

SENT BY EMAIL  
wdlp@wakefield.gov.uk  
24/06/2024

Dear Planning Policy Team,

## **WAKEFIELD LOCAL PLAN: BIODIVERSITY NET GAIN DRAFT SUPPLEMENTARY PLANNING DOCUMENT**

1. Thank you for consulting with the Home Builders Federation (HBF) on the Wakefield District Biodiversity Net Gain (BNG) Draft Supplementary Planning Document (SPD).
2. The HBF is the principal representative body of the house-building industry in England and Wales. Our representations reflect the views of our membership, which includes multi-national PLC's, regional developers and small, local builders. In any one year, our members account for over 80% of all new "for sale" market housing built in England and Wales as well as a large proportion of newly built affordable housing.
3. The HBF recommends that the Council withdraw this SPD, and instead focus on providing a frequently asked questions link on their website to the appropriate sources of national guidance, provided by gov.uk and the PPG.
4. The HBF considers that this SPD provides significant potential for confusion and contradiction and provides very little additional information that is actually necessary or needed at a local level. The PPG<sup>1</sup> is clear that plan-makers should be aware of the statutory framework for biodiversity net gain, but they do not need to include policies which duplicate the detailed provisions of this statutory framework. It goes on to state that it will also be inappropriate for plans or supplementary planning documents to include policies or guidance which are incompatible with this framework.
5. BNG is mandatory under Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021). Therefore, developers must deliver a biodiversity net gain of 10%.

### **The Biodiversity Gain Hierarchy**

6. The Council have provided their own take on the Biodiversity Gain Hierarchy, the HBF considers that this is not appropriate and instead links to the original source would be more appropriate. The Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024 defines the biodiversity gain hierarchy, the Council

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<sup>1</sup> PPG ID: 74-006-20240214

should not be seeking to define their own hierarchy. The Regulations states that “*biodiversity gain hierarchy*” means the following actions in the following order of priority—

- (a) in relation to onsite habitat with a habitat distinctiveness score, applied in the biodiversity metric, equal to or higher than four—
  - (i) avoiding adverse effects of the development, or
  - (ii) insofar as those adverse effects cannot be avoided, mitigating those effects;
- (b) in relation to any onsite habitat which is adversely affected by the development, compensating for that adverse effect by—
  - (i) habitat enhancement of onsite habitat;
  - (ii) insofar as there cannot be that enhancement, creation of onsite habitat;
  - (iii) insofar as there cannot be that creation, the availability of registered offsite biodiversity gain for allocation to the development;
  - (iv) insofar as registered offsite biodiversity gain cannot be allocated to the development, the purchase of biodiversity credits.’

7. Within paragraph 3.6 the SPD refers to the Statutory Metric and provides direct quote in relation to very high distinctiveness habitats. However, again the HBF considers it would have been more appropriate for the Council to have provided a link to the direct source of this information rather than interpreting it, and potentially not getting it quite right, or leaving out important information. For example, this same paragraph also mentions the trading rules, however, it does not make clear that the trading rules only apply up to the point of no net loss. Once trading rules have been met, biodiversity net gain requirements can be met by the creation and enhancement of any habitat, provided it is within the relevant module.
8. The HBF notes that the following two tables are available in the Statutory Metric User Guide, and this could have been referred to as needed.
9. Within paragraph 3.10 the Council suggests that where a Design and Access Statement is submitted it should include a section on BNG showing the different layout scenarios with a rationale why this has not been considered feasible. The HBF considers that this is not necessary. The use of the metric should be sufficient, this appears to be going further than any of the policy requirements, PPG, advice provided by DEFRA or guidance provided on gov.uk. The calculations in the metric already reflect the hierarchy and reward schemes that retain on-site BNG features and penalise those that don't.
10. Paragraph 3.13 states that any losses to irreplaceable habitats cannot be calculated by the statutory metric therefore, they are removed from the baseline and the metric calculation. The HBF is concerned that this may be misinterpreted, the guidance on gov.uk<sup>2</sup> states that ‘*developers should record all on-site irreplaceable habitat in the metric calculation tool*’. It goes on to state that:  
*‘However, the 10% BNG requirement does not apply when irreplaceable habitats are lost. This is because they are so difficult to recreate and have such a high biodiversity value that it would be impossible to achieve the requirement to increase biodiversity on top of no net loss.*

*BNG does not change the existing protections and compensation requirements for irreplaceable habitat in planning policy. The national planning policy framework on irreplaceable habitat applies. This means that planning permission for development resulting in*

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<sup>2</sup> <https://www.gov.uk/guidance/irreplaceable-habitats>

*the loss or deterioration of irreplaceable habitat will only be granted in wholly exceptional circumstances and where a suitable compensation strategy exists’.*

11. It goes on to consider when there are impacts to irreplaceable habitats in these cases it states that *‘Impacts to irreplaceable habitats cannot be measured by the biodiversity metric and they are automatically removed from the baseline calculation when you use the biodiversity metric. You must not record any bespoke compensation action for these losses of irreplaceable habitat within the enhancement or creation sheets of the biodiversity metric’.*
12. Finally, it goes on to consider when making enhancements to irreplaceable habitats, where it states that:  
*‘Where there are no losses or deterioration of irreplaceable habitat, their enhancements must be recorded in the metric calculation tool and will be included in the baseline calculations. Enhancement works may contribute towards the calculation of post-development biodiversity units. Enhancement works must be ecologically appropriate and not have any adverse impacts on irreplaceable habitats’.*
13. Again, the HBF would suggest that rather than creating unnecessary confusion, it would have been much easier and more appropriate for the Council to have referred to the guidance that already exists on gov.uk.

### **Accounting for Degraded Sites**

14. Paragraph 3.16 refers to Schedule 14 of the Environment Act in relation to habitat management degradation, again the HBF is concerned that this doesn’t directly reflect the information available in the PPG<sup>3</sup> and would again suggest that a link to the Environment Act and the PPG would have been more appropriate. The PPG states that *‘where unauthorised degradation of the onsite habitat has taken place on the land between 30 January 2020 and the date of relevant date, the biodiversity pre-development value of the onsite habitat should be calculated as the biodiversity value of the habitat on the date immediately before the carrying out of these degradation activities. The relevant date should therefore be set as a date immediately before these activities. Unauthorised degradation of onsite habitat is any degradation which is not in accordance with a previous planning permission’.*
15. The PPG<sup>4</sup> also states that *‘for the purposes of the Biodiversity Gain Plan, paragraph 5 of Schedule 7A sets out that the ‘relevant date’ is used to calculate the pre-development biodiversity value of the onsite habitat is the biodiversity value of the onsite habitat. The relevant date is either:*
  - *in a case in which planning permission is granted on application, the date of the application, and*
  - *in any other case, the date on which the planning permission is granted’.*
16. Again, the HBF is concerned by the wording used in paragraph 3.17 which doesn’t quite reflect the guidance available in the PPG<sup>5</sup>, in particular, it suggests that that a higher condition score should be used in the absence of contrary evidence, whilst the PPG suggests that it should be the highest value which is reasonably supported by any available evidence relating to it. The HBF would again recommend that the Council just refers developers to the guidance and advice in

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<sup>3</sup> PPG ID: 74-036-20240214

<sup>4</sup> PPG ID: 74-012-20240214

<sup>5</sup> PPG ID: 74-036-20240214

the PPG and gov.uk rather than creating their own inconsistent guidance. The PPG states that *'if there has been degradation and there is insufficient evidence about the biodiversity value of the onsite habitat immediately before the degradation, the pre-development biodiversity value of the onsite habitat must be taken to be the highest biodiversity value of the habitat which is reasonably supported by any available evidence relating to it. This requirement must be applied to the calculation of pre-development biodiversity value in the metric tool, and the Biodiversity Gain Plan template asks for information regarding whether there has been prior habitat degradation'*.

### **The Biodiversity Metric**

17. The HBF would suggest that again, this section is generally not needed and instead people could be referred to the metric, the user guide, the information on gov.uk and in the PPG.
18. If the SPD and this section is to be retained, the HBF suggests that the third bullet in paragraph 3.22 should be amended to *'and Watercourse Biodiversity Units'*.
19. The HBF would suggest that paragraph 3.36 should not be a limited list, particularly, as it is not consistent with the suggested sources of off-site biodiversity units identified on gov.uk, which include: directly from a landowner; from a habitat bank operator; through a broker; from a trading platform; and from your LPA (if they provide this service).

### **The Small Sites Metric**

20. Again, the HBF would suggest that this section is not necessary, and the Council could instead refer people to the Small Sites Metric (Statutory Biodiversity Metric) User Guide (February 2024).
21. The HBF is concerned that paragraph 3.40 is not consistent with the Small Sites Metric User Guide, and it should instead state:  
*'You can only use the SSM for 'small sites' - small sites are defined as not major developments under the Town and Country Planning (Development Management Procedure) (England) Order 2015). This means:*
  - *residential development where the number of dwellings is between 1 and 9 on a site of an area 1 hectare or less, or if the number of dwellings is unknown, the site area is less than 0.5 hectares, or*
  - *commercial development where floor space created is less than 1,000 square metres or total site area is less than 1 hectare, or*
  - *development that is not the winning and working of minerals or the use of land for mineral-working deposits, or*
  - *development that is not waste development.*
22. The HBF is again concerned by the lack of consistency in paragraph 3.41, and suggest that it should state  
*'It is not possible to use the SSM on all sites defined as 'small sites'. The following criteria also need to be met to use the SSM:*
  - *where only the habitats available in the SSM are present on-site*
    - o *any site containing any additional habitats (including riparian zones where relevant) not included in the SSM must use the statutory biodiversity metric calculation tool*
  - *where no priority habitats are present on-site*
    - o *some hedgerows and arable field margins are excluded from the above as these are medium distinctiveness habitats and are included in the SSM*

- *where no statutory protected sites or habitats are present*
- *where no European protected species are present*

*Even where the above criteria are met, the SSM does not have to be used. The statutory biodiversity metric calculation tool can always be used in its place’.*

### **National Validation Requirements**

23. The HBF does not consider that this section is necessary, and it would be more appropriate for the Council to refer to the PPG<sup>6</sup> where it sets out what information an applicant must submit as part of a planning application if they believe that the statutory biodiversity gain condition applies to their development.

24. The PPG states that *‘where an applicant believes the development would be subject to the biodiversity gain condition, the application must be accompanied by minimum information set out in Article 7 of The Town and Country Planning (Development Management Procedure) (England) Order 2015:*

- *confirmation that the applicant believes that planning permission, if granted, the development would be subject to the biodiversity gain condition;*
- *the pre-development biodiversity value(s), either on the date of application or earlier proposed date (as appropriate);*
- *where the applicant proposes to use an earlier date, this proposed earlier date and the reasons for proposing that date;*
- *the completed metric calculation tool showing the calculations of the pre-development biodiversity value of the onsite habitat on the date of application (or proposed earlier date) including the publication date of the biodiversity metric used to calculate that value;*
- *a statement whether activities have been carried out prior to the date of application (or earlier proposed date), that result in loss of onsite biodiversity value (‘degradation’), and where they have:*
  - *a statement to the effect that these activities have been carried out;*
  - *the date immediately before these activities were carried out;*
  - *the pre-development biodiversity value of the onsite habitat on this date;*
  - *the completed metric calculation tool showing the calculations, and*
  - *any available supporting evidence of this;*
- *a description of any irreplaceable habitat (as set out in column 1 of the Schedule to the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024) on the land to which the application relates, that exists on the date of application, (or an earlier date); and*
- *plan(s), drawn to an identified scale and showing the direction of North, showing onsite habitat existing on the date of application (or earlier proposed date), including any irreplaceable habitat (if applicable)’.*

### **Validation Information required by Wakefield Council for Major Developments**

25. The PPG<sup>7</sup> suggests that in addition to the minimum information requirements, as set out above, it may be appropriate for local planning authorities to ask for further information. It suggests that the amount of information will vary depending on the type and scale of development, type of planning application, the onsite habitat impacted, and the extent of any significant onsite enhancements. It goes on to state that LPAs should take a proportionate approach to information requirements, focused on only necessary additional information.

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<sup>6</sup> PPG ID: 74-011-20240214

<sup>7</sup> PPG ID: 74-013-20240214

26. The HBF would suggest that much of the information required by the SPD is not proportionate, and not focused on only necessary additional information.
27. For example, the Initial Biodiversity Statement is not necessary and not proportionate. The national requirements already require information in relation to the pre-development biodiversity value and the completed metric tool showing the calculations of the pre-development biodiversity value of the onsite habitat. Whilst any information provided in relation to the expected balance of on-site gains and off-site gains will need to be considered as indicative, with flexibility and with the potential to change. The HBF is concerned that if the Council require a formal document such as their suggested Initial Biodiversity Statement, and this differs from the Biodiversity Gain Plan that is submitted post permission, this has the potential to cause issues and confusion for members of the public. If this document is to be retained the HBF recommends that the Council make clear that any information provided in relation to the BNG to be provided, and how it will be secured, is subject to change and that the statutory framework for BNG has been designed as a post-permission matter to ensure that the biodiversity gain objective will be met for the development granted planning permission.
28. These same issues would apply in relation to the requirement for the Statutory Biodiversity Metric being completed for both pre and post development. With the national requirements already requiring the pre-development biodiversity value to have been provided, and the post-development value not being necessary or proportionate, given that BNG is a post-permission matter.
29. Again, these same issues would apply in relation to the need for a Plan and the GIS Shapefiles, where the national requirements already require the existing on site habitats to be drawn on a plan, and for any post-development habitats to be unnecessary at this stage.
30. The HBF is also concerned in relation to the requirements of paragraph 4.5 and 4.6, particularly in relation to outline applications, and phased developments, and how these requirements sit with BNG being a post-permission requirement. The HBF suggests that this information should only be required as part of the BNG Plan, once permission has been granted.

#### **Validation Information required by Wakefield Council for Minor Applications**

31. This suggests that as a minimum for minor applications the Council will require an Initial Biodiversity Statement, a Statutory Biodiversity Metric and a Plan. The HBF considers that none of these elements are necessary or proportionate, for the same reasons as highlighted above.

#### **Discharge of the General Biodiversity Condition**

32. The HBF considers that there is no need for the Council to recreate this information instead the Council could have provided links to the Habitat Management and Monitoring Plan template, the Biodiversity Gain Plan template and the PPG<sup>8</sup>.

#### **Approach for Phased Development and Outline Applications**

33. The HBF considers that there is no need to the Council to recreate this information and could instead refer to the PPG<sup>9</sup>.

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<sup>8</sup> PPG ID: 74-035-20240214

<sup>9</sup> PPG ID: 74-054-20240214

### **Application Process**

34. The HBF considers that again there is no need for this information the PPG and gov.uk provide information about the planning application process, and the gov.uk has guidance specifically set out for developers, land owners and planning authorities.

### **Areas of land not acceptable to contribute to onsite BNG**

35. The HBF considers that the Council does not need to include this information instead it could have referred to gov.uk<sup>10</sup>. The HBF is concerned that areas of land identified by the Council as not being considered acceptable are not consistent with the information provided nationally, and does not consider this is appropriate. For example, private gardens can make positive contributions to biodiversity, and are recognised as non-significant enhancements, that should still be included in the metric calculations. It is recognised that appropriate planting and ongoing management cannot be secured in the long-term and the Biodiversity Metric recognises this in its scoring of the value of gardens. Additionally, Sustainable Urban Drainage systems are clearly identified as counting in full in relation to BNG.

### **Areas of land acceptable to contribute to BNG**

36. The HBF considers that the Council does not need to include this information instead it could have referred to gov.uk<sup>11</sup>. The HBF is concerned that again, the information provided by the Council is not consistent with that provided nationally, and if retained needs to be amended.

### **Onsite Strategic Significance**

37. The HBF considers that there is potential here to refer to the Biodiversity Metric User Guide, rather than repeating all of the information.

38. Paragraph 5.7 in relation to the Wakefield Local Nature Recovery Strategy (LNRS) would benefit from more information in relation to when the LNRS will be published, and potentially when there is likely to be opportunities to be involved in the production of the LNRS and consultation periods.

39. The HBF considers that paragraph 5.8 is useful and should be retained, although there is no need for this to be contained within an SPD, it could just be an informative on the Council's website, for use until the LNRS is put in place.

### **Significant onsite biodiversity net gain**

40. The HBF suggests that again this section could have referred to the guidance available at gov.uk, and other sources of information.

### **Monitoring and Reporting of Significant Onsite Units**

41. Paragraph 5.25 suggests that after the statutory 30 years onsite habitats will be retained in positive management for the lifetime of the development. The HBF is concerned about this requirement, and how this will be considered in terms of development viability and how this is expected to be managed beyond the 30 years.

### **Off-site Delivery of BNG – Location**

42. Paragraph 6.4 states that the location of off-site provision will require agreement from the Council and must take into consideration a significant number of criteria. The HBF does not consider this appropriate. Gov.uk provides guidance for making off-site biodiversity gains as a

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<sup>10</sup> <https://www.gov.uk/guidance/what-you-can-count-towards-a-developments-biodiversity-net-gain-bng>

<sup>11</sup> <https://www.gov.uk/guidance/what-you-can-count-towards-a-developments-biodiversity-net-gain-bng>

developer, and it states that: *'Biodiversity gains may be delivered anywhere in England, but you should consider the following when deciding where to source your off-site biodiversity gains.*

*The biodiversity metric incentivises off-site gains close to your development. This is so that communities local to the development benefit from increases in biodiversity. Except for intertidal, watercourse or linear habitat, off-site gains in a neighbouring local planning authority (LPA) will be worth fewer biodiversity units than off-site gains in the same LPA as the development. Off-site gains beyond the neighbouring LPA will be worth even fewer.*

*The metric also provides an incentive to achieve off-site biodiversity gains in areas of strategic significance. Strategically significant areas are areas which are especially positive for off-site interventions, and are set in your local nature recovery strategy'.*

### **Options for Securing Off-site Net Gain**

43. As previously, the HBF suggests that most of the information provided here can be found from other sources and as such does not need to be provided here.
44. And as has been set out previously in relation paragraph 3.36, the HBF would suggest that this should not be a limited list, particularly, as it is not consistent with the suggested sources of off-site biodiversity units identified on gov.uk, which include: directly from a landowner; from a habitat bank operator; through a broker; from a trading platform; and from your LPA (if they provide this service).

### **Securing Offsite BNG**

45. The HBF considers that much of this section is unnecessary and that links to gov.uk could have been provided, particularly in relation to Habitat Management and Monitoring Plans.
46. The HBF is concerned by paragraph 6.13 which suggests that for all offsite options the Council will use conditions and S106 agreements to secure delivery and monitoring of offsite net gains for 30 years. The HBF would highlight you can choose off-site habitats which are already legally secured and registered. If you do this, those off-site habitats do not need to be legally secured again. And that there are 2 types of legal agreement for BNG, a planning obligation (section 106) with an LPA or a conservation covenant agreement with a responsible body.

### **Conclusion**

47. In conclusion, the HBF recommends that the Council withdraw this SPD, and instead focus on providing a frequently asked questions with links on their website to the appropriate sources of legislation and national guidance, provided by gov.uk and the PPG.
48. As has been highlighted throughout this response the HBF considers that this SPD provides significant potential for confusion and contradiction and provides very little additional information that is actually necessary or needed at a local level. The PPG<sup>12</sup> is clear that plan-makers should be aware of the statutory framework for biodiversity net gain, but they do not need to include policies which duplicate the detailed provisions of this statutory framework. It goes on to state that it will also be inappropriate for plans or supplementary planning documents to include policies or guidance which are incompatible with this framework.
49. The HBF considers that the Council should focus the information they provide in relation to BNG to that which is actually necessary and distinct to Wakefield, for example information in

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<sup>12</sup> PPG ID: 74-006-20240214



relation to the LNRS and the locations that will be used in relation to Strategic Significance until the LNRS is published.

### **Future Engagement**

50. I trust that the Council will find these comments useful. I would be happy to discuss these issues in greater detail or assist in facilitating discussions with the wider house building industry.

51. The HBF would like to be kept informed of all forthcoming consultations upon the Local Plan and associated documents. Please use the contact details provided below for future correspondence.

Yours sincerely,

A handwritten signature in cursive script that reads "Joanne Harding".

**Joanne Harding**

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