

Local Authorities regulating the Off-site Market

An insight in to how Local Authorities are regulating local private off-site schemes, using existing resources.

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Summary

This document showcases the different approaches taken by three local authorities in the South of England, Somerset Council, Buckinghamshire Council and Devon County Council to regulate and approve biodiversity gain sites as part of their strategy for providing local off-site solutions for Biodiversity Net Gain (BNG). These case studies look at the approaches taken by the authorities to review and approve landowner schemes for generating a supply of biodiversity units for new developments. Their approach allows them to take a central role in the governance and regulation of new off-site solutions to BNG and other environmental schemes in the private marketplace.

We highlight how each council's approach complements local ambitions, address existing environmental concerns unique to each authority, consider opportunities for improving resourcing and costs, and influence the development of off-site solutions to mitigate environmental impacts.

The purpose of these case studies is to encourage other local councils to consider whether such approaches might be the right route for them. Each case study follows a similar format:

- The key objectives and drivers behind each approach.
- How the processes were established.
- The regulatory processes established by the councils and how proposals for new schemes are assessed.
- Next steps and learnings for the future.

The case studies cover the following key actions:

- Setting up a habitat bank regulation service to review potential supply areas for biodiversity.
- Using an environmental call for sites process.
- Working with landowners on identifying the potential for maximising local ecosystem services.

The key benefits of these approaches are that collectively, across the 3 local authorities, they contribute:

- To the generation of additional revenue for resourcing and costs,
- Create positive socio-economic and environmental impact for local communities in strategic areas,
- Trigger precautionary risk management, and
- Influence the development of suppliers into and within the private marketplace.

Introduction

Researchers have emphasised that there is a need for governance in the private marketplace to avoid fraud and deception. There is debate that local planning authorities (LPAs) may lack the necessary resources to effectively regulate off-site biodiversity net gain [1]. LPAs play a central role in the BNG system [2] and have a general duty to conserve and enhance biodiversity under Section 102 of the Environment Act [3]. The NAO report [4] identifies inappropriate habitat bank management, financial abuse, and misappropriation as key risks, highlighting the lack of legal powers to effectively regulate such mechanisms and mitigate these risks.

The purpose of regulating a market is to prevent risk, ensure liability, setting standards to govern processes, ensuring equity and to prevent any deceptions. In order to be registered on Natural England's off-site BNG register, off-site areas must be secured via a S106 or conservation covenant. These legal agreements take time to set up and agree and there are concerns about shortages in bodies able to make such agreements.

Local authorities are not obliged to provide an S106 for off-site BNG supply areas, and there are a limited number of Responsible Bodies (RBs) within the country (currently at 33, with 13 being local authorities) securing proposals using Conservation Covenants.

The Revenue for Nature Guidebook on BNG [5] explains that the BNG system in England has two key governance actors: LPAs and RBs. It emphasises the level of control LPAs can exercise over off-site schemes and notes that an LPA, as a governance actor, can serve as both a monitor and enforcer unless a responsible body is engaged. The guidebook also makes an interesting point about LPAs, describing them as the BNG market makers within their own jurisdictions.

The approaches set out within this document concern securing agreements primarily through Section 106 with the local planning authority, alongside conservation covenants with a Responsible Body. The approaches used will vary between LPAs and across regions. However, it remains essential to ensure that minimum legal requirements for defining a biodiversity gain site are met, whether the land is referred to as a habitat bank, a unit supply area, or another term used to describe a gain site intended to meet the biodiversity gain objective.

Under the Environment Act 2021, a biodiversity gain site is defined as land where an individual is required, through a conservation covenant or planning obligation, to carry out habitat enhancement works for a minimum of 30 years following completion. These enhancement works must also be made available for allocation under the terms of the covenant or obligation to one or more developments with planning permission, for the purposes of Schedule 7A to the TCPA 1990.

Alongside BNG requirements, local authorities take into account other legislative and policy requirements, including their biodiversity duty under the NERC (Natural Environment and Rural Communities) Act and their Local Plan, alongside corporate priorities to determine what they want habitat banks to deliver. The authorities in our examples have set up processes to screen proposals before they are established, ensuring that they meet the legal BNG requirements, but also meet broader priorities, support long-term delivery and manage reputational and financial risk.

Authorities should consider whether the criteria align with minimum statutory requirements as well as local policy, ensuring that requirements are appropriately justified and supported by a robust evidence base and that these are transparent to market participants, as landowners can choose to enter into a conservation covenant with another Responsible Body. Any approaches should always be optional to participants; it is important to note that local authorities should not state or imply that landowners must use their services or screening mechanisms, as these are optional, nor that applicants or developers can only purchase off-site units from proposals that have been screened through those services.

Somerset Council

Key objectives & drivers

Somerset council (SC) became a unitary authority in April 2023. Like most councils, availability of planning, legal and ecology resources is a major issue, and making the most of scarce resources is one of the key drivers behind their establishing a call for sites process [6] for biodiversity gain sites. In response to significant local demand for off-site solutions, and given the absence of any local Responsible Bodies, Somerset recognised both the wider benefits for the area and the alignment with Council Plan objectives of taking a proactive approach to off-site BNG.

There was also uncertainty about how many responsible bodies might come forward, and whether they would provide what was actually needed within Somerset. SC are keen to ensure that potential suppliers understand the Council's strategy and have produced a guidance note [7], which integrates the council's strategy and includes local biodiversity and environmental principles, the interim approach to strategic significance and considerations for wider ecosystem benefits. The guidance also covers planning application requirements, should a proposal come forward. SC has identified BNG as an integral (but not the only) approach to delivering outcomes to support LNRS.

Risks & challenges

Although engagement with developers in Somerset has shown that regional and national developers are confident in securing both on-site and off-site net gain, smaller, more local developers have raised concerns about bringing forward smaller developments with less flexibility to deliver either on-site or off-site, stakeholder engagement also suggests that smaller schemes are likely to resort to statutory credits to meet mandatory BNG requirements. The challenge for smaller developers also applies to off-site phosphate mitigation areas to address nutrient neutrality [8] impacts on protected sites.

SC recognised early on, that it is in their best interest to enable and facilitate a feasible and accessible local offer to avoid an unreasonable impact from BNG and nutrient neutrality on small developments and mitigate any indirect effects on development viability and deliverability, through a call for sites process.

Establishing a process

The Council was successful in bidding to the Government's Nutrient Mitigation Fund, securing £9.6m of funding to assist in addressing nutrient neutrality issues through the delivery of off-site phosphate mitigation schemes. The proposal to establish a revolving local fund which would purchase credits in bulk from such schemes, sell the credits on to developers as needed, then reinvest the income into further mitigation schemes was premised on launching a call for sites to assess and determine appropriate schemes to fund.

In 2023, the Council began receiving significant interest from third party off-site BNG providers, in addition to the ongoing interest in developing third party nutrient neutrality schemes and legally securing these with the Council. Given the relationship between and ability to stack nutrient neutrality and BNG schemes, the Council decided to cover both aspects within the planned call for sites. The Council set out a transparent and consistent assessment process to ensure there was a clear audit trail and justification for progressing priority sites for assessment, negotiation and legal agreement. Amongst other things, this placed weight on schemes able to deliver both nutrient neutrality and BNG as well as other associated multi-functional benefits including public access, natural flood mitigation etc. The assessment was aided by Urban Intelligence's PlaceMaker [9,10] software which helped streamline the process and filter sites.

Establishing a process cont.

The Council prioritised sites based on:

- Potential for delivering wider benefits (ecosystem services),
- Readiness to commence immediately or within a year,
- Landowners or managers have consented to the use of the land to supply biodiversity units or phosphate credits,
- A business model and associated governance frameworks is in place, and
- Demonstrates a low risk of failure (based on officer review).

SC also assessed proposals based on a number of wider benefits, for example how proposals will:

- Deliver benefits for local protected sites and species.
- Contribute to the council's recovery ambitions.
- Support and mitigate flood risk through natural flood management.
- Identify opportunities to sequester and store carbon.
- Improve public access e.g. bespoke educational programmes.
- Improve and enhance the historic environment and local character.
- Impact land-use changes like integrating sustainable agricultural practices.

Whilst also assessing these proposals against constraints like:

- Ensuring schemes do not undermine permitted development proposals or development plan policy.
- Ensuring sites do not fall within areas appropriate for renewable energy production.
- Ensure sites do not fall within designated areas for minerals and aggregates like the nationally important Mendip area.
- Other constraints including the consideration of land for transport, historic environment and aerodrome safeguarding.

The regulating process

The call for sites process was open for eight weeks. The process was set out to provide the council with three tranches of sites:

- Tranche 1 - sites submitted in the first four weeks of the process going live, and scoring highly following an auto-assessment via PlaceMaker. The council assessed these sites in full, first (see below).
- Tranche 2 - sites submitted in the last four weeks of the process and scored highly following the automated assessment.
- Tranche 3 - sites which received a low score based on the automated assessment. Tranche 3 sites are categorised as non-priority.

The process assesses both phosphate and BNG schemes. The initial automated assessment stage included pass/fail criteria:

- Delivery capability is above the minimum standard (10kg Phosphate credits/10 Biodiversity Units).
- The location falls within a catchment hydrologically linked to the Somerset Levels and Moors.
- A phosphate credit scheme report (or similar).
- The location does not fall within Grade 1 agricultural land.
- Phosphate-credits proposed under the scheme have not been marketed for sale.
- The location falls within the authority's boundary.
- A completed statutory biodiversity metric has been submitted.

Sites which failed to meet these were not taken forward for detailed assessment in any of the tranches as they were considered not to be sufficiently developed at this stage. This helped reduce time on prioritising and reviewing proposals. Please note for some of the criteria stated above relate only to BNG, some to nutrients and some to both. For further information regarding the criteria, you can refer to SC's call-for-sites submission guidance (Pg 18-19)[6].

In addition to the pass/fail criteria, the auto-assessment stage graded submissions based on factors such as availability, readiness for market, agricultural land value, delivery of wider benefits, strategic significance and unit type being promoted. There were some additional criteria for phosphate schemes. Scoring of these factors was used to determine the tranche that a site should be considered under for full officer assessment based on the following criteria:

- Justification for land selection within the wider land-holding. Demonstrating that proposals were well thought through, sustainable, integrated with wider management, and aligned with the business ethos, rather than being opportunistic or poorly considered.
- No major issues associated with the submitted credit scheme report or other calculations.
- Habitat degradation has been appropriately considered and included within relevant calculations.

The regulating process cont.

- Make sure on-site irreplaceable habitat has been appropriately considered and included within relevant calculations.
- No major issues are associated with the submitted statutory biodiversity metric, biodiversity gain plan and/or HMMP.

In addition to these pass/fail criteria, sites were graded on how well they responded to wider farm context, how appropriate they were for the site in the round, potential constraints to delivery, the delivery and management/monitoring body, soil type conduciveness, and alignment with the Somerset's BNG Principles.

Other constraints assessed in this stage also include:

- Development Plan Policy, nearby allocated or permitted development proposals.
- Renewable energy generation potential and potential impacts upon ability to meet local energy targets.
- Compatibility with minerals safeguarding and the potential to compromise future mineral works.
- Compatibility with published transport development proposals.
- Compatibility with aviation constraint layers.

The final stage of the review process was to determine any risks of failure. The criteria used to inform this included:

- A sound business plan, which contains all the necessary information.
- A risk management strategy and contingency plan, where appropriate.
- Evidence of appropriate stakeholder engagement.
- No planning consents, covenants or charges on the land which could constrain scheme delivery.
- No rural payments, agri-environment schemes which may be incompatible with the scheme proposal.
- Natural England DAS sign-off in place regarding phosphate schemes.

Once the above checks have been completed and SC is satisfied, the scheme can then progress to negotiations and work towards securing a legal agreement with the Council.

Moving forward & key learnings

Approximately 70 sites were submitted through this process with 35 sites just for BNG and 24 sites for nutrient credits (phosphate) and BNG. 31 sites failed the assessment process and have not been taken forward. All Tranche 1 and 2 sites have been assessed in full, clarifications sought and where appropriate, have progressed into negotiations. A number of BNG schemes have been secured with legal agreements, and will go on to be registered nationally and commence habitat works in the next few months. Tranche 3 (non-priority) sites continue to be assessed internally as capacity allows.

Having an open and transparent process and an audit trail mitigates against reputational risk and legal issues. The process provides clarity on how the establishment of off-site schemes will be regulated and can be integrated with the processes of external parties. Consider using digital platforms like Placemaker to prioritise and automate elements of review and assessment, this can save a lot of time and resources if you have the correct type of data required to use such tools. Applicants might not follow through on proposed actions or lack the capacity to do so. Stacking natural capital requires extra checks to confirm applicants understand what is required and can deliver benefits on-site, both financially and from a regulatory perspective. Additional verification ensures that stacked natural capital delivers multiple benefits in a way that's financially sound, practically achievable, and fully aligned with LPA requirements for off-site BNG.

It is important to ensure that sufficient and experienced legal resource is allocated to the development of Section 106 templates. The PAS templates provide a useful starting point, but each council will have its own preferred approaches and may wish to capture additional aspects.

Balancing the review of successive iterations of reports, clarification responses, and the assessment of non-priority sites has proved challenging alongside statutory planning duties. Keeping a record of the time spent on these schemes is essential to enable cost recovery once a scheme is agreed. Looking ahead, it may be more appropriate to charge an upfront fee to cover the assessment and negotiation processes.

Buckinghamshire Council

Key objectives & drivers

Buckinghamshire Council (BC) developed their policy around BNG well in advance of mandatory BNG requirements. The project was initially commenced in 2015 by the Natural Environment Partnership for Buckinghamshire and Milton Keynes (NEP) with support from Warwickshire County Council and Buckinghamshire County Council where net gain policies were incorporated into the then district local plans. BC became a unitary authority in 2020 combining five authorities. The council has a political steer to ensure as far as possible that off-site BNG is delivered locally within the boundaries of the authority to contribute towards LNRS ambitions and in 2022, BC published the first Supplementary Planning Document for the new unitary authority on the topic of BNG.

At that time, BC identified S106 legal agreements as the key mechanism to secure off-site biodiversity net gain, so that off-site BNG unit supply areas could be registered ahead of the commencement of mandatory net gain, as there were no Responsible Bodies present to secure legal agreements with. In the spring of 2024 BC signed S106 legal agreements for two Habitat Banks that were early entries on the Natural England's Biodiversity Gain Sites Register. On 2nd May 2024, BC achieved Responsible Body status and it is currently reviewing how best to make use of Conservation Covenants as well as S106 to achieve BNG locally.

Risks & challenges

The council receives an average of 13,000 planning applications annually in addition to a number of Nationally Significant Infrastructure Projects (NSIPs). Development pressure is high and there is a subsequent demand for BNG units. BC considered BNG as an opportunity to influence and regulate local nature recovery and ensure that the approach is in alignment with local planning policies and strategic objectives including the emerging Local Nature Recovery Strategy, interim strategic significance guidance and the county's biodiversity action plan [11]. A lot of interest has been generated among private landowners, brokers, and agents since BNG became mandatory and BC is keen to support generating a local supply of biodiversity units underpinned by Lawton Principles 'More, Bigger, Better and Joined'.

Establishing a process

BC's approach involved four key steps. The first step was to set clear criteria and expectations of what BC wants landowners to provide:

- Landowners must have legal control of the land which is to supply units with any associated consents provided.
- Any habitat interventions ensure the best outcomes for biodiversity in Buckinghamshire and adhere to BC's BNG guidance [12] and LNRS.
- BC expects landowners to adhere to best practice principles [13]. If there are plans to secure additional benefits alongside BNG on-site, what approaches are proposed and how this will be governed.
- A completed statutory biodiversity metric to evidence the potential uplift from interventions is feasible along with adequate baseline survey produced by a competent ecologist.
- A HMMP for the minimum term of 30-yrs, ideally using the Natural England template.
- A financial cash flow model which shows how management will be funded throughout the HMMP term including considerations like inflation and contingency.
- Agreement on how BC will be notified of units sales from the bank.
- Evidence showcasing considerations for other environmental concerns associated with the site under review e.g. archaeology.

The second step comprised identifying and developing guidance to support the above criteria. BC focused on four key pieces of guidance covering ecology, environment, finance and legal [14]. Further guidance has been created, covering spatial risk and strategic significance and the importance of soil testing, essential to support and mitigate queries.

Establishing a process cont.

BC has also developed guidance covering archaeology and BNG. From a financial and legal perspective, the council has a monitoring fee calculator to calculate the monitoring fee for all habitat banks, as well as a S106 template, which includes financial reporting and remediation clauses. A cash flow template is also available for providers to complete. The third step was to establish two pilot habitat banks, BC worked in partnership with three local conservation charities (The Berkshire, Buckinghamshire & Oxfordshire Wildlife Trust, The River Thames Conservation Trust and the Trust for Oxfordshire's Environment which together will deliver around 22ha of Other Neutral Grassland, 15ha of Floodplain Wetland Mosaic, 0.5 ha of Scrub and 8ha of Lowland Meadow.

The regulating process

The final step was the launch of BC's Habitat Bank Regulation Service at the end of 2023 [15], which is a discretionary and chargeable service. The service is for any land which can generate off-site unit supply. The regulation service is split into four stages (see below), and can be initiated by landowners, agents and/or brokers submitting an expression of interest (Eol) form via BC's website.

Stage 1 (Initial Evidence) - The Eol form requests evidence of a sites potential to contribute to the authority's wider strategic landscape priorities for biodiversity and information about the existing habitats, proposed habitats and other potential contributions towards nature. The form also requests details of any site-related issues or future conflicts that could impact the generation of uplift. This stage identifies and prioritises the sites with the best potential.

Stage 2 (Scoring the Site) - As part of the 2nd stage, the Eol's are reviewed before being shared with a panel to discuss and identify priority sites. To set a proportionate and equitable response to Eols, BC has a scoring system for assessment covering site readiness, spatial and ecological criteria so that the panel can streamline the process of reviewing sites. The scoring system includes:

- How well the proposed site meets the Lawton Principle [16] of right habitat, right place.
- The range of proposed habitats and distinctiveness.
- Whether the site includes proposals to enhance priority habitats or habitats of high/very high distinctiveness.
- The current state of readiness from a financial, legal and ecological perspective.
- Where the location of the site falls within the council's boundary, securing delivery locally.

The Review Panel - The panel meets as required and is made up of officers representing different departments within the council including archaeologists, planners, legal, landscape, and a member of the Buckinghamshire and Milton Keynes Biological Records Centre (BMERC).

Stage 3 (Financial/S106 Set Up Fee Assessment) – BC negotiates fees with the external party, charging an hourly rate for officer time to review ecological information, considerations for other environmental disciplines and additionality issues (if any). The fee negotiations also include an assessment of the financial model, production of a draft S106 legal agreement and creating a payment schedule for the minimum term. Legal fees are agreed and discussed (see stage 4) separately between the legal team and the external party's solicitor. Recent examples suggest the S106 set up fee ranges between £9k to £15k but this may differ case-by-case.

Stage 4 – is the final stage by which the legal agreement is secured. The agreement covers monitoring for the minimum term (30 years) or more depending on the individual case. The external party then registers their site with Natural England's BNG Gain Site Register after signing the legal agreement (which takes approx. 6 weeks). BC then publicly announces a legal agreement with the landowner on the council's website.

Moving forward & key learnings

BC have achieved RB status and are now offering Conservation Covenants in Buckinghamshire and they are working with their elected members and leadership on other options for use of Conservation Covenants, in addition to S106s. Setting criteria has been useful for identifying and accounting for risk and ensuring a transparency in approach for selecting sites. Having a checklist ensures that the appropriate governance for the site is in place, standardises the approach to working with external third parties and encourages transparency amongst all stakeholders.

Charging a fee for the review process tackles the capacity issue of meeting demand, generates a revenue for the council and opens up the opportunity to reinvest in the service to streamline the approach to BNG. Establishing good working relationships with 3rd party landowners is key to a successful outcome. BC's regulation service helps to set, realistic expectations of the review process and the time involved in setting up habitat banks. Using the existing government templates for BNG Habitat Management and Monitoring Plans (HMMPs) can be efficient but further details are also required. As an authority, you need to be adaptable as each new site has a different operating model for unit creation, sale and delivery. The key is to have appropriate in-house expertise in ecology and legal plus buy in from senior leadership and elected members to ensure the service remains a success.

Devon County Council

Key objectives & drivers

A centralised approach is needed in Devon due to eight district authorities, two unitary authorities and two national park authorities within the county. Devon County Council (DCC), in collaboration with other district councils previously helped a habitat bank in Exeter which was the first to register biodiversity units in England. DCC are not directly involved in reciprocal arrangements to secure supply areas with district level authorities.

However, they have been looking to play a role where local authorities bring forward council-owned land, acting as a legal agreement signatory to help secure these schemes. With regard to providing legal agreements to private stakeholders, this responsibility sits entirely with district councils/unitary authorities. That said, DCC have provided some high-level strategic input on the factors authorities may wish to consider when setting up BNG legal agreements. From DCC's perspective, the starting point of the process was that each local authority wanted at least one habitat bank within their respective areas. The main driver at the outset was to secure a local bank to ensure local provision.

Establishing a process

All authorities contributed to establishing an FTE role at DCC to support BNG preparedness and development of strategic approach which included the registration of habitat banks on the Natural England register. Despite being a county council, rather than a unitary authority, DCC's process is not much different to the examples above. Demand for securing banks on the national register within the county is relatively consistent across the Devon authorities. DCC's ecology team review ecological information about the site and liaise with the applicant on behalf of the individual authority. This review includes undertaking a site visit and confirming the submitted habitat baseline. Once the review has been completed this is then shared with the local authority. DCC also provide ecological input into Habitat Management and Monitoring Plans for districts that do not have their own ecological capacity.

At present, there is no structured triage system in place, which means proposals are assessed individually. As DCC is also a developer, it is in their interest to see habitat banks established within the districts. Each of the authorities have their own individual internal processes for reviewing proposals. These can include coverage on the historic environment, landscape ambitions and even member committee approval. From an ecological perspective, DCC shares any documents they have developed, such as guidance on soil analysis [17] and habitat bank verification criteria, to support the lower tier authorities. They continue to aim to co-develop these resources in collaboration with the districts.

The regulating process

The county provides strategic guidance which includes:

- Habitat verification criteria.
- Suggested monitoring Fees.
- They also host a BNG steering group with representatives from each of the authorities.

Currently, each proposal is reviewed on its own merits. A private habitat bank submits the required information, including ecological assessments, which is first reviewed by the LPA ecologist. Once approved, the planning department considers the wider planning aspects, after which the proposal progresses to legal, typically through a Section 106 agreement. However, DCC believes districts are gradually moving towards adopting a process similar to the Buckinghamshire regulatory model.

DCC has provided legal agreement templates to assist a standardised approach. There are also other approaches which have been considered to secure management and delivery of works for the long-term.

The regulating process cont.

These approaches can be:

- A 30-yr lease with the landowner where the 3rd party operator takes complete control of the site and takes full legal responsibility. Some operators may offer a cash deposit scheme to account for delivery risks. Where the operator secures a cash deposit with the authority based on the cost of management and monitoring an individual site for the minimum term. This is returned to the operator on an annual basis, so if delivery for whatever reason stops the authority would still have the funds to continue unit delivery. This may vary among districts, but DCC would be on hand to support.
- A 30-yr lease where the landowner is retained, and the 3rd party bank pays the landowner to undertake management with an annual management fee.
- Using a special purpose vehicle, an arm's length model on council-owned land.
- Individual landowners who may want to secure gains on-site without 3rd party involvement from commercial organisations.

The steering group provides a forum for addressing strategic BNG matters and recurring challenges, while also promoting a standardised approach to significant biodiversity net gain. This work is supporting districts effectively. DCC has established a steering group, meeting quarterly, to provide overarching guidance and strategic support. They will not be reviewing individual proposals in the future but will continue to offer input at a higher level where required by local authorities. Monitoring fees have been drafted to support oversight of habitat banks, and all guidance notes have been co-developed through the steering group.

Moving forward & key learnings

As part of the future approach, DCC plans to set up an online registration system similar to Buckinghamshire Council's Eol process for the individual authorities. Identifying opportunities to charge for the review process for different habitat banking models, with a focus on identifying opportunities to secure unit provision on council-owned land, in order to enable district councils to secure such sites with DCC.

At present, there is limited appetite for becoming a responsible body. There is a possibility that DCC may consider becoming a Responsible Body (RB) in the future, though at present they remain comfortable with using S106 agreements. Some habitat banks are being set up with private RBs, which brings advantages in terms of off-site provision. However, a lack of transparency for LPAs is a drawback. For authorities with limited capacity, there are benefits, as RBs take responsibility for registering schemes, easing workflow, though this reduces LPA influence, particularly on larger sites.

Looking ahead, Devon is expected to become a unitary authority within the next few years. As a result, some districts have been hesitant to progress off-site schemes due to uncertainty around future legal arrangements. Mid Devon, Torbay, East Devon, and South Hams are exploring the use of council-owned land for habitat banks secured through Section 106 agreements with DCC. While South Hams and Torbay are still advancing with this approach, other districts have stepped back in light of the unitary transition. There is a possibility that DCC may consider becoming a responsible body in the future, though at present they remain comfortable with Section 106 agreements.

Conclusions

These approaches to regulating new market suppliers are individually unique, but these processes all have the same outcomes. Somerset Council due to their location and local requirements needed to consider other offsetting solutions and not just BNG. Due to the extent of Buckinghamshire Council and existing development pressure, they identified quite early on that regulating BNG locally would have the potential to contribute towards LNRS ambitions as well as meeting other needs. As a non-unitary, Devon County Council have created an accessible and specialist service tailored to the needs of their LPAs. These processes showcase opportunities for more efficient resourcing, reducing costs, identify additional benefits alongside BNG, improving risk-management, local market transparency and contributing towards market development.

Resourcing and costs

Setting up an environmental call for sites process allowed Somerset Council to control and manage the existing demand for off-site schemes based on their existing capacity. The use of Placemaker in this process reduced officer time and filtered such schemes for further review. It highlighted that processing times can vary depending on the individual proposal and that applicants may row back on proposals during negotiations. Somerset Council have highlighted that nationally there needs to be better oversight on stacking land uses and payments. Buckinghamshire Council's regulation service is slightly different; they have an online portal which allows applicants to submit an EoI form. The scoring system in place, is the mechanism which improves efficiency and reduces review time. It also allows the council to appropriately respond to interests. The review stage of the regulation service is chargeable to the applicant which means there is no internal resourcing the scheme. Devon County Council also has verification criteria in place for off-site unit suppliers. This provides transparency on what documents are required prior to any site visits or agreements. They have also established guidance on monitoring fee thresholds based on site size.

Multi-functional benefits

These regulatory processes encourage applicants to outline the potential for other benefits if relevant, such as how management actions can support other local factors including:

- Protected species and/or priority habitats,
- Landscape character,
- Green infrastructure networks,
- Natural flood management,
- Carbon sequestration and storage,
- Sustainable agricultural practice,
- Soil nutrient status,
- Archaeology and heritage assets,
- Education and public use, and
- Local nature recovery strategies.

The provision of guidance specifically on how schemes could deliver additional benefits from management actions is highly impactful for identifying contributions towards local ecosystem services and helps LPA's in delivering their nature recovery priorities. One of the principles set out within the BSI FLEX 702 [18] highlights that for nature markets, market participants should recognise that nature is multi-functional, suggesting that stakeholders involved should already be aware of the range of benefits associated with nature and how these benefits or services could support climate adaptation and mitigation. By integrating these considerations early in the process during the scheme review, these councils are encouraging landowners to maximise ecosystem service outputs in habitat interventions tailored to local context and strategic priorities. The detailed assessment criteria are individually unique to each council's jurisdiction and justifiably help strengthen scheme designs by setting out the needs and expectations of what proposals can deliver for the long-term.

Strategic Benefits & Integrating Quality - *Local authorities could demonstrate the potential of proposals to deliver wider environmental benefits, including biodiversity enhancement, habitat restoration, carbon sequestration, flood risk mitigation, and opportunities for public access or education which help deliver against wider ambitions. Alignment with local priorities, including the Local Nature Recovery Strategy and Local Plan, alongside satisfying legal and policy requirements beyond BNG is essential. Ecological quality should be prioritised, with the right habitats in the right places, enhancement of priority or distinctive habitats, and protection of irreplaceable habitats. Proposals should integrate with wider landscape management, sustainable land-use practices, and other local environmental objectives.*

Regulating risk

These processes were introduced to reduce and manage risk associated with off-site offsetting solutions. With these types of approaches being relatively new and growing due to demand, these councils are setting a precedent with detailed criteria of what needs to be verified before any future sales are processed. Prior to securing legal agreements, applicants are requested to provide a response on financial capability to deliver the scheme design. Applicants are expected to justify management actions, competency to deliver the scheme for the long-term and appropriately plan for unintended consequences.

Managing Risk - *Compliance with planning, land-use, and environmental constraints is essential, avoiding conflicts with development, renewable energy, minerals, or infrastructure priorities. Overall, submissions should be well considered, sustainable, low-risk, and designed to deliver measurable, long-term benefits beyond baseline biodiversity gain. Local planning authorities looking to establish screening mechanisms should also consider BSI Flex 701- Nature markets, overarching principles and framework to identify suitable proposals and ensure a consistent approach across the country. The standard sets out principles to support with validation and verification, avoiding unintended consequences and ensuring the delivery of benefits for the credit/unit lifetime.*

Market transparency & development

Providing these services to applicants gives both parties the ability to develop and learn more about the potential positive impacts local off-site schemes may have on the local natural environment. These processes allow councils to identify current responses to local demand and what offers are available for new developments. Continuously using these regulatory processes will support these authorities in building a local market portfolio of off-site solutions that have been verified and approved to sell biodiversity units and other environmental benefits. Scheme applicants now have detailed submission guidance and additional information relating to local requirements, which can help in steering designs to provide offsetting solutions to new BNG applications with more transparency. Influencing landowners early in the process with local assessment criteria, can help navigate and support applicants in responding to local market demand. It allows for councils to take a more central regulatory role in this process of setting up new off-setting schemes and strengthens a collaborative relationship between parties for the longer-term. These mechanisms are also designed to enable and authorise more local offers to developers and contribute towards the diversity of the local marketplace.

Readiness & Evidence - *Sites must be ready for near-term delivery, with landowner consent, legal control, and robust ecological evidence such as baseline surveys and statutory biodiversity metrics. Proposals should be supported by sustainable business models, governance frameworks, and long-term financial planning to ensure delivery and monitoring over the minimum term. Local Planning Authorities can play a constructive role by providing information that supports the development of the market and ensures that local provision meets actual needs e.g., data on housing and other development pipelines, their likely locations, and the habitats they will interact with can help avoid mismatches in supply, such as an oversupply of woodland units when watercourse or other habitat units are required by local developers.*

LPA's could also consider what information is publicly available on monitoring fees and how these are calculated, to promote transparency for market participants. This information can help landowners incorporate it into their own sale strategies. There is also an opportunity to emphasise the benefits to local landowners of establishing a gain site, encouraging them to bring forward land to contribute to supply. Examples of successful collaborations with private landowners to secure land for off-site BNG could serve as useful illustrations to promote off-site BNG to local landowners.

Further guidance

For entering legal agreements, government guidance states that the legal agreements for BNG are a legal obligation for enhancing and maintaining a habitat type for a minimum of 30-yrs. Further information on legal agreements can be found here: [Enter a legal agreement for biodiversity net gain](#).

For offsite BNG [19], the habitat enhancement works will need to be maintained for 30 years from completion of the habitat creation or enhancement. The LPA should identify what 'completion' is referring to and when exactly the management and monitoring term begins and ends.

The agreement for off-site BNG should detail:

- Planned habitat enhancements to the site.
- Specific actions to achieve enhancement work.
- Assign parties responsible for habitat interventions, maintenance, and monitoring. (the agreement should outline the party subcontracting work for habitat interventions).
- A schedule of management and monitoring using the HMMP template as a steer.

Further guidance cont.

The LPA or Responsible Body must ensure they receive sufficient information comprising:

- How to gain access to the site, with a monitoring schedule including information on how the site will be monitored.
- A start/end date signifying 30-yrs from the date habitat interventions have been initiated/completed.
- Any consent or licenses associated with delivery, monitoring and maintenance associated with the agreed interventions.
- An agreement between all parties within the agreement on what actions can be taken if obligations are not met or if planned interventions on-site do not go as planned. If the obligations are not met, the appropriate body may take enforcement action [20].
- A payment schedule for any funding arrangements e.g. ongoing monitoring.
- A metric which outlines the pre-intervention habitat baseline for land under consideration.

Private market stakeholders are highlighting publicly a range of medium to very high distinctive unit supply in addition to current cost averages for specific habitat types which include transaction and legal fees. Based on guidance regarding statutory credit pricing, credit prices are not to be used as a guide for setting prices for off-site biodiversity units. Further information on statutory credit pricing can be found here: [Statutory Biodiversity Credit prices](#).

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