

**Consultation Documents Update and Proposed Responses
Community and Local Government Consultation
Bio-diversity off-setting**

Report by Head of Development Management and Senior Ecologist

Summary: This report summarises the Government's proposal to introduce biodiversity off-setting and proposes response to be submitted to National Parks England for submission to Government.

Recommendation: That the comments in the report be adopted as the position of the Broads Authority.

1 Introduction

- 1.1 The Government has identified growing the economy and improving the natural environment as the twin challenges facing the country. It has established Local Enterprise Partnerships (LEPs) and Local Nature Partnerships (LNPs) as the bodies charged with addressing these challenges. It is concerned that the planning process introduces additional costs and inefficiencies to development when dealing with biodiversity and can block the housing and infrastructure that is critical to growth. It also recognises, however, that the natural environment is a finite resource and that harmful development is unsustainable. The Government is therefore looking to mechanisms which balance these apparently competing challenges and help to maintain and improve ecosystems and natural resources whilst allowing development.
- 1.2 Biodiversity offsetting is identified as a mechanism which can achieve this. Offsetting pilots have been running in six areas since April 2012 and in May 2013 the Government hosted an offsetting summit to explore the idea with a range of stakeholders including developers and conservation bodies. Defra advise that there was interest in the concept, but a recognition that the success or failure of offsetting in practice will depend on how it is adopted. Accordingly, in September they published for consultation a Green Paper looking at biodiversity offsetting and setting out options for taking it forward.
- 1.3 The issue of offsetting is complicated and necessarily involves the use of various assumptions and assessments which are intrinsically complex. This report seeks to briefly summarise the Green Paper and provide a short commentary. For further details the consultation paper can be found on the Defra website. https://consult.defra.gov.uk/biodiversity/biodiversity_offsetting

2 The definition and principles of biodiversity offsetting

- 2.1 Biodiversity offsets are defined in the Green Paper as “conservation activities that are designed to give biodiversity gain to compensate for residual losses. They are different from other types of ecological compensation as they need to show measureable outcomes that are sustained over time”.
- 2.2 Central to the adoption of biodiversity offsetting is a mitigation hierarchy which requires:
- In the first instance harm should be **avoided**, for instance by locating development at a different site;
 - Where this is not possible the impacts should be **mitigated**, for example through the detailed design of the environment;
 - Lastly any residual impacts should be **compensated** for, for instance by restoring or recreating habitat elsewhere.
- 2.3 The Green Paper notes that support for this approach is embedded in many areas of environmental legislation, including in the NPPF which states at para 118:
- “...if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or as a last resort, compensated for, then planning permission should be refused”
- 2.4 The Green Paper recognises that whilst in principle offsetting allows impacts on nature to be quantified and for environmental gains to be offset against environmental losses, in practice there are both scientific and legal limitations. For example, some habitats such as ancient woodland are impossible to recreate on a meaningful timetable, whilst there are legal protections in place for European sites (SPAs and SACs) and under the Habitats Directive development which would have an adverse impact can only be permitted where there are imperative reasons of overriding public interest (IROPI) and where the integrity of the Natura 2000 network would be maintained. With regard to protected species, and particularly those protected by the Habitats Directive, the application of offsetting would be considerably more complex. It would require a greater knowledge of the distribution and trends of species’ populations as it would need to be undertaken on a species specific basis, using a risk-based approach which took into account the importance of the site to the species’ population.

3 The Mechanics of Offsetting

- 3.1 In order to quantify the value of a habitat, it is necessary first to devise a calculation which takes account of all the specific characteristics of a habitat. This metric needs to be simple to use, yet sufficiently sophisticated to cope

with the range of habitat types and conditions to which it will be applied nationally. This metric will then underpin the offsetting system.

3.2 A metric has been devised by Defra for use in the six pilot areas. It quantifies the value of habitats on the basis of three criteria as follows:

- The **distinctiveness** of the habitat is assessed as low, medium or high. Distinctiveness reflects, amongst other factors, the rarity of the habitat concerned (at local, regional, national and international scales) and the degree to which it supports species rarely found in other habitats. Guidance has been provided alongside the pilot, setting out the distinctiveness rating for different habitat types.
- The **quality** of the habitat is assessed as poor, moderate or good. This assessment is based on a standard framework. In the pilots this has been Natural England’s “Higher Level Stewardship: Farm Environment Plan (FEP) Manual”.
- The **area** of the habitat in hectares.

3.3 Having assessed the habitat against these factors, its value in “biodiversity units” can be calculated using the following table:

Value of 1 ha in “biodiversity units”		Habitat distinctiveness		
		Low (2)	Medium (4)	High (6)
Habitat Quality	Good (3)	6	12	18
	Moderate (2)	4	8	12
	Poor (1)	2	4	6

3.4 Offset providers use the same system is used to calculate the number of biodiversity units they can provide, taking into account three additional factors:

- The **risk** associated with habitat restoration or recreation, as not all activities will achieve the desired outcome. An offset provider may need to restore or recreate a larger area to have confidence that the required number of “biodiversity units” will be created. For the offset pilots, restoration and recreation activities have been classified in four bands from low to very high difficulty. For low difficulty sites no increase in area is required. For very high difficulty restoration or recreation activity 10 times as much area will need to be improved to generate the same number of “biodiversity units”.

- The **time** it will take to restore or recreate the habitat. In this period society will experience a net loss of biodiversity, so the system can require the offset provider to do more to compensate for this temporary loss. In the pilots this is handled by applying a 3.5% discount rate as set out in HM Treasury's Green Book.
- The **location** of the offset. In the pilots, local authorities have set out strategies on where to locate offsets to create maximum environmental gain. Larger offsets need to be provided if they are outside the area identified for offset provision.

3.5 Having established the framework for quantifying the value of a habitat, offsetting would then be applied through the planning process. At the plan making stage, an LPA could use the metric to assess the biodiversity value of land and to inform choices around the allocation process, as well as identifying land which would be suitable for receiving offsets in order to create ecological linkages and a critical of habitats. At the application stage, the LPA would consider the proposed development against the principles of the mitigation hierarchy and assess whether this had been followed and whether sufficient offsetting was proposed to compensate for residual loss. If planning permission was to be granted, the developer would be required to secure and implement the offsets in accordance with an agreed schedule, which might be covered through a S106 Agreement. The establishment and success of the offset habitat would also need to be monitored, potentially over a long period for certain slow to establish habitats.

3.6 A further aspect in the mechanics of the offsetting process is the location for offsetting. The Green Paper notes that in theory an offsetting system could allow an offset to be provided anywhere, including overseas, provided it would secure biodiversity gain; it also notes that for some species (such as migratory birds) there may be sound environmental reasons to secure sites overseas. It does not, however, propose to allow this at this point and considers only the issues relating to offsetting at a national versus local level. It notes that allowing offsetting at a national level might lead to a net loss in biodiversity in some areas (eg those with the greatest development pressures) and net gain elsewhere (eg areas where offsets can be secured more cheaply). Whilst it advises that this could be economically and environmentally beneficial, including through the creation of coherent larger scale ecological networks, it acknowledges that for communities on the 'net loss' side there will be adverse effects (including, effectively, amenity losses) resulting from loss of local biodiversity.

3.7 In order to address this, the Green Paper outlines three approaches to the locations for offsetting:

- Requiring offsets to be provided within a certain distance of development, which might involve a simple distance measurement, use administrative boundaries or use a landscape scale area;

- A hybrid approach based on qualitative factors, whereby trading is restricted for habitats valued as more distinctive under the metric. Under this model, low-distinctiveness habitats might be able to be offset anywhere, whereas moderate and high distinctiveness habitats might have to be offset more locally;
- An approach based on distance, whereby the size the offset required increases with distance from the development. A similar approach to this has been taken in the pilot areas, whereby a multiplier of 3 is applied if the offset is provided outside the area prioritised in the local offsetting strategy.

3.8 There are a range of other detailed factors which would need to be addressed in taking forward the detail of biodiversity offsetting, including assessing harm, securing offsetting against provider failure, the kind of habitat which can be provided as an offset and achieving consistent application of the metric. These are detailed in the Green Paper. One of the key critical issues for the functioning of any such process, however, relates not to biodiversity itself but to the mechanism whereby a developer would engage with the offsetting process. This might be discretionary (as an alternative to other means of securing compensation), partially permissive (where the metric is used to calculate offset value and the developer can choose how to compensate for this), threshold based or, finally, based on a Community Infrastructure Levy model.

4 The Government's View

4.1 The Government have signalled their strong support for the principle of biodiversity offsetting. It identifies the benefits of offsetting as ensuring that there is no “net loss” of biodiversity through locating the right offsets in the right places to improve ecological networks. For the natural environment, it considers that it ensures that biodiversity is taken fully into account and is properly compensated for, as well as being monitored and maintained longterm. For the developer, it considers that it offers a means to make compliance with biodiversity protection provisions quicker by using a simple, standard framework whereby compensation can be bought “off-the-shelf” and more transparent and certain by setting out up-front what will be required. It considers that it can also be cheaper due to reduced complexity and the ability to offset on less costly non-developable land and it would also provide consistency in approach nationally.

5.2 There are, however, significant practical and process issues to resolve prior to the introduction of any such scheme and these are the subject of the consultation. Consultation on these detailed aspects is welcome, particularly given the Government's clear intention to take offsetting forward.. Further details are given in the commentary below.

5 Commentary

5.1 This issue of biodiversity offsetting is controversial and there are valid ‘in principle’ objections which can be made on political and philosophical

grounds. These arguments relate to the principle of applying a monetary (or quasi-monetary in the form of the proposed metric) value to natural capital, which should instead be recognised as having an intrinsic value which cannot be reduced to a finite sum. Integral to these arguments are issues of social and spiritual value, including the links that the natural environment provides to our past and the legacy it represents for the future. It can also be argued that the monetarisation of such features devalues both them and the society which sees only the single dimension and seeks to reduce a complex system to a single figure. These arguments are valid and especially so in the National Parks and Broads which have been designated for reasons including their rich biodiversity.

- 5.2 Notwithstanding the above, mechanisms which apply a monetary value to environmental features have become an increasingly common part of the planning process in recent years and it must be recognised that good works have been achieved. Green infrastructure is often provided as part of larger schemes (or between schemes) as a means of informally offsetting residual environmental harm by providing links between habitats and thereby increasing the value of the whole. Biodiversity offsetting as proposed is a similar principle, albeit on larger and more comprehensive scale.
- 5.3 In terms of what could be achieved through biodiversity offsetting, it is the case that a well regulated, mandatory national system for biodiversity offsets could offer a practical and consistent way for development to contribute to biodiversity growth. Were it to be linked to the local biodiversity partnerships (or the Local Nature Partnerships) it could be directly related to the local and national BAP targets and priorities and contribute to the preservation, restoration and re-creation of priority habitats, ecological networks and the protection and recovery of priority species populations. This is particularly important given that funding from the public sector for biodiversity and land management is decreasing, meaning that private funding mechanisms from enterprises that rely on and can affect natural capital will play a greater role in the future.
- 5.4 It also offers benefits in that it would enable offsetting to be applied to the smaller development schemes which individually cause little harm, but which cumulatively have a significant impact. The Broads Biodiversity Audit (2011) identified that locally the Broads have experienced a documented loss of six species per decade since the 1950s, with these species mainly lost from semi-natural or uncultivated areas around the margins of the Broads, where land has been radically altered by development or cultivation. ([http://www.broads-authority.gov.uk/broads/live/authority/publications/conservation-publications/Broads Biodiversity Summary Report.pdf](http://www.broads-authority.gov.uk/broads/live/authority/publications/conservation-publications/Broads_Biodiversity_Summary_Report.pdf)). Biodiversity offsetting would provide a mechanism to mitigate or compensate for these effects and, critically, to manage and monitor the offsets long term. This is an important point, because unless biodiversity features are positively managed in perpetuity that will not they will not genuinely provide enhanced biodiversity opportunities.

- 5.5 It is important, however, that it is not used as a framework for allowing damage to ecosystems which could otherwise be avoided on the basis that it can be compensated for more easily elsewhere. Furthermore, it needs to be the case that those habitats and species which benefit from the highest level of protection (eg SPA, SACs and SSSIs), or those which are practically irreplaceable (eg peat fens and wet woodlands), or those where the development would have an adverse impact on such habitats (eg the abstraction of base-rich groundwater from fens) should not be the subject of offsetting other than in the most exceptional circumstances, where IROPI must be applied rigorously (see 2.4 above). This principle is set out in the National Planning Policy Framework at para 118 and it is fundamental to the acceptability of offsetting. Many of the habitats in the Broads would fall into this category.
- 5.6 In developing any scheme for offsetting, the Government needs to be mindful of the following factors:
- The ability to offset unavoidable harm needs to be made compulsory. The pilots have demonstrated without compulsion a voluntary offsetting approach will fail as few developers will volunteer to spend more. Representatives are likely to lobbying for more cost effective biodiversity investment which may weaken the existing requirements of the planning system.
 - Permanent removal of habitat can be granted without the current security for permanent replacement, for example a chalk meadow created in Oxfordshire is only secured for 15 years, yet the 98-home development that funded the meadow offset is a permanent loss of biodiversity. However if the offset is placed with the right recipient, with right funds for management and sound science has been incorporated into the calculations at the start the risk of long-term loss is unlikely.
 - Biodiversity offsetting approaches in other countries are sometimes hard to compare to the UK, which supports highly managed semi-natural habitats. Offsets elsewhere have resulted in some cases of an increase in the loss of biodiversity. In the USA and Australia, where biodiversity offsetting is most advanced, studies show that offsets rarely completely replaced what was destroyed. However over time habitats, if placed in the right location as part of a network of sites, are likely to improve in condition and support the more, bigger, better and joined aspirations of the governments review panel in 'Making Space for Nature' (2010).
 - Potential impact on local communities: Biodiversity offsetting only refers to replacing environmental values, but areas of environmental value have social values to local communities. Offsetting could displace nature away from people's homes under certain development scenarios. Habitat recreation should ideally take place as locally as possible.
 - Risk of weakening legislation that protects the environment: Current UK environmental and planning laws prohibit environmental destruction, but

offsetting brings in shades of grey, meaning developers can buy themselves out of environmental obligations.

- Local authorities do not have the necessary expertise to decide whether offsetting is appropriate; resourcing of local authorities needs to be considered carefully to ensure that an offsetting system can be effective.

5.7 In conclusion, cautious support can be given to the principle of biodiversity offsetting, subject to caveats as above. Provided these conditions are properly, offsetting appears to offer a genuine step forward towards ensuring that natural capital becomes a fundamental building block for our economy. Development needs to demonstrate that it can contribute to genuine net environmental benefits, and those benefits need to be assessed using robust and transparent rules.

Background papers: None

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Appendices: None