

Three Rivers District Council

Committee Report

Date: 21 May 2025

POLICY AND RESOURCES COMMITTEE

MANDATORY BIODIVERSITY NET GAIN IN PLANNING – FEE SCHEDULE FOR MONITORING HABITAT CREATION AND ENHANCEMENT (Director of Finance)

1 Summary

- 1.1 This report sets out a proposed fee charging schedule to be introduced to enable the Local Planning Authority (LPA) to effectively monitor the creation and enhancement of habitats which are proposed to either achieve biodiversity net gain on-site, or proposed as part of a habitat bank used for developments which can only achieve off-site gains.

2 Details

2.1 Background to Biodiversity Net Gain

- 2.1.1 The Environment Act (2021) introduces Biodiversity Net Gain (BNG) inserted by Schedule 7A of the Town and Country Planning Act. The aim is to ensure biodiversity is in a quantifiably better state post development by a minimum of 10%. Gains can be created within a development site or on land elsewhere. Gains must be maintained for 30 years. BNG applies to most development, however there are a number of exemptions set out in regulations. These include where the application relates to works to a single dwellinghouse, where the development impacts less than 25sqm of on-site habitat, where the scheme proposes self-build or custom-build housing, and works covered by permitted development rights.
- 2.1.2 On 10th June 2024, Policy and Resources Committee noted a report 'Three Rivers Biodiversity Policy and BNG update'. That report updated Members on the legislative duties of the Council under the Environment Act, including the strengthened Biodiversity Duty and mandatory Biodiversity Net Gain. The report explained that some gains would be secured by a S106 agreement, and that the LPA is responsible for monitoring such agreements. The report set out that the LPA will need to formulate a monitoring regime for BNG sites and for sites where BNG is secured following a grant of planning permission. This report sets out the details of the charges for that proposed monitoring regime.
- 2.1.3 The Town and Country Planning Act sets out that every planning permission granted for the development of land in England shall be deemed to have been granted subject to the condition that the development may not be begun unless a biodiversity gain plan (BGP) has been submitted to the LPA and the LPA has approved that plan. The BGP must provide details of the pre- and post-development biodiversity value of the site, and any off-site biodiversity gains or credits relied upon if the gains cannot be achieved on site.
- 2.1.4 Whilst the mandatory BNG condition sets out the arrangements to meet the mandatory gain, there is nothing in that condition which sets out the timescales for the actual implementation, maintenance and monitoring. For that reason, alongside the mandatory condition it is expected that planning permissions would include additional planning conditions attached by planning officers requiring the submission of a Habitat Management and Monitoring Plan (HMMP), and conditions requiring notice to be given about when the HMMP is implemented, when the works are completed, and to set out monitoring periods. Monitoring is essential, to ensure the promised gains are suitably delivered and maintained for a 30 year period.

2.2 How is BNG achieved and secured

- 2.2.1 BNG must be achieved through creation or enhancement of habitats on the development site, or off-site and the legislation requires significant enhancement to be secured for 30 years. A significant enhancement is an area of habitat enhancement which contributes significantly to the proposed development's BNG relative to the biodiversity value before development. This will vary on a site by site basis but could include the creation of a wildflower meadow or habitats of medium distinctiveness in the biodiversity metric. The habitat value is measured in Biodiversity Units using a metric produced by Natural England. In order to ensure that the gains are delivered and maintained in accordance with the submissions, it will be necessary for the LPA to undertake monitoring at regular intervals. This will be a resource-intensive process and it is expected the costs of the monitoring should be cost neutral to the council.
- 2.2.2 The Local Government Act 2003 (S93) permits the authority to seek to recover the costs of monitoring by levying a fee.
- 2.2.3 Biodiversity Net Gain Planning Practice Guidance sets out that if a developer is making off-site gains on their own land, outside the development site or is making significant on-site gains, they need to enter into a legal agreement to secure the gains for a period of 30 years. LPAs are responsible for monitoring the agreement to make sure land owners meet their obligations, and are required to register the planning obligation with the local land charges register. It is important to note that some significant on-site gains can be secured by planning condition rather than legal agreement, and the route to be used will be down to the Planning Officer's judgement, with input from Ecologists. Whilst the gains can be secured by condition or S106 agreement, a monitoring fee can only be secured by S106 agreement, as a planning condition cannot be used to secure a financial contribution.

2.3 What will monitoring involve

- 2.3.1 Developments will be subject to a HMMP which will include a specification of the habitats to be created or enhanced and details of their monitoring. Monitoring events will require a developer/subsequent landowner to provide an update report at set intervals in respect of the creation and enhancement of the habitats and any remedial action needed/taken. It is expected that this will take place at years 1, 3, 5, 10, 15, 20, 25 and 30. This is a total of eight monitoring events per site. These intervals have been suggested by Herts Ecology and reflect what other local authorities in England are doing. These will all involve the submission by a developer/land owner of a written monitoring report, prepared by a suitably qualified person, providing details of the habitats created/enhanced. In addition to this desktop monitoring exercise, site visits are envisaged to take place. These will involve a site visit by an Ecologist, accompanied by a Planning Officer to view the site and ensure compliance with the HMMP and to ratify the content of the monitoring reports. Monitoring events will require work by the planning team to record and log the submissions, by ecologists to provide expert advice on the monitoring documents submitted, and will also involve administrative work by planning and other departments.
- 2.3.2 The monitoring fees account for some sites requiring very limited intervention, and other sites requiring further works including remedial actions and any potential enforcement action in the event there is a failure to comply. They also account for the need to ensure habitat becomes established, acknowledging that once this has happened the activities should become more streamlined. The fees also account for work collecting information, recording submissions and

reporting on the delivery of the obligations, which is of particular importance given the statutory duty on local authorities to report on Biodiversity through the publication of a biodiversity report detailing the actions taken to comply with BNG obligations.

- 2.3.3 Time estimates have been created for undertaking this work, with consideration given to the technical difficulty of creation/enhancing the habitat and the size of the site subject of the creation/enhancement. These time estimates have been multiplied by the hourly rate of the relevant role undertaking the work. The rates include employee 'on' costs. The fees created are also subject to inflation, with a 3.5% increase added every year over the 30 year period for the purposes of these initial fees. This will need to be reviewed and it is recommended this be on an annual basis.
- 2.3.4 Finance have advised that because the monitoring is a statutory function of the Local Authority, the monitoring fees are not subject to VAT. The S106 will index link (using RPI) the monitoring contribution from the date of the deed until the date of payment, to ensure the contribution will not erode in real terms between the date permission is granted, and the commencement of development.
- 2.3.5 This report sets out a proposed charging structure. The costs will be based on a combination of the technical difficulty of the habitat to be enhanced/created (which is set in the Statutory Metric), and the area of that habitat. The range of fees is as follows:

	Technical difficulty:		
Size:	Low	Moderate	High
Small (Up to 5ha)	£5,546.30	£5,901.50	£7,580.65
Medium (5.01 to 19.99ha)	£6,901.77	£7,505.01	£9,989.96
Large (20+ ha)	£11,126.16	£12,374.96	£17,536.20

2.4 What do other councils do?

- 2.4.1 Benchmarking has been undertaken with a number of other local authorities. Planning Practice Guidance confirms "Local planning authorities can charge a monitoring fee through section 106 planning obligations, to cover the cost of monitoring and reporting on delivery of that section 106 agreement". The costs proposed represent, on a cost-recovery basis, TRDC's costs of monitoring BNG.
- 2.4.2 It is anticipated that the fee will be collected as a one-off payment to the council, as the monitoring fee has been calculated accounting for inflation of 3.5%. It must be noted that part of the fee covers work to be undertaken by Ecologists at Hertfordshire County Council under an arrangement to be secured by a Service Level Agreement.
- 2.4.3 The charging schedule will be monitored to ensure it remains sufficient to ensure costs of monitoring are covered.

3 **Options and Reasons for Recommendations**

- 3.1 Option: This report recommends the fee schedule set out at 2.3.5 is adopted, with the fee based on the area of land subject of the habitat creation, and the technical difficulty of the habitat being created. Payments would be expected up-front, and indexation has been accounted for in the fee schedule. This adopts a

model used by other local authorities around the country, ensures the fee received covers 30 years of work and is received up-front.

4 Policy/Budget Reference and Implications

- 4.1 The purpose of the introduction of this monitoring fee is to ensure the LPA's costs of undertaking monitoring are covered, to ensure that effective monitoring can take place to support the statutory biodiversity net gain regime. As this relates to new legislation, actual volumes of schemes to be subject to monitoring are not yet known. Since mandatory BNG was introduced for all applications in April 2024, 515 planning applications have been granted, of which 11 are subject of mandatory BNG.

5 Environmental, Community Safety, Public Health, Climate Change and Sustainability, Public Health, Customer Services Centre, and Health & Safety Implications

None specific

6 Financial Implications

- 6.1 Should the fees be agreed, the Council would be able to cover the costs of monitoring whether habitat creation and enhancement takes place and is effective throughout the 30 year period. This will include support from HCC specialist Officers, with part of the fee to be returned to HCC. If the fees are not agreed, the Council would be able to undertake only very limited proactive monitoring, and would incur considerable resource costs.
- 6.2 On the basis that since BNG became mandatory, we have approved 11 applications which are required to provide a mandatory net gain, it is estimated that income could be between £61,000 and £193,000 in the first year.
- 6.3 Officers are not able to predict the volume and type of applications that may be submitted, and whether they would be subsequently approved and subject of BNG which requires monitoring. However, the monitoring activities are expected to require additional resources, including from Hertfordshire County Council specialist officers and other external support as necessary.

REVENUE IMPLICATION	Current Year 2024/25 £	2025/26 £	2026/27 £	Future Years per annum £
Revenue	0	0	0	0
Expenditure	£61,009- £192,898	TBC	TBC	TBC
Income/savings				
Net Commitment	0	0	0	0

7 Legal Implications

- 7.1 Should the fees be agreed, Officers would be able to cover the costs of monitoring whether habitat creation and enhancement, required by the Environment Act, takes place and is effective throughout the 30 year period, meeting our biodiversity duty and ensuring the mandatory 10% biodiversity net gain is achieved.

8 Staffing Implications

- 8.1 Fees would be implemented and monitored through existing resource in the Development Management team, with support from colleagues at Hertfordshire County Council. Monitoring events, including reviewing written reports and attending site visits would be undertaken by Development Management officers, Ecologists from HCC, with potential input from TRDC's Leisure and Natural Infrastructure team. Over time it is expected that monitoring activities will require additional resources.

9 Equal Opportunities Implications

- 9.1 The charge would affect planning applicants or land owners, applied on a judgement relating to their specific applications and would apply regardless of protected characteristics.

10 Communications and Website Implications

- 10.1 If the new monitoring fees and process are agreed there would be relevant communications internally and externally to ensure everyone is aware of the new requirements.


11 Risk and Health & Safety Implications

- 11.1 The Council has agreed its risk management strategy which can be found on the website at <http://www.threerivers.gov.uk>. In addition, the risks of the proposals in the report have also been assessed against the Council's duties under Health and Safety legislation relating to employees, visitors and persons affected by our operations. The risk management implications of this report are detailed below.
- 11.2 The subject of this report is covered by the Regulatory Services service plan. Any risks resulting from this report will be included in the risk register and, if necessary, managed within this/these plan(s).

Nature of Risk	Consequence	Suggested Control Measures	Response (tolerate, treat, terminate, transfer)	Risk Rating (combination of likelihood and impact)
Biodiversity Net Gains are not achieved or suitably managed on sites	Biodiversity creation and enhancements do not take place	Monitoring sites should reduce the risk; introduction of a fee and monitoring regime ensures adequate monitoring can be resourced.	Treat	4
Insufficient Staffing and expertise to	Monitoring of creation and	introduction of a fee and	Treat	4

monitor sites	enhancement does not take place.	monitoring regime ensures adequate monitoring can be resourced.		
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- 11.3 The above risks are scored using the matrix below. The Council has determined its aversion to risk and is prepared to tolerate risks where the combination of impact and likelihood scores 6 or less.

Very Likely  Likelihood Remote	Low 4	High 8	Very High 12	Very High 16
	Low 3	Medium 6	High 9	Very High 12
	Low 2	Low 4	Medium 6	High 8
	Low 1	Low 2	Low 3	Low 4
	Impact Low Unacceptable			

Impact Score

4 (Catastrophic)
3 (Critical)
2 (Significant)
1 (Marginal)

Likelihood Score

4 (Very Likely (≥80%))
3 (Likely (21-79%))
2 (Unlikely (6-20%))
1 (Remote (≤5%))

- 11.4 In the officers' opinion none of the new risks above, were they to come about, would seriously prejudice the achievement of the Strategic Plan and are therefore operational risks. The effectiveness of the management of operational risks is reviewed by the Audit Committee annually.

12 Recommendation

- 12.1 That Members resolve to AGREE the introduction of the monitoring fee for Biodiversity Net Gain sites and for development sites where significant on-site BNG is achieved, in accordance with the table at 2.3.5, with any minor alterations delegated to the Head of Regulatory Services in consultation with the Lead Member.

- 12.2 That the fee is subject to an annual review which will look at the time taken to monitor gains, the costs to the authority of monitoring, and the rate of inflation at the time.
- 12.3 That public access to the report be immediate.
- 12.4 That public access to the decision be immediate.

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Data Quality

Data sources: N/A

Background Papers

- Item PR6/24 – Three Rivers Biodiversity Policy and BNG Update - <https://moderngov.threerivers.gov.uk/ieListDocuments.aspx?CId=1140&MId=1482>

APPENDICES / ATTACHMENTS

None

