features should not be degraded or lost, but then in the same sentence talking about being retained 'wherever possible'. This might

just be a case of word placement, as the ‘wherever possible’ might just relate to maintaining heights. It’s very restrictive and that restriction has the potential to block options for biodiversity improvement. For example, the loss of a hawthorn dominated hedge in poor condition, compensated for by the creation of a new native species, species-rich hedgerow within the development design would likely be a better outcome than retaining the existing hedge.

E3.3

2.21. Similar comments to those given in para. 2.20. Is this feasible and achievable in a viable development?

[E3.8]

2.22. Fine to be aspirational, but has this requirement been made based on the authors having a copy of these standards (which cost hundreds of pounds) so is there an understanding of what this actually involves? Also, the Design Codes seem to have been struck out in the Appendices, so have they been ditched?

[E3.9]

2.23. Appears to contradict [E3.7] which states that such features ‘...*must be retained*...’

[E3.10]

2.24. Is this necessary?

[5.18]

2.25. No comment as factual information.

[5.19]

2.26. Would suggest the following amendment

There are no sites of international importance for the habitats and species they support within Southwell parish. However, development has the potential to have negative effects on habitats and species that are a priority for conservation at national and local level of importance. This includes protected species and those listed on Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006 and those identified within the Nottinghamshire Biodiversity Action Plan.

[5.20]

2.27. No comment to make.

[5.21]

2.28. Although frequently referred to as the Defra metric etc. it is published by Natural England so would perhaps be better referred to as ‘The Natural England Biodiversity Metric’ also, the type of habitat is important. Also, this is the first instance in the document that the Defra Biodiversity metric term has been used, so it seems odd to include it in the explanatory paragraphs. A more factually correct version would be:

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The Natural England Biodiversity Metric uses a standardised methodology to calculate 'biodiversity units' in relation to development proposals, based on the type, condition and extent of habitats present pre and post development.

[5.22]

2.29. I'm not aware of what this 'Register of Vegetation' is. So cannot comment further.

[5.23]

2.30. I think that all these bulleted examples are likely correct, so no comment.

6.1[5.24]

2.31. No comment.