

Home Builders Federation

Matter 7

MOLE VALLEY LOCAL PLAN EXAMINATION

Matter 7 – The Environment

Policy EN9 Natural Assets

1. Would policy EN9, in extending its requirements to ‘... native biodiversity, protected, otherwise endangered or otherwise vulnerable species or habitats’, be effective in meeting the policy aim to protect biodiversity and geodiversity?

No comment

2. Would the detailed wording of policy EN9 2, setting out requirements for new development, be effective, unambiguous and give a clear indication as to how a decision maker should react to a development proposal, so as to meet the policy aims?

No comment

3. Would the requirement, in policy EN9 3 for net gain in biodiversity at a minimum of 20% over the baseline value, for most development (excepting those excluded from those requirements in EN9 3), be justified by the evidence? Would any transitional period for its implementation be justified by the evidence?

As the inspector will be aware the Environment Act 2021 requires from December 2023 that all new development delivers at least a 10% net gain in biodiversity over its baseline value. However, the Council are seeking in ENV9 to require development to deliver a 20% gain in biodiversity, an additional 10% on that required by this legislation. However, what is not clear is why the Council consider it necessary for development to deliver more than the 10% required through legislation and in particular how this meets the test set out in paragraph 57 of the NPPF and regulation 122 of the CIL Regulations 2010 that such obligations should meet all the following tests:

- “a) necessary to make the development acceptable in planning terms;*
- b) directly related to the development; and*
- c) fairly and reasonably related in scale and kind to the development.”*



However, we could not find any evidence from the Council to justify the additional 10% in relation to these tests.

Firstly, we could not find any evidence presented by the Council as to why a 20% net gain is required to make a development acceptable in planning terms. Paragraph 174d) of the NPPF states that planning policies should “*minimise impacts on and provide net gains for biodiversity*”. As such a development that meets this minimum requirement will ensure that paragraphs 174(d) of the NPPF is addressed. As the Government note in their response to the consultation on net gain, they considered 10% to deliver the right balance between “*ambition, achieving environmental outcomes, and deliverability and cost to developers*”. The consultation goes on to state that this should not be viewed as a cap on the aspirations of developers who want to go further “*voluntarily*”. This suggests that 10% is what is required to ensure no net loss of biodiversity and as such any level above this is not necessary to make the application acceptable.

Moving on the second test, the Council provide no evidence as to how the additional 10% gain over legislative requirements is directly related to the development. As set out above the Government consider 10% sufficient to address the impacts of development on biodiversity relating to any site. As with other form of infrastructure new development is not required to address existing shortfalls in green infrastructure but to ensure that it provides the necessary mitigation in relation to the impacts of that development. Wider declines in biodiversity will have occurred due to, for example changing agricultural practices, and it cannot be sound for new development to address the losses from such activities. Providing a 10% net gain in biodiversity will ensure that the impact of that development on biodiversity is addressed and as such anything beyond 10% is not directly related to the development and unsound.

Finally, it must be fairly and reasonably related in scale and kind to the development. Again, the Council have not provided any evidence as to how the policy requirement meets this test. Development meeting its requirements set out in legislation will be considered to have addressed its obligations with regard to ensuring the policy requirement and that there is a net gain. As stated above, to go beyond that figure means that the development is addressing historic losses or losses created by other sectors. As such the additional 10% is not fairly or reasonably related to the scale of the development and as such the policy also fails on this final test.

In conclusion there would appear to be no evidence as to why the Council consider the additional 10% on top of the minimum required by the Environment Act 2021 is necessary, directly related to the planning application or fairly and reasonably related in scale and kind to the development being proposed. Without this evidence the Council cannot justify this policy requirement and, on this basis, it should be removed from the local plan.

Viability evidence

In addition to the failure of the policy in terms of the tests for planning obligations there remains significant uncertainty as to the costs of delivering net gains. Whilst the

Government have set out their expectations with regard to these costs these will be principally dictated by the site and the base level of biodiversity. Prior to these being tested there is significant uncertainty as to what is required on a site-by-site basis. As such it is very difficult to assess how much additional cost the Council's policy will actually place on development. As we have highlighted in our representations, the HBF is concerned that 20% net gain will require a higher proportion of delivery either off site or through the purchase of credits. Given that the national credits scheme is still to be introduced and there does not appear to be a local scheme in place the costs, and as such the impact on development, remain uncertain.

Transitional period

The necessary guidance from Government on how the 10% Biodiversity Net Gain (BNG) will be delivered is still to be published. This will provide the necessary clarity on both measuring the level of net gain to be delivered and how these can be addressed both on and offsite. For this reason, we would suggest that the Council recognise the two-year transitional period between the Environment Act achieving royal assent and the mandatory 10% BNG coming into force. This will ensure that the necessary guidance is in place to support both developers and LPAs in meeting this latest requirement. In seeking to implement a 20% net gain prior to these regulations being in place is not only unjustified but jumping the gun. The complexity in assessing, delivering, and monitoring BNG means that a consistent approach across the country is necessary to ensure it is effective. Without these being fully agreed there is a danger that the processes used by the Council will not be consistent with regulations creating confusion for decision makers and applicants alike.

Conclusion on EN9

The HBF considers the requirement in EN9 for new development to deliver a 20% net gain in biodiversity to be unjustified. Primarily the Council have failed to provide any evidence as to how the 20% requirement meets any of the tests in paragraph 57 of the NPPF. The Council are required to show how the policy would meet all of these tests but has provided no evidence to support its position. Alongside this the uncertainty as to the costs to development and the delivery of credits places further doubt not only as to whether the policy has been justified but whether it is deliverable.

Rather than seek an additional 20%, as required through the legislation, we would suggest that the Council focuses on working with developers to help them meet the minimum required by the Environment Act and instead encourage them where possible to go beyond this minimum.

4. Would the provision of policy EN9 9, in relation to designated sites, in referring to '... potential impacts from development within or adjacent to designated sites' '... enable assessment of the full range of impact pathways such as recreation, hydrology, and air pollution, which may need to be considered for developments that would be further away from a sensitive site?

No comment

5. Should policy EN9 include a requirement to monitor biodiversity net gain and provide details of appropriate specific methodology? If so, how would this be best achieved?

The approach to assessment and monitoring are still to be established in the relevant regulations and guidance required to support this primary legislation. The complexity of delivering BNG requires significant additional regulation and guidance to ensure a consistent approach is taken across the country with regard to baseline assessments, monitoring and the delivery of credits. The importance of these in delivery is one of the key reasons why a transitional period was required and why we consider it necessary the policy reflects this period. There is the distinct danger of the Council introducing practice and guidance ahead of the specific regulations which will cause confusion.

6. Are any other modifications to policy EN9 required to ensure effectiveness?

We consider the modifications proposed in our response to question 3 to be necessary to ensure the effectiveness of policy E9.

Policy EN13 Standards and Target for Combatting the Climate Emergency

1. Would the requirements in policy EN13 1 be justified, effective and consistent with NPPF 16F, given the strong likelihood that such matters will be covered by the Building Regulations on adoption of this Plan?

The uplifts to building regulations in relation energy efficiency of new homes and electric vehicle charging points came into force in June of this year and as such those elements so policy EN13 referring to these standards is merely repeating national policy and should be deleted.

2. Would the requirement for major new residential development to make the development zero carbon be justified by the evidence, effective in terms of deliverability and consistent with national policy (NPPF 152), which provides support for the transition to a low carbon future?

The requirement for new major development to be zero carbon is not justified or consistent with national policy. The HBF recognises the need for new homes to become more energy efficiency as we move towards the net zero carbon aspirations set out by Government. As such we support the Government's transitional process through proposed amendments in building regulations to achieve a 31% improvement and then a further 75% improvement with the introduction of the Future Homes Standard.

By delivering carbon reductions through the fabric and building services in a home rather than relying on wider carbon offsetting, the Future Homes Standard will ensure new homes have a smaller carbon footprint than any previous Government policy. In addition, this footprint will continue to reduce over time as the electricity grid

decarbonises. These improvements will ensure new development supports the Government's aims with regard to carbon emissions.

We would also question whether the Council's approach is deliverable. Firstly, there is a need to increase the skills and manufacturing capacity of key sectors in order to deliver the future homes standard, a key part in ensuring development can be net zero. This takes time and to support and drive efforts on this front the HBF launched the new Future Homes Delivery Hub, with the support and involvement of Government. The Hub will help facilitate a sector-wide approach to identify the metrics, more detailed targets where necessary, methods and innovations to meet the goals and the collaborations required with supply chains and other sectors. It will incorporate the needs of all parties including the public and private sector and crucially, consumers, such that they can all play their part in delivering environmentally conscious homes that people want to live in.

Secondly it requires those developers that cannot meet net zero on site to contribute to a Council administered carbon offset fund. However, no details are provided about this offset fund, how it would operate and what it would cost. Without this scheme in place now it is not clear how the Council consider this policy to be deliverable. Whilst we recognise the desire of the Council to accelerate the rate at which new development is zero carbon it is necessary for this to be a realistic aim. The improvements being made through building regulations alongside decarbonisation of the national grid provides such an approach whilst maintain housing supply.

Therefore, the approach being taken forward by Government is consistent with paragraph 152 of the NPPF which supports a transition to a low carbon future and as such we would suggest requirements for major development to be zero carbon from the point this plan is adopted to go beyond the scope of this approach and should either be deleted or amended to support the delivery of zero carbon development.

3. If justified by the evidence, should the Plan include a definition and details of what is meant by of zero carbon?

Clear guidance as to what is expected of development is essential to ensure no unnecessary delays in bring forward schemes or during the consideration of planning applications. A lack of clarity with regard to expectations is one of the key reason why the HBF supports such measures being delivered through Building Regulations and not the planning system.

4. Are any other modifications to policy EN13 required to ensure effectiveness?

None other than those suggested.

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