

Report for: Cabinet

Date of Meeting: 09 January 2024.

Subject: The statutory duty to conserve and enhance biodiversity.

Cabinet Member: Cllr Natasha Bradshaw, Cabinet Member for Climate Change.

Responsible Officer: Jason Ball, Climate and Sustainability Specialist.

Exempt: None

which are Exempt from publication under paragraph 3, Part 1 of Schedule 12A to the Local Government Act 1972 (as amended) as it contains information relating to the financial or business affairs of any particular person (including the authority holding that information)

Wards Affected: Whole District

Enclosures: None.

Section 1 – Summary and Recommendation(s)

To update Cabinet on the work underway in relation to the Council’s statutory duty to conserve and enhance biodiversity and the timeline for progression of the work.

This paper summarises the nature of the statutory duty, explains key requirements, and frames expectations of how to formulate action. It seeks to clarify the difference in roles between the Local Planning Authority (LPA) (statutory decision maker on planning applications) and the Corporate entity of MDDC with its associated role as land / property owner and developer.

Recommendation(s):

- 1. To note that the Cabinet Member for Climate Change has submitted comment on this matter (to the Climate and Sustainability Specialist preliminary briefings) as the first consideration of what action to take with regard to this duty.**
- 2. To note that action and policy development will be split into two separate streams: either matters within the Council’s statutory**

Planning Policy making process and the statutory powers as a Local Planning Authority (largely governed and prescribed by national policy and through the work of the Forward Planning and Development Management teams); or items outside those functions, such as land and built asset management and its wider corporate operations.

- 3. To note that the responsibility to deliver on the general biodiversity duty is shared across all Council operations. As such, this matter will be raised on agendas for all Policy Development Groups (PDGs) and, where within the jurisdiction of the LPA, the Planning and Policy Advisory Group (PPAG) to request input to the policy framework and action plan.**
- 4. That Cabinet delegates authority to the Cabinet Member for Climate Change, the Director of Place and the Climate and Sustainability Specialist to develop a policy framework and action plan in consultation with staff and Council bodies as above, then recommendations brought to Cabinet.**

Section 2 – Report

1.0 Introduction

- 1.1 The Council has a statutory duty to conserve and enhance biodiversity (habitats and species) as set by the Environment Act 2021 and the amended Natural Environment and Rural Communities Act 2006 (NERC Act). This is known as ‘the biodiversity duty’. The Department for Environment, Food & Rural Affairs (Defra) has published [guidance](#) on purpose and compliance.
- 1.2 The Council, as a local authority, must:
 - a) Consider what it can do to conserve and enhance biodiversity.
 - b) Agree policies and specific objectives based on its consideration.
 - c) Act to deliver its policies and achieve its objectives.
 - d) [Report on its biodiversity duty actions](#). (Defra has [guidance](#) on this.)
- 1.3 The Council must, as part of their strategic assessment of their functions, have regard to any relevant Local Nature Recovery Strategies (LNRSs), Species Conservation Strategies and Protected Site Strategies (introduced in the Environment Act).
- 1.4 Practical [actions](#) to achieve objectives could cover the full range of relevant Council activities such as:

- land under its ownership or management;
- built asset management;
- corporate policies and practices e.g. for water and natural resources, waste, artificial lighting, sustainable procurement;
- supporting the management plans for Protected Landscapes (Blackdown Hills National Landscape);
- community engagement;
- partnership working;
- development plans, planning advice and decisions (LPA activity);
- delivery of Biodiversity Net Gain (BNG) – separately both as LPA and landowner/developer.

1.5 The biodiversity duty is relevant when complying with requirements under:

- a) [strategic environmental assessment](#)
- b) [environmental impact assessment](#)
- c) [Habitats Regulations assessment](#).

2.0 Background

2.1 The [legislation's explanatory notes](#) (Part 6, section 102) carry key points:

2.1.1 A requirement for public authorities to assess how they can take action to conserve and enhance biodiversity, and then take these actions (beyond simply discharging its duties as the Local Planning Authority).

2.1.2 The aim is to provide for the enhancement or improvement of biodiversity, not just its maintenance in its current state.

2.1.3 To comply, a public authority must periodically consider the opportunities available across the full range of its functions. This represents a proactive, strategic assessment of a public authority's functions, rather than considering each function in isolation.

2.1.4 The Council may decide there is no action it can reasonably take that is consistent with the proper exercise of its functions. For example, if particular action is not possible within budget constraints, not good value for money or conflicts with other priorities. However, if there is action it can take, then it must decide how that action can be put into effect, through appropriate policies and objectives (and the legislation then requires the public authority to take the action).

- 2.1.5 It is possible the duty can be satisfied by adjusting existing policies and objectives, rather than requiring public authorities to introduce new policies or undertake new projects.
- 2.1.6 Subsequent assessments and action planning must take place at least every five years (or sooner); then decisions around policies and objectives should follow as soon as is practically possible.

3.0 Notes the Council could consider on drafting a Framework for Policies.

- 3.1 The Council shall establish district targets considered to be aligned with (i.e. will contribute positively towards) the requisite goals set out by government legislation and guidance. Targets should be achievable or surpassable, assuming a favourable strategic environment (with appropriate government funding, etc.).
- 3.2 When shaping or reviewing Council policy, the responsible body shall consider the potential for policy to contribute towards the biodiversity duty. New policy recommendations should come with a note to confirm whether this duty has been considered (e.g. as part of a climate and sustainability statement) and to highlight relevant points that might be taken forward to support the biodiversity duty framework.
- 3.3 The Council shall seek opportunities for external funding and non-financial support for its biodiversity duty work, such as tree planting grants, land management payments, partnership working, volunteer help and donations. Constraints on Council resources are recognised as a potential barrier.
- 3.4 Partnership work is recognised as a vital success factor, particularly with regard to the fact that its land ownership is a small fraction of the district. The Council would support knowledge exchange with partners and other authorities.
- 3.5 The Council will set out a schedule of suitably resourced work to monitor and review progress towards its district targets.
- 3.6 Principles of additionality and traceability should be observed in order to avoid double-counting the same gains and to attribute achievements correctly. (For example - landscape scale partnership schemes might combine many projects resourced in several ways, but if certain works were done specifically to deliver planning permission Conditions or BNG, this should be made clear in the data reporting.)
- 3.7 Methodology for monitoring, evaluations and reporting should comply with [national guidance](#) (Defra). Metrics for “gains” should be viable and comparable, such as with the current / contemporary Defra BNG metric.

Progress evaluations should relate to a suitable baseline for data comparison (such as 2021 when the Environment Act was passed).

4.0 Notes the Council could consider on drafting a Framework for Actions

4.1 The Council can take action on a range of distinct levels:

- areas we directly control or manage;
- areas we directly manage or influence through procurement and contractual agreements;
- areas we enable or support through policy and regulatory systems (i.e. such as through the formal planning system and the LPA role.)
- areas we can enable or support through funding;
- strategic influence through engagement and partnership;
- wider indirect influence through requests and lobbying.

4.2 Continuation of the 'status quo' in activities might be unlikely to contribute to an enhancement of Mid Devon's natural heritage, except in cases where this is a specific aim, such as the BNG requirements in planning.

4.3 Current, planned or imminent Council activities considered to contribute to the biodiversity duty include:

- a) the delivery of BNG requirements in Planning (statutory work which the LPA is already duly considering);
- b) the delivery of Local Nature Recovery Strategy (statutory work);
- c) a significantly reduced frequency of grass mowing on Council land (changes in management regimes achieved since 2021);
- d) A number of suitable areas have been removed from routine grass cutting and are now maintained on a conservation regime primarily managed for biodiversity (changes in management regimes achieved since 2021);
- e) a significantly reduced use of herbicides on Council land (changes in management regimes achieved since 2021);
- f) the Tree Policy guides tree management on Council land and those that are afforded protection under Planning legislation i.e. Conservation Order or Tree Preservation Order.
- g) Investigate the potential for the Council to set up one or more Habitat Banks and sell credits for situations where BNG is provided off site through new development.

- h) Continuation of partnership working e.g. with Connecting the Culm, with the Creedy Crayfish Project, or the Blackdown Hills National Landscape. Seek to support and help shape emerging opportunities led by landowners and other agencies e.g. Natural Flood Management.

4.4 Potential new actions **outside** statutory Planning Policy / LPA duties and powers that could contribute to the general biodiversity duty include:

- a) Enhanced investment in land management for nature recovery.
- b) Promote ecologically restorative projects and the creation of nature reserves on land either in Council, joint or private ownership.
- c) The Council could investigate the potential costs, benefits and implications of a biodiversity gain target for its own land, at suitable sites.
- d) Council policy could ensure that, for example, when parks and open spaces ownership or management responsibility is given over to other parties, that arrangements or agreements are made, where practicable, to safeguard progress. (That land use regimes will not be less favourable to biodiversity.)
- e) Publish a tree and woodland management strategy for Mid Devon. This should respond to the Devon Tree and Woodland Strategy. The strategy should aim to examine what we have, management in place (private and public) and identify threats and opportunities (very brief summary).
 - Following on from the above strategy, look at opportunities to boost woodland management across the district to enhance biodiversity.
 - Create a list of preferred planting stock e.g. species and provenance that will reflect the local character and noted for their biodiversity value.
- f) Revised Mid Devon Tree Protection Order (TPO) Guidance. Seek to afford suitable trees with TPOs in localities where they are not within conservation area. Amend local guidance on evaluation / amenity scoring to include climate change and ecological considerations.

4.5 Potential new actions **within** statutory Planning Policy processes and powers that could contribute to the general biodiversity duty include:

- The new Local Plan review timeline is a key opportunity to embed the duty, thinking more broadly than BNG when shaping policy. A suitable scope of activity could include, e.g. shaping practice to improve biodiversity benefits, or specific measures to benefit Mid Devon priorities

(such as bespoke mitigation and enhancement measures to address nutrient or disturbance issues for particularly sensitive sites) additional to national requirements. These matters can be discussed with PPAG, drawing on relevant advice and guidance from technical specialists as required.

4.6 Notes on setting and enabling achievable ambitions with lasting effect.

- a) The Council could devise ways to channel funding into schemes under its management or within its influence (managed by partners) such as through community fundraising, investor initiatives, BNG or bespoke agreements.
- b) Funding will be crucial to enable some or all proposals raised. The Council should evaluate which actions to prioritise (e.g. some might become committed goals whilst others remain aspirational or heavily dependent on external factors or finance).
- c) Partnership work offers ways to achieve more and overcome gaps in capacity e.g. by supporting the roles, perspectives and expertise of partners.
- d) Draft project proposals could be devised in readiness for funding opportunities that become available to the Council or partners.
- e) Volunteer engagement could serve to expand the potential range and scale of nature conservation activities, education and study in the district. Seeking biodiversity opportunities could help identify links with local projects to achieve co-benefits e.g. wellbeing and community pride initiatives.

5.0 Progress and next steps

5.1 Preliminary work involved briefings, a discussion paper and draft report circulated internally including with the Corporate Management Team (CMT), Forward Planning team, Tree Officer and the Parks and Open Spaces Officer.

5.2 The Cabinet Member for Climate Change submitted comment on this matter as the first consideration of what action to take with regard to this duty. Cabinet 12 December 2023 received a verbal update from the Cabinet Member.

5.3 Next steps:

- report circulated to key officers across teams;
- report circulated to PDGs and PPAG asking for recommendations;
- Cabinet Member takes a report to Environment PDG (23 Jan 2024);
- verbal update to Cabinet (06 Feb 2024);
- Cabinet would seek to consider recommendations by the end of this Administrative year cycle (April 2024) to enable a plan to be finalised.

Financial Implications

None for this paper. Future decisions and actions should be considered for their potential financial implications.

Legal Implications

The general duty to conserve and enhance biodiversity is set out in the Environment Act 2021 and the Natural Environment and Rural Communities Act 2006 (NERC Act) as amended.

Mid Devon as LPA has set duties to discharge in line with national policy and this is separate and distinct from anything which the authority chooses to do as a corporate land/property owner.

Risk Assessment

Failure to comply with legislation could result in the Council facing legal action. Delivering well on the biodiversity duty would contribute to nature recovery with particular regard to national and local strategic targets (better biodiversity); failure to act could result in 'status quo' or worse rates of biodiversity decline (targets missed), potentially with consequences for ecosystem services in the district and beyond.

Impact on Climate Change

None for this paper. Future decisions and actions should be considered for potential climate impacts (for example, carbon cycle processes depend on the health of ecological systems). Ecological recovery is viewed as an important part of achieving climate change resilience, whilst biodiversity decline has a negative effect.

Equalities Impact Assessment

None for this paper. Future work will be fully considered for potential impacts and benefits.

Relationship to Corporate Plan

Corporate Plan priorities include (Env 03) 'Identify opportunities to work with landowners to secure additional hedgerow planting, biodiversity and reforestation.' There are also potentially co-benefits for other Council priorities, for example nature recovery can benefit health, community wellbeing and the economy.

Section 3 – Statutory Officer sign-off/mandatory checks

Statutory Officer: Andrew Jarrett

Agreed by or on behalf of the Section 151

Date: 19 Dec 2023

Statutory Officer: Maria de Leburne
Agreed on behalf of the Monitoring Officer
Date: 19 Dec 2023

Chief Officer: Richard Marsh
Agreed by or on behalf of the Corporate Director
Date: 19 Dec 2023

Cabinet member notified: Yes.

Section 4 - Contact Details and Background Papers

Contact: Jason Ball, Climate and Sustainability Specialist. Email: JBall@MidDevon.gov.uk Telephone: 01884 255255.

Background papers: None.