

Examination of the Guildford Development Management Policies

Hearing Statement: Matter 3 Biodiversity in New Developments

Hallam Land Management Limited

This Hearing Statement has been prepared on behalf of Hallam Land Management Limited. Hallam submitted representations on the 16th February 2022 in response to the Development Management Policies document, as part of the Regulation 19 Consultation.

Main Question: Whether Policy P6/P7: Biodiversity in New Developments is positively prepared, justified, effective and consistent with both national policy and the LPSS.

Supplementary Questions:

Is the requirement for a 20% increase in biodiversity justified in the case of Guildford?

1. As a matter of principle, this policy duplicates, and goes beyond, that which is contained within the Environment Act and should be deleted.
2. The policy requirement for 20% is in conflict with the Environment Act which seeks 10% biodiversity net gain (BNG). The National Planning Policy Framework (NPPF) requires at paragraphs 174 and 179 developments to provide net gains for biodiversity. Therefore, this policy is unsound.
3. The Environment Act sets out the national policy requirement for a minimum of 10% BNG. Although the Council have stated that they recognise that they are departing from this national requirement, they consider their position to be justified. This is not agreed, and it is not considered that the Council's conflict with the Environment Act is acceptable.
4. The Council recognise the Natural Environment Topic Paper and specifically paragraph 3.46, which highlights the importance of ensuring alignment with the national approach to BNG by removing exemptions that were proposed. Similarly, the most recent consultation on the Biodiversity Net Gain Regulations and Implementation states, at page 7, that "*mandating biodiversity net gain through the Environment Act will establish a consistent set of requirements and necessary exemptions which give developers clarity as to how they can meet their net gain obligations.*"
5. There is no clear or justified evidence as to why the Council require a BNG which is higher than that being introduced by the Environment Act, and there is no justification as to whether this additional 10% is viable across all future sites, both greenfield and brownfield, within the Borough.
6. Should the Council continue to seek 20% then there will be instances where planning permission is refused on the grounds of this policy, despite according with national legislation. In effect, there would be a Development Plan policy which attracts the weight of Section 38(6) of the Act constantly at odds with another Statute.

What would be the implications of a 20% increase on development viability? Would there be any unintended consequences?

7. The Environment Act does not set a maximum quantum of net gain, through using this proposed higher percentage the Council will increase costs put on developers and could run the risk of a series of unviable schemes.
8. It should also be recognised that BNG calculations are site specific and until a scheme is at an advanced stage in the design stages, the requirement for 20% across all sites is not known to be achievable.
9. Unless additional viability evidence and testing is prepared for this consultation on a range of sites then it is unreasonable to require all sites across the Borough to achieve 20%. This uncertainty is reflected in the national 10% minimum with the encouragement to seek higher levels where possible.
10. Key elements of the assessment are variable across specific sites, for example the baseline is much lower on sites comprising arable land in comparison to pasture and grassland. This means there will be increased abnormal costs for developers on sites with pasture and grassland, however this does not seem to have been considered.
11. There is particular concern around the classification of grasslands under UKHab, the chosen habitat classification system for use the Defra Biodiversity Metric. This states that where neutral grasslands support an average of more than 9 species per sqm, these should be identified as 'other neutral grasslands' regardless of land use, species composition, management regimes or input. It is not especially difficult for sites covered in grassland to achieve this, and this means that many pasture grassland fields could support a medium distinctiveness habitat baseline that would be subject to the trading rules of the metric, requiring compensation with the same broad habitat type. Where this is the case, it could significantly increase the area of compensation land required to offset a scheme, impacting on development viability.
12. The Council's Viability Study (2021) sets out that the delivery of BNG is 0.119% of the build cost for brownfield compared to 0.883% for greenfield. This may be due to the redevelopment of brownfield sites typically considered as having a low baseline, whereas it is now widely understood that these sites, when left unused for long periods of time, have a much higher baseline. This is a matter which should be revisited and updated evidence provided to ensure this is not creating a greater cost to developers to achieve the 20% alongside the existing constraints of brownfield sites.
13. Specifically, and in regard to the strategic sites allocated within the adopted Guildford Local Plan Strategy and Sites document (2019), there is concern that there is conflict between this proposed policy and Policy ID4. Policy ID4 states at "new development should aim to deliver gains in biodiversity where appropriate." This policy was examined alongside the proposed allocation sites, and was found sound. The strategic site allocations took into consideration site constraints, opportunities and policy requirements, during the examination of this part of the Local Plan.
14. Should the proposed P6/P7 policy be adopted then strategy sites would have to consider two different approaches to net gain. One which aims to deliver gains, and one which requires a

minimum of 20%. Similarly, the Strategic Development Framework Supplementary Planning Document requires at paragraph 3.2.32 that “proposals will be expected to...provide net gains.” The strategic sites are now also required to accord with national legislation through the Environment Act and would be required to deliver 10% net gain was legislation is implemented.

15. Should policy P6/P7 be adopted this risks the delivery of the Local Plan housing requirements, through placing additional infrastructure and land requirements on the strategic site allocations.
16. The Council’s published viability assessment assumes 75% of the net gain will be delivered on site with the remaining 25% delivered off site. This is concerning and does not reflect the situations already being experienced across the Borough.
17. This concern relates to two key matters: the first being the quantum of land required on site to deliver the net gain, which would reduce developable area in turn reducing the number of houses delivered on site; and secondly, the ability for developers to also seek out 25% off site net gain to achieve a 20% BNG rather than 10%, which is costly and there is no clear indication of where this off site land would be found. There is currently no Borough wide BNG scheme, which could be utilised by developers. Therefore, third party land must be identified for BNG purposes, which has an unknown variable cost.
18. Ongoing research and consultation is being undertaken by the government on these matters, including the February 2021 DEFRA Market Analysis Study for BNG. This identifies an offsite unit cost of approximately £20,000-25,000 per biodiversity unit. The increase from 10% to 20% will give rise to developers requiring more offsite biodiversity units and experiencing costs greater than those researched and assessed by DEFRA.
19. Naturally a number of sites will be unable to deliver the 20% on site and exceed the 25% offsite set out by the Council. At the time of writing this Hearing Statement the Council are yet to publish whether they are able to offer public offsite biodiversity units, and if so where these would be located and the mechanism for developers to use them.
20. The Council have also not provided evidence of how much the additional 10% above the National requirement would require in offsite units. Should this remain the case then developers will be forced to seek private unit banks to be policy compliant. The private biodiversity unit costs are expected to be a substantial additional cost to developers, above that of the cost of units from the Council.
21. A recommendation of the Market Analysis Study report to is to ensure consistent and clear policies which can then be enforced. This is repeated within the Biodiversity Net Gain Regulations and Implementations document on page 7 stating “Mandating biodiversity net gain through the Environment Act will establish a consistent set of requirements and necessary exemptions which give developers clarity as to how they can meet their net gain obligations”.
22. The approach by the Council is not consistent with this national recommendation and would lead to the risk of not being enforced or requiring additional resources to monitor and assist developers in delivering BNG and housing.

If viability is an issue on a site, how does biodiversity feature amongst other priorities?

23. A key concern, should the Council pursue this higher percentage, is that developers will no longer be able to focus on design and good placemaking principles.
24. For example, woodland planting is heavily penalised in the metric and so it creates no incentive to create areas of screening planting or areas of woodland for recreational use. In fact, as these habitat score so poorly in the metric, it actively discourages their creation in favour of other structural habitats such as scrub planting. While scrub can be of great benefit for biodiversity within the right setting, it is not considered appropriate in all environs however this is not captured within the metric scoring. This could have further implications on the viability of site design.
25. Instead, the priority and cost of achieving the 20% will determine the typology of green infrastructure provision, the use of land for development versus BNG, and should offsite units be required then this is likely to lead to a reduction in the quality of development built on sites to pay for these units.
26. Another priority at risk is to other onsite and offsite infrastructure, for example monetary contributions towards educational facilities and/or affordable housing delivery. Should these infrastructure requirements not be met there is a risk that the introduction of this policy causes a conflict with the existing adopted policies, including the strategic allocation policies, and the other emerging Development Management policies through a viability review. This risks the delivery of the Local Plan as a whole, alongside a shortfall in market and affordable housing delivery.
27. Section 98 of the new Environment Act 2021 sets out the 10% requirement, however secondary legislation is required under Section 4(6) of Schedule 14 of the Act before the BNG requirement becomes a legal requirement; this has not been complete yet.
28. The delivery of BNG is still to be determined through the Environment Act on how to be implemented and secured, and a reasonable transition period should be allowed for the development industry to adapt. Through the Council proposing 20% in the emerging Development Management policies, it is bringing these requirements forward much sooner than the Environment Act, whilst also requiring more than the Act would seek. This timescale risks development sites not being able to sufficiently respond and adapt.
29. The above demonstrates that although the Council have set out their contribution requirements and evidence in regards to net gain, there is conflict with paragraph 34 of the NPPF whereby the loss of developable land to meet the 20% net gain and the costly off site delivery potentially threatens the viability of all future schemes across the Borough. This threat to viability could undermine the deliverability of the plan and the ability for the Council to deliver the quantum of housing set out at Policy S2 of the adopted Local Plan Strategy and Sites document.
30. This Statement sets out the series of practical effects that flow from the introduction of this policy, which will have wider implications to development across the Borough.
31. It is recommended the policy is deleted so as not to duplicate national legislation, and should the Council wish to seek higher percentages, this should be encouraged, not required.


LRM Planning Limited
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