

Tunbridge Wells Borough Council

BIODIVERSITY REPORT

First consideration

December 2023



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The Biodiversity Duty

Introduction

- 1.1 This report relates to the Council's Corporate and Planning roles and responsibilities under the [Environment Act 2021](#) for protecting and enhancing biodiversity across the Borough, and covers how the Council will:
 - i. Respond to the new corporate **Biodiversity Duty** imposed on Local Planning Authorities under the Environment Act 2021 requiring Local Planning Authorities to propose and report on actions for biodiversity within a **Biodiversity Report**.
 - ii. Deliver and monitor **Biodiversity Net Gain** (BNG) as a mandatory requirement of new development which comes into force January 2024 and which must form part of the **Biodiversity Report**.
- 1.2 The Government published the [25 Year Environment Plan \(25YEP\)](#) in 2018 signalling that they would strengthen the Biodiversity Duty and introduce a mandatory system for development of Biodiversity Net Gain (i.e. making sure that the habitats for wildlife associated with a development are on completion of that development in a better state than before the development took place).
- 1.3 The [Environmental Improvement Plan \(EIP23\)](#), published in January 2023, builds upon the foundation of the 25YEP and sets out government plans for significantly improving the natural environment by working with landowners, communities and businesses towards the joined vision.
- 1.4 The [Environment Act 2021](#) received Royal Assent on 9 November 2021 and amended section 40 of the Natural Environment and Rural Communities Act 2006 (duty to conserve biodiversity) so that there is now a general biodiversity objective which is the "*conservation and enhancement of biodiversity*". To comply with the duty Planning authorities must consider what action the authority can take "*to further the general biodiversity objective*".
- 1.5 The Planning authorities considerations, actions and reporting on those actions are required by the Environment Act to be set out in a **Biodiversity Report** and the

legislation and accompanying guidance sets out the timescale and required content of the report which includes reporting on Biodiversity Net Gain.

- 1.6 The Government advised that 10% Biodiversity net Gain (BNG) would become mandatory for all major development in November 2023. The November date has since been pushed back to January 2024 and only applies to major development with BNG and for most other relevant development coming into force in April 2024.
- 1.7 Using the Council's adopted policy for Biodiversity (Core Strategy Policy CP4) of "no net loss" and the more recent (2023) National Planning Policy Framework (NPPF) paragraphs 174(d) and 179(b) which encourages BNG, the Council adopted a de facto policy of requiring 10% BNG for all new development in 2019. The Council included in the drafting of its emerging Local Plan a specific BNG policy (EN 9) requiring at least 10% biodiversity net gain.
- 1.8 The Council has formally recognised the need for urgent action on Biodiversity through a declaration of a climate and biodiversity emergency ([Full Council in July 2019](#)) and has taken decisive action by being an early adopter of Biodiversity Net Gain in 2019. Latterly the Council, through its Council Plan – [Building a Better Borough \(2022-24\)](#) has committed to reviewing its [Biodiversity Action Plan](#).
- 1.9 The Council has for many years identified and designated a wide and extensive range of sites to be protected for their wildlife interest and seeks to ensure their continued protection and enhancement through policies and actions including community involvement in conservation activities.
- 1.10 This report is intended to set out what the Council currently does to deliver biodiversity and to set out how the Council will meet the new challenges posed by the Environment Act 2021 in respect of biodiversity building on its existing policies, partnerships and actions setting out a clear strategy for going forward that will maximise the benefits for biodiversity within the resources and influence available to the Council.

The Biodiversity Report

- 1.11 The Environment Act 2021 amends section 40 of the Natural Environment and Rural Communities Act 2006 (NERC Act). The original duty was “*so far as is consistent with the proper exercise of [the public authority’s] functions, to the purpose of conserving biodiversity*” and this has been replaced by a more proactive duty (new section 40(1)) to “*from time to time consider what action the authority can properly take, consistently with the proper exercise of its functions, to further the general biodiversity objective*”.
- 1.12 Public authorities must also under section 40A of the NERC Act evidence the action it takes by the publication of a **Biodiversity Report** which must also report on the outcomes of mandatory Biodiversity Net Gain.
- 1.13 This is a corporate responsibility that goes across all Council departments, actions and decision making. The Government guidance ([Reporting your biodiversity duty actions](#)) specifically requires Local Authorities to publish **biodiversity reports** which contain:
- “*a summary of action which the authority has taken over the period of the report*”
 - *a summary of the Authorities plans for the 5 years following the report*
 - *quantitative data and any other information the authority considers is appropriate is include in the report*”.
- 1.14 The Environmental Act 2021, section 102 to 103 and its associated guidance ([Reporting your biodiversity duty actions](#)) stipulates publication and frequency dates as follows:
- the first report must cover no longer than 3 years, subsequent reports must cover no longer than 5 years and run consecutively
 - the report must be published within 12 weeks of the last day of the report
- 1.15 The Government guidance ([Complying with the biodiversity duty](#)) summarises what, under the legislation, public authorities must do:
- “*Consider what you can do to conserve and enhance biodiversity.*”
 - *Agree policies and specific objectives based on your consideration.*
 - *Act to deliver your policies and achieve your objectives*”.

1.16 The report has three compulsory sections which are described in the Government guidance as follows:

“Section 1: Your policies, objectives and actions

You must include this information in your report.

Explain:

- *the policies and objectives you have set to meet your biodiversity duty;*
- *the actions you’ve completed, either alone or in partnership with others, that benefit biodiversity.*

Section 2: How you have considered other strategies

You must include this information in your report.

Explain how you’ve taken into account:

- *local nature recovery strategies*
- *protected site strategies*
- *species conservation strategies*

For example, include information about how:

- *you’ve advised or worked in a Local Nature Recovery Strategy (LNRS) partnership In your area*
- *these strategies influenced your policies, objectives or actions*

Section 3: Your future actions

You must include this information in your report.

1. *Explain how your organisation plans to fulfil your biodiversity duty over the 5 years following the end of this reporting period.*

You can report your plans for future actions in each section of your report alongside the ones you’ve achieved”.

1.17 In addition the guidance also refers to the following optional content:

Section 4: Information about your authority

Section 5: Your top achievements

Section 6: How your policies and actions have helped

Section 7: How you’ve raised awareness and educated the community

Section 8: Monitoring and evaluating your actions

Section 9: Biodiversity highlights and challenges

1.18 Much of this information may usefully be included and the Council intends that The **Biodiversity Report** will encompass the Council’s commitment in [Build a Better Borough](#) to review the Council’s [Biodiversity Action Plan](#) and hopes that it can also be of use in positively communicating to a wider audience the actions that the Council already undertakes to improve biodiversity through its partnership working.

- 1.19 Whilst the first **Biodiversity Report** must be reviewed within three years and subsequent reports every five years there is a requirement for a first report that sets out the Council's **first consideration** of what action to take for biodiversity to be published by **01 January 2024** and “*agree your policies and objectives as soon as possible after this*”. This report is then the Councils **first consideration**.
- 1.20 The Guidance on [Reporting your biodiversity duty actions](#) stipulates that the end date of the first reporting period should be no later than 01 January 2026 which means that the first review or reporting period will be far less than the 3 years maximum allowable.

First consideration

- 2.1 There is no guidance on what should be in a **first consideration** report and so the Council is using this opportunity to set out how it will:
- Review what the Council already does for biodiversity.
 - Undertake internal discussions across all departments and to undertake a limited stakeholder consultation to develop policies and actions that will improve outcomes for biodiversity.
 - Monitor progress and effectiveness on agreed policies and actions.
- 2.2 The Council is proposing the following route and timetable to the production, adoption and review of the **Biodiversity Report** noting the requirement that the **first consideration** must be published by 01 January 2024 and the end date of the first reporting period should be no later than 01 January 2026 and thereafter every 5 years.

Report Stage	Target date for Draft Publication	Sign off approval procedure	Target date for adoption/publication
First Consideration	December 31 st 2023	Head of Service/Cabinet Member	January 2024
First Report	September 2024	Cabinet	November 2024
Second Report	September 2025	Cabinet	November 2025
Third Report	September 2030	Cabinet	November 2030

- 2.3 The information and considerations set out below are not exhaustive and will be added to and developed through discussion and consultation.

Current policies and actions

2.4 The Council has declared a Climate and Biodiversity emergency ([Full Council in July 2019](#)) and has taken decisive action by being an early adopter of Biodiversity Net Gain in 2019. In line with the declaration, the Council engages in projects and takes initiatives to protect our most important sites, inclusive of but not limited to significant parks, woodlands, nature reserves, which improve all habitats for wildlife across the borough and build in resilience to climate change.

2.5 The Council has a series of policies in the adopted and emerging plans for biodiversity, habitats and ecological management and has been operating a de facto 10% BNG policy for planning since 2019. Current and emerging policies are set out below noting that subject to the adoption of the submission Local Plan the policies in the Core Strategy and 2016 Local Plan will be superseded.

[Submission Local Plan 2021](#)

- Policy EN 9: Biodiversity Net Gain
- Policy EN 10: Protection of Designated Sites and Habitats
- Policy EN 11: Ashdown Forest Special Protection Area and Special Area of Conservation
- Policy EN 12: Trees, Woodland, Hedges, and Development
- Policy EN 13: Ancient Woodland and Veteran Trees
- Policy EN 14: Green, Grey, and Blue Infrastructure
- Policy EN 16: Landscape within the Built Environment

[Core Strategy \(adopted 2010\)](#)

- Core Policy 4: Environment

[Remaining Saved Policies at 2016 of Local Plan \(adopted 2006\)](#)

- Policy EN 13: Tree and Woodland Protection
- Policy EN 15: Statutory Local Nature Reserves and other non-statutory Nature Conservation Sites
- Policy EN 22: Areas of Landscape Importance
- Policy EN 23: Important Landscape Approaches
- Policy EN 24: Arcadian Areas

2.6 The Council's Web site contains detailed guidance on BNG, and the Council's planning work is supported by the following assessments:

- [Strategic Environmental Assessment](#)
- [Habitats Regulations Assessment](#)

[Supplementary Planning Documents \(SPD\)](#)

- Landscape Character Assessment SPD (adopted 2017)
- Landscape and Nature Conservation 2002
- Green Infrastructure Plan SPD (adopted 2014)

2.7 In addition the Council has relied upon a number of Evidence Base documents for planning purposes that have a role in biodiversity which include:

- [Grassland Assessment Survey of Selected Sites within the High Weald AONB 2020](#)
- [Green Infrastructure Framework for Draft Local Plan – Regulation 18 Consultation \(September 2019\)](#)
- [Biodiversity Action Plan 2008](#)
- [Ancient Woodland Inventory 2007](#)

2.8 The Council has been involving a number of key longstanding partnerships that support biodiversity:

- Kent High Weald Partnership
- High Weald AONB Joint Advisory Committee
- Kent Nature Partnership
- Making Space for Nature (Local Nature Recovery Strategy)
- Ashdown Forest Partnerships
- Local Wildlife Site System for Kent

Work to develop the first Biodiversity Report

2.9 Whilst the Council is proud of its work and achievements for biodiversity it views the production of the **Biodiversity Report** as an opportunity to undertake a review of what it currently does and to consider how it might improve outcomes for biodiversity. Members have committed to a new Service Level Agreement with the Kent High Weald Partnership who manage a number of protected sites for wildlife and who do so much on the Council's behalf to raise awareness, educate and engage with our communities on biodiversity.

2.10 Planning and the parks team play a key role in the protection and improvements to biodiversity across the Borough but through this work the Council will raise awareness of biodiversity across the whole organisation.

2.11 Set out below are the actions the Council will take in order to inform the first **Biodiversity Report**:

- The Council will continue to apply the environmental policies to planning applications and will continue to review and update guidance and practice to improve outcomes.
- The Council will review and report on BNG achieved since 2019 both on and off site and monitor mandatory BNG as it develops.
- The Council will identify and develop sites for the provision of offsite BNG on council owned and third party land.
- The Council will continue to support and work with the relevant partnerships to deliver wildlife conservation activities, environmental education, landowner advice, community engagement and conservation volunteering.
- As part of [Build a Better Borough](#) and any subsequent Borough Plans, the council will review the Council's [Biodiversity Action Plan](#).
- Through internal discussions the Council will review procedures and practices across the Council to ensure that any reasonable opportunities to protect and enhance biodiversity are identified and actioned.
- The Council will engage with key stakeholders to review current partnership working on biodiversity and look to new opportunities to improve outcomes for biodiversity.

Monitoring

- 2.12 As part of the actions noted above the Council will consider how both existing and any new actions will be monitored.
- 2.13 BNG as part of planning has its own monitoring requirements set out in legislation and guidance which the Council will follow. In addition the Council publishes an Annual Monitoring Report (AMR) for the Local Plan policies and has prepared a new monitoring schedule for the Submission Local Plan for when that becomes adopted. The relevant content of these reports will form part of the **Biodiversity Report**.
- 2.14 Most partnerships that form part of the Councils commitment to biodiversity already have reporting requirements which can be captured for the **Biodiversity Report**.
- 2.15 In devising monitoring proposals the Council will have to be mindful of the resources available and will seek to avoid duplicating work done elsewhere so that where monitoring is already being done this will be incorporated into the **Biodiversity Report** ahead of publication on the Council's web site.

Next steps

- 2.16 The Council will undertake discussions across the different departments of the Council seeking to improve understanding of and response to biodiversity.

- 2.17 Consult with key stakeholders to seek views on the work the Council currently does for biodiversity and how that might be improved in the future.

- 2.18 The results of these discussions and any new proposals will be reported to and discussed with members through the committee procedure for Cabinet reports to agree and finalise the first **Biodiversity Report**.

Appendix

National policies

- [Environmental Improvement Plan \(EIP23\)](#)
- [Environment Act 2021 – Part 6: Nature and biodiversity](#)
- [National Planning Policy Framework \(NPPF\) 2021 paragraphs 174 to 182](#)
- [Nature Recovery Network](#)
- [Guidance on Compliance with Biodiversity Duty](#)
 - [Local Nature Recovery Strategies](#)
 - [Species Conservation Strategies](#) (Pending)
 - [Protected Site Strategies](#)
- [Guidance on Reporting Biodiversity Duty](#)
- [Green Infrastructure Planning and Design Guide 2023 by Natural England](#)

Regional policies

- [Kent Environment Strategy by Kent County Council](#)
- [Kent Nature Partnership Biodiversity Strategies 2020 to 2045](#)
- [Local Nature Recovery Strategies \(LNRS\) led by Making Space for Nature in Kent and Medway](#) (To be developed across 2023 - 2025)
- [High Weald AONB Management Plan 2019 - 2024](#)
- [Draft High Weald AONB Management Plan 2024 - 2029](#)

Local policies

- [Biodiversity Action Plan 2008](#)

Background Documents

- [Biodiversity - Actions to comply with the Environment Act – Cabinet Report 21 September 2021](#)
- [Net Gain for Biodiversity in the Borough – Cabinet Report 12 September 2019](#)

Government Guidance

- [Main Biodiversity Guidance collection](#)
 - [Understanding biodiversity net gain](#)
 - [Sell biodiversity units as a land manager guidance](#)
 - [What you can count towards a development's biodiversity net gain \(BNG\) guidance](#)
 - [Draft biodiversity net gain planning practice guidance](#)
- Compliance and Reporting Biodiversity Duty Guidance
 - [Complying with the biodiversity duty guidance](#)
 - [Reporting your biodiversity duty actions guidance](#)
- Draft Statutory guidance
 - [The Biodiversity Gain \(Town and Country Planning\) \(Modifications and Amendments\) \(England\) Regulations 2024](#)
 - [The Biodiversity Gain Requirements \(Exemptions\) Regulations 2024](#)