

## PLANNING COMMITTEE

8 JULY 2025

### REPORT OF THE CORPORATE DIRECTOR - PLANNING AND COMMUNITY

#### A.5. **BIODIVERSITY NET GAIN (BNG):** **DELEGATION AND CONSULTATION ARRANGEMENTS IN RESPECT OF PROPOSALS** **FOR HABITAT BANKS**

#### PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT
<p>To seek the Planning Committee's agreement to delegate future decision making powers to the Head of Planning and Building Control in respect of proposals for 'Habitat Banks' including their approval, entering into legal agreements and future enforcement. To also seek the Committee's agreement to consultation arrangements for the processing of Habitat Bank proposals. These matters are referred to the Planning Committee at the request of the Cabinet, following its decision on 21 October 2024 to adopt an interim planning policy on Biodiversity Net Gain (BNG).</p>

EXECUTIVE SUMMARY
<p>On 21 October 2024, the Cabinet considered a report of the Portfolio Holder responsible for Housing and Planning seeking agreement to adopt a policy statement on 'Biodiversity Net Gain' (BNG) to serve as the Council's interim corporate position on the subject, ahead of detailed consideration as part of the forthcoming Local Plan review.</p> <p><b>The Cabinet report and associated policy statement are attached in full as Appendix 1 to this report for information and detailed background.</b></p> <p>The policy that has been adopted for interim use is now applicable both in the determination of planning applications and in the consideration of proposals for 'Habitat Banks'. Habitat Banks are parcels of land where habitats have been created or enhanced, in advance, to provide an uplift of biodiversity units. These surplus biodiversity units can then be sold to developers to meet their BNG requirements 'off-site'. In order to sell off-site biodiversity units, there are a number of legislative criteria that must be met; and whilst the establishment of a Habitat Bank does not require planning permission, in many cases it would require landowners to enter into a s106 legal agreement with the Council alongside a formal registration process with Natural England.</p> <p>As well as agreeing the adoption of the policy statement, the Cabinet resolved to invite the Planning Committee, at its earliest convenience, to consider and determine how it will exercise its power in respect of Council decisions on entering into legal agreements with landowners under Section 106 of the Town and Country Planning for the purposes of setting up Habitat Banks, guided by the</p>

aforementioned policy and the advice of Officers – including the extent to which the Committee deems it appropriate for such decision-making powers to be delegated to Officers; and any arrangements for public consultation on specific proposals. This is because this is a fairly new area of work with no explicit arrangements set out in the constitution in respect of delegated powers and no legislative requirements around public consultation.

It is recommended that the consideration, approval and entering into s106 agreements with landowners for the establishment of Habitat Banks be delegated to the Head of Planning and Building Control, along with decisions around future enforcement action against non-compliance. If agreed, it is recommended that these arrangements are put forward for consideration, as part of a future review of the constitution, as to whether explicit amendments to the wording are required.

It is also recommended that no specific requirements for public or other stakeholder consultation on Habitat Bank proposals need to be put in place, apart from technical consultation with suitably qualified ecologists for the purpose of seeking professional advice.

It is important to emphasise that the establishment of a Habitat Bank (as described in this report) is a different and separate concept and process from the determination of planning applications for new development that, in many cases, have a requirement to address Biodiversity Net Gain (and for which existing constitutional arrangements for the Planning Committee and appropriate delegation to Officers already, along with statutory consultation requirements already apply).

## **RECOMMENDATION**

**That the Planning Committee:**

- a. notes the adoption of the ‘Policy on Biodiversity Net Gain (BNG)’ as attached as part of the report to Cabinet of 21 October 2024 (Appendix 1), as the Council’s interim policy on the subject of BNG – which is applicable both to the determination of planning applications and to the consideration of proposals for ‘Habitat Banks’;**
- b. agrees that future decisions for approval and/or entering into a s106 legal agreement with landowners for the establishment of Habitat Banks, along with any associated decisions around enforcement against non-compliance, be delegated to the Head of Planning and Building Control;**
- c. agrees that this delegation to the Head of Planning and Building control be put forward for consideration as part of the next review of the Council’s constitution to determine whether any specific wording changes be made to either the Planning Committee’s terms of reference or Part 3 Delegated Powers; and**
- d. confirms that the process for considering Habitat Bank proposals will not include any specific arrangements for public or wider stakeholder consultation, aside from**

**technical consultation with suitably qualified ecologists as considered necessary for the purpose of seeking professional advice.**

#### **REASON(S) FOR THE RECOMMENDATION(S)**

At present, the Council's constitution and associated Part 3 scheme of delegation does not provide any explicit arrangements for decision making in respect of entering into s106 legal agreements for the establishment of Habitat Banks – as it is a relatively new area of work. The constitution does however state that 'all planning conservation matters' are delegated to the Assistant Director (Planning) [whose responsibilities are fulfilled by the Head of Planning and Building Control] except in relation to the determination of certain planning applications for determination by the Committee as listed.

For the avoidance of any doubt in the interpretation of the constitution and delegated powers therein, it is recommended that the Planning Committee agrees that matters relating to the establishment of Habitat Banks, including the entering into s106 legal agreements with landowners for that purpose, are to be amongst those delegated to the Head of Planning and Building Control. It is also recommended that decisions required in respect of taking enforcement action against non-compliance with the clauses within s106 legal agreement for a Habitat Bank be delegated to the Head of Planning and Building Control.

Through a future review of the constitution, consideration could then be given to whether these delegated powers need to be made explicit within any revised wording.

Because the establishment of a Habitat Bank is not classed as development or a change of use and physical works (planting of trees, hedges and habitat creation of other sorts etc) do not, in themselves, require planning permission, it is considered appropriate for such matters to fall within those delegated to Officers and for there to be no explicit need for proposals to be the subject of any formal public or stakeholder consultation. It is only the arrangements for long-term management and monitoring of the habitats, in most cases, will require agreement from the local authority through s106 – for which the matters are mainly technical (following advice from a suitably qualified ecologist), legal and administrative and thus usually delegated to Officers.

#### **ALTERNATIVE OPTIONS CONSIDERED**

The alternative option in relation to delegation of powers would include that the Planning Committee retains all decision-making powers over matters relating to Habitat Banks and does not include them with the powers delegated to Officers. The implication would therefore be that any Habitat Bank proposal would need to be presented to and agreed by the Committee before any s106 agreement

is entered into, despite the fact that the physical works involved in setting up a Habitat Bank do not, in themselves, require planning permission.

The alternative option in relation to consultation arrangements would be for the Planning Committee to require proposals for Habitat Banks to be advertised and consulted upon – inviting residents and other interested parties to have their say before any decisions are taken. Again, because the physical works involved in creating a Habitat Bank do not constitute development nor change of use and do not require planning permission, there would be little merit in inviting comments from third parties – and such an approach would be inconsistent with that taken for other matters not requiring planning permission – such as permitted development. In Officers’ consideration of Habitat Bank proposals, they would however consult suitably qualified ecologists for advice as necessary, to ensure the proposals for management included within the associated ‘Habitat Management and Monitoring Plan (HMMP)’ (which are also required for registration with Natural England) are appropriate and acceptable.

## **APPENDICES**

Appendix 1: 21 October 2024 Report of the Portfolio Holder responsible for Housing and Planning to Cabinet: Tendring District Council’s Interim Policy on Biodiversity Net Gain (BNG).