

FOR PUBLICATION

AGENDA ITEM

Planning Obligation relating to the Wild Whittington Habitat Site at Old Whittington, Chesterfield.

MEETING:	PLANNING COMMITTEE
DATE:	4th December 2023
REPORT BY:	DEVELOPMENT MANAGEMENT & CONSERVATION MANAGER
WARD:	Whittington

1.0 REASON FOR THE REPORT

- 1.1 To seek authority for Chesterfield Borough Council (CBC) to enter into a planning obligation by deed of agreement with Derbyshire Wildlife Trust (DWT) and the site leaseholder in relation to the Wild Whittington Habitat Site. The agreement would require DWT/the leaseholder to provide, manage and maintain biodiversity units on the Wild Whittington Habitat Site, having regard to the provisions of the Council's development plan, the NPPF and the Environment Act 2021. As part of the agreement, DWT/the leaseholder would commit to giving CBC fees to cover monitoring of delivery of biodiversity units and CBC would in turn commit to utilising the monitoring fees to ensure that biodiversity units are being created and maintained in line with the Habitat Management and Monitoring Plan (HMMP) submitted by DWT (Appendix 1).

1.2 The report also seeks to inform Planning Committee of the wider context around Biodiversity Net Gain and highlight the importance of securing off-site net gain opportunities within the borough.

2.0 BACKGROUND

2.1 The Requirement for Biodiversity Net Gain

2.2 The NPPF (paragraph 174, d) and Chesterfield's Local Plan (Policy CLP16) require a net measurable gain in biodiversity from developments. However, they do not specify a percentage level of gain to be delivered. The Environment Act (2021) introduces the requirement for 10% Biodiversity Net Gain (BNG) above baseline conditions for planning permissions granted under the TCPA 1990 in England, and the requirement will come into force from January 2024. Habitat created to deliver BNG will need to be maintained for at least thirty years after the associated development has been completed. Local Planning Authorities (LPAs) will need to ensure that developments comply with the new legislation and that BNG is delivered in a sustainable and transparent way.

2.3 The Environment Act (2021) will introduce a statutory Biodiversity Metric, which is a habitat based approach to determining a proxy biodiversity value, developed by Natural England. The Metric is designed to measure both on-site and off-site BNG delivery both at baseline (pre-development) and post-development stages. 'On-site' includes all land within the red line boundary whereas 'off-site' is all land outside of the on-site boundary, regardless of ownership.

2.4 The ecological mitigation hierarchy is a key component of BNG, ensuring that on-site BNG will be prioritised. As set out in the National Planning Policy Framework (NPPF, 2021),

and the National Planning Practice Guidance (NPPG) the mitigation hierarchy seeks the avoidance of harm to valuable habitats and species, followed by mitigation (through design or mitigation measures) and compensation to provide an equivalent value of biodiversity to be used as a last resort.

2.5 The Biodiversity Metric has been designed to give weight to local mitigation and the siting of BNG at strategically important sites across wider geographies. There is a balance of local context to be weighed in each case, which should help Developers, Planners and Planning Committees arrive at the appropriate outcome for BNG.

2.6 BNG raises a number of key issues which CBC officers have been working to address prior to the Environment Act taking effect in January 2024:

- The lack of an existing habitat bank or mapped off-site BNG opportunities within Chesterfield.
- The lack of evidence required to support strategic significance scoring within the Defra Metric.
- The need to provide a transparent approach which supports the creation of long-term habitat enhancement at a landscape scale.

2.7 The development of a long term approach to habitat creation and evidence to support strategic significance scoring is currently being progressed through the production of a county wide Local Nature Recovery Strategy (LNRS) and at borough level through CBC's Plan for Nature. DWT commenced the Plan for Nature work in June 2023 and expect to publish the document in early 2024. The work will guide policy making and ensure an integrated approach to delivering biodiversity enhancements across the borough and identify strategic opportunities for new habitat creation and restoration on CBC owned land to help create a connected, functioning Nature Recovery Network.

- 2.8 Until the recommendations of the LNRS and Plan for Nature are progressed, there is a need for viable solutions to the challenge of where to site BNG (if developers can evidence that net gain cannot be achieved wholly within the redline boundary) and how to approach this prior to new laws and guidance coming from Defra. At present there are no third party off-site BNG receptor sites within the borough of Chesterfield.
- 2.9 A Habitat Site to Deliver Biodiversity Net Gain in Whittington Ward
- 2.10 DWT have put forward a proposal to rewild sixty acres (24.36 hectares) of land for nature with areas of woodland, scrub, wetlands and open areas of grassland. The site is located in 'Whittington' Ward, Chesterfield and the scheme to rewild the land is called 'Wild Whittington'.
- 2.11 Any uplift in biodiversity generated at the Wild Whittington site will be sold by DWT/the leaseholder as BNG habitat units, primarily to developers seeking to compensate for the loss of BNG units resulting from development. The project also aligns with DWT's core objective of achieving a Wilder Derbyshire, through the creation of Nature Recovery Networks and mobilising communities to support nature recovery.
- 2.12 Chesterfield Borough Council's Development Management Team has confirmed that the habitat enhancement at the Wild Whittington site does not require planning permission as it will not involve a material change of use. However, in line with Government guidance on selling biodiversity units as a land manager, a S106 agreement (or conservation covenant) is needed with the Council to legally secure the site's management as a habitat site and commit DWT/the leaseholder to delivering biodiversity units in line with the HMMP. It will also make some or all of the biodiversity units

from the habitat site available for allocation to developers by Sale or Transfer.

3.0 PROPOSED HABITAT SITE

- 3.1 The 24.36 hectare Wild Whittington site is wholly owned by DWT following purchase in 2023. The site is located in Whittington, Chesterfield and stretches between St Bartholomew's woods to the south and Grasscroft ancient woodlands to the north. The site was formerly used for intensive arable agriculture and does not contain any statutory designated sites for nature conservation. Two Local Wildlife Sites are located immediately adjacent to the site boundary: Grasscroft Wood (to the north) and Whittington Hospital Grounds (adjacent to the eastern boundary). The habitats on site are primarily former arable fields with narrow grassy field margins and native hedgerows with trees. A site location plan is provided below:



3.2 The site has been chosen by DWT for nature recovery owing to its potential to increase both species and habitat connectivity in the surrounding landscape. It would also create a large area of continuous habitat that is able to support a greater number of species than at present. DWT's Nature Recovery Network (NRN) modelling shows that the site is of high and medium priority for woodland and open habitat creation, with most of the site highlighted as high priority for open habitat creation. It is anticipated that the site will help to create habitat networks linking with hedgerows (east and west) as well forming a corridor between isolated priority

woodland to the south and broadleaved woodland to the north. Whilst Chesterfield does not have any formally identified areas of strategic significance the site is considered to meet best practice around enhancing habitat connectivity and extent.

3.3 DWT have provided a HMMP which shows how they anticipate the biodiversity gains on site coming to fruition. A baseline survey of the site (undertaken in October 2022 by a suitably qualified ecologist) indicates that the site has a baseline of 62.34 BNG habitat units. It is anticipated that Wild Whittington will increase the number of habitat units by 98.41 BNG habitat units within the 30-year management plan through the creation of the following units:

- A net increase of 5.84 woodland habitat units through natural succession (covering 3.83 hectares).
- A net increase of 92.57 habitats through the creation of a 50:50 mosaic of other neutral grassland and mixed scrub.

3.4 It is important to note that the baseline survey work was undertaken in October 2022 which is outside of the optimal period for habitat surveys (March to September). It is therefore likely that individual plant species were overlooked, however, DWT consider the surveys to provide a robust baseline for the site, with broad habitat types identified to a sufficient level. The HMMP also states that most of the site comprised arable land which is easily classified outside of the optimal survey season.

3.5 The HMMP states that the management plan for the site will be regularly reviewed and updated following the outcome of ongoing monitoring. Adaptive management for net gain sites is considered to be a good practice principle as any unsuccessful interventions can be modified to suit the site conditions and 30-year timeline of the net gain plan period. It also allows for any changes in legislation, regulations and guidance to be reflected.

4.0 AGREEMENT

4.1 DWT and the Leaseholder are seeking to enter into a Section 106 agreement to bind their interest in the habitat site and the obligations within the agreement. Under the S106 agreement DWT/the leaseholder would be obligated to carry out a number of actions, which include:

- to undertake the Habitat Creation and Enhancement Works in line with the HMMP;
- to pay the Council a Management Plan Monitoring Fee to an agreed schedule and to manage and maintain the site for a period of thirty years from the date of the Commencement Notice;
- to make available for allocation to developers by Sale or Transfer some or all of the Biodiversity Units from the Habitat Site; to provide Habitat Monitoring Reports to the Council and undertake any remedial measures as reasonably required by the Council;
- to apply to Natural England as the operator of the Biodiversity Gain Site register for registration of the relevant Biodiversity Units on that Register;
- to maintain a schedule setting out all of those biodiversity units on the habitat site which have been sold or transferred and a separate schedule of those biodiversity units on the habitat site which are available for sale or transfer.

4.2 In signing the agreement the council would covenant to:

- provide timely confirmation, approval and consent in writing where it is required for any purpose in connection with the terms of the S106 agreement;

- operate, abide by and comply with the arrangements terms conditions and obligations within schedule one of the agreement;
- return any part of the monitoring fee that is not committed for the purposes specified (along with any interest accrued) ten years after the date of receipt;
- remove local land registry charges relating to obligations and covenants once they have been satisfied by DWT/the leaseholder.

5.0 MONITORING REPORTS

- 5.1 Regular monitoring will be key to the habitat site's success as the management interventions outlined in the HMMP are closely associated with monitoring outcomes. The HMMP sets out that DWT will map the changes in habitat extent and distribution at the site at eleven points over the project lifespan (years 1-5, 7, 10, 15, 20, 25 and 30) in order to ensure that the site will deliver the BNG habitat units indicated within the Defra Metric.
- 5.2 Whilst DWT/the leaseholder would be obligated to carry out the habitat creation and enhancement and actions identified within the HMMP, the LPA will be required to review each monitoring report submitted to ensure that the monitoring results align with the original biodiversity net gain plan and metrics. This would also involve validating the monitoring through independent site visits. Where the council is of the view that the HMMP is not being complied with then DWT/the leaseholder would need to submit remedial measures for implementation following LPA approval.
- 5.3 The LPA will also need to keep track of cumulative gains and losses (including mapping) and the sale of units following notification from DWT.

- 5.4 CBC has no in-house ecology expertise at present and would need to use external consultants to scrutinise monitoring reports and any associated revisions where adaptive management is required. The advice would need to be procured from a 'competent person' i.e. holding a minimum of Membership of the CIEEM or a comparable body with a professional code of conduct.
- 5.5 A Management Plan Monitoring fee of £2,128 (index linked) per monitoring year has been agreed which is payable in the month of every April of a monitoring year by the Wildlife Trust/leaseholder. The fee is based on quotes gathered from three external sources and is considered to be a reasonable estimate of costs provided it is futureproofed through indexation.
- 5.6 Any balance not committed for monitoring remaining after ten years of the date of receipt would have to be repaid alongside any interest accrued by the council.

6.0 LINKS WITH PLANNING APPLICATIONS

- 6.1 At the planning committee meeting of the 12th December 2022 Members resolved to grant planning permission subject to conditions and the signing of a S106 agreement connected to outline planning for erection of warehouse units (Class B2/B8) up to 68,000 sq. m gross, with ancillary office accommodation; construction of new access road; provision of service yards and internal vehicle circulation and parking areas; erection of covered cycle parking areas, pump house and sprinkler tank, gate houses and perimeter fencing; associated drainage works, site levelling and landscaping; and realignment of existing public right of way (CHE/21/00554/OUT).

- 6.2 As yet the planning application related S106 remains outstanding and therefore permission has not yet been granted.
- 6.3 The committee report for the Markham Vale planning application concluded that the off-site delivery of biodiversity will take place on land within the ownership and control of DWT as part of an offsetting strategy. Part of the proposed habitat creation for application CHE/21/00554/OUT currently relies on being created in the Wild Whittington site and will result in the generation of 15.93 habitat units. The BNG specified through the resolution to grant planning permission is therefore dependent on DWT entering into a separate planning obligation with the council or conservation covenant with a responsible body to secure Wild Whittington as a habitat site.

7.0 PROCEDURES

- 7.1 Under the council's constitution entering into a covenant with the Derbyshire Wildlife Trust and leaseholder is a non-executive function which can be delegated to Planning Committee.
- 7.2 The council is under no obligation to enter into the Wild Whittington Section 106 agreement to secure land to meet the Markham Vale development's BNG requirement and consideration of whether to legally secure the delivery of the Wild Whittington Habitat site is a separate matter from consideration of the planning application itself. Consideration is not prejudiced by the Committee having already considered the Markham Vale expansion application, and members would not have to declare interests if they were at the Committee which considered the Markham Vale planning application.
- 7.3 Once the freestanding Wild Whittington S106 agreement has been signed, DWT can implement the HMMP and commence

the sale of biodiversity units and register the site on the national biodiversity net gain register once available. As the biodiversity units can be sold to multiple buyers, the sale date for biodiversity units will differ, the obligation of DWT to manage these habitats is contingent upon the start date of individual sales agreements.

8.0 CONSIDERATIONS

- 8.1 The obligation to undertake the habitat creation and enhancement works at the Wild Whittington site sits with DWT /the leaseholder and is dependent on the council as the local planning authority being satisfied that it is able to comply with the obligations set out within Schedule 2 of the draft 106 (described at Section 4.2).
- 8.2 The use of Wild Whittington as a habitat site takes National and Local Policy into consideration along with current best practice. The site would facilitate the provision of net gain as required through policy CLP16 of the Chesterfield Borough Local Plan (2018-2035) and the NPPF (paragraph 174, d). The provisions under section 98 of, and Schedule 14 to, the Environment Act 2021 will also impose a new statutory “general planning condition” on planning permissions granted under the TCPA 1990. The steps undertaken by DWT in bringing forward the Wild Whittington site are also in line with the government guidance¹ for land managers wishing to sell biodiversity units which highlight a need to secure the land through a planning obligation (Section 106) with an LPA or a conservation covenant with a responsible body.
- 8.3 Whilst the primary motivations for entering into the Section 106 Agreement would be to enhance biodiversity within the borough through the creation of a habitat site improved in

¹ Gov.uk Guidance - Sell biodiversity units as a land manager <https://www.gov.uk/guidance/sell-biodiversity-units-as-a-land-manager>

extent, quality and connectivity, there are a number of socio-economic factors:

- The Wild Whittington habitat site would facilitate development in cases where all on-site options for BNG have been exhausted. This would minimise delays to decision making and help meet the development needs of the borough.
- Developers with net gain requirements in nearby local authorities would be able to secure biodiversity units within Chesterfield (i.e., creating the potential for inward investment in biodiversity).
- The provision of public access to areas of the site and opportunities for community voluntary involvement would promote learning and recreational opportunities which can benefit human wellbeing and quality of life.

8.4 The proposal will allow significant financial investment in biodiversity within Chesterfield in a targeted and strategic manner. If the CBC does not enter into the agreement there is a risk that BNG contributions from developers will leave the borough as receptor sites are sought beyond the borough boundary. This would be a missed opportunity for health and wellbeing as well as species diversity.

8.5 The council will be obligated to monitor compliance with the HMMP and review Habitat Monitoring Reports for 30 years from the date of the Commencement Notice. This could result in additional expense for the council in the event that the Management Plan Monitoring Fee is insufficient to cover the Council's costs. To minimise this risk CBC has obtained a number of supplier quotes and futureproofed the fee through indexation.

- 8.6 Whilst it is recommended that the council enters into the obligations within the agreement, it does not mean that the habitat site will automatically be delivered. The project is reliant on the sale of biodiversity units and will rely on specific planning applications and conditions of planning stipulating that each of these will be legally obliged to demonstrate how they will achieve an overall 10% Biodiversity Net Gain.
- 8.7 There are no known equalities implications, positive or negative.
- 8.8 It is considered that the approach will have a overall positive impact on carbon emissions through the creation of measurably more habitat which will have the potential to capture carbon.
- 8.9 The management of the site for biodiversity should not sterilise the site's ability to be used more intensively for agriculture in the future.

9.0 RECOMENDATION

- 9.1 That the Planning Committee resolve that the Council enters into the Section 106 agreement with DWT/the leaseholder to ensure the delivery of biodiversity units on the Wild Whittington site.

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