



RTPI

mediation of space · making of place

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26th January 2011

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Area 3B, Nobel House
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Email response sent to: bio.offsets@defra.gsi.gov.uk

Dear Sir or Madam,

Response to Consultation Paper: Offsetting the impact of development on biodiversity

Thank you for the opportunity to respond to the above consultation. The Royal Town Planning Institute (RTPI) is the largest professional institute for planners in Europe, representing around 23,000 spatial planners. The Institute seeks to advance the science and art of spatial planning for the benefit of the public. As well as promoting spatial planning, the RTPI develops and shapes policy affecting the built environment, works to raise professional standards and supports members through continuous education, training and development.

This response has been formed drawing on the expertise of the RTPI Environmental Planning and Protection Network's Biodiversity and Countryside Management Group.

Enclosed is the RTPI's response to the consultation.

If you require further assistance, have any queries relating to the enclosed or require clarification of any points made, please contact the Policy and Practice Team on 0207 929 9466 or email policy@rtpi.org.uk.

Yours faithfully,

Matt Thomson
Head of Policy and Practice

Enc.

Q: Do you agree with the four potential benefits identified above? Are there other potential benefits from more consistent, and greater use, of offsetting? Are there any potential downsides to offsetting?

The RTPI recognises that in times of financial austerity when there is so much pressure on public spending then a system of biodiversity offsets could help provide much-needed funding for nature conservation work. We also acknowledge that the process of managing potential development impacts on biodiversity can be challenging for both local authorities. However, unless any system of offsets is carefully thought through there is potential to actually make the process more complicated.

The risks of adopting biodiversity offsets are considerable. The risks include:

- i. Defining a development's actual impact on biodiversity is difficult – each is different in its scale, nature and type of impact. Indirect and cumulative impacts are also rarely accounted for. A biodiversity offset could be seen as a narrow approach with limited benefit and potentially be seen as a means to negate the need for on-site biodiversity mitigation or enhancements.
- ii. Undermining the protection afforded to biodiversity by existing planning policy, particularly the 'avoid-mitigate-compensate' hierarchy enshrined in the Key Principles of Planning Policy Statement 9 and in the 5 point approach advocated by the RTPI. If offsets are genuinely intended to avoid net loss of biodiversity then they could be used to provide compensation but they should never be contemplated unless it has been established that impacts on biodiversity cannot be avoided or mitigated.
- iii. The idea of biodiversity offsets assumes that any biodiversity can be substituted but this is not actually so. The finite capacity for habitat enhancement must be recognised as well as the fact that certain irreplaceable habitats, such as ancient woodlands, limestone pavements and even nutrient-poor/biodiversity-rich meadows cannot be recreated within human timescales. These should be 'red-flagged' as in the Biobanking system in New South Wales.
- iv. Certain habitats are easier to create than others (for instance reedbeds). There is a danger that using offsets could lead to the delivery of some habitats that are easy to create, rather than addressing real conservation requirements.
- v. If biodiversity offsets require habitat creation then receptor sites have to be carefully selected to ensure that they are of lower biodiversity value than the proposed habitat. If this is not the case then the end result would be a net loss of biodiversity.
- vi. The success of these systems has been mixed. A recent study showed that of the 12 oldest wetland habitats in Ohio that had been set up under habitat banking, most were failing to some degree through lack of maintenance and effective monitoring (see http://www.ecosystemmarketplace.com/pages/dynamic/article.page.php?page_id=5617§ion=home). The difference in topography and biome in the vast lands of North America and Australia compared with the less wild and more mosaic ecosystems in the UK in general, and England in particular, should not be underestimated. Compensation in the form of habitat recreation has been undertaken several times in the UK in response to unavoidable harm on sites protected under the Habitats Regulations. It should be noted though that the Habitats Directive requires that compensatory measures provide equivalent ecological function e.g. feeding sites for wildfowl, rather than a direct substitution of 'like for like' habitat. Most projects so far have involved the recreation of dynamic habitats such as mudflats rather than climax ecosystems such as broadleaved woodland.

- vii. It creates the assumption that all biodiversity loss can be compensated for and there are no situations under which impacts are so severe that a development should be rejected.

There is also a question about where offsets should be located. To be most successful in terms of delivering biodiversity benefits, the delivery of biodiversity offsets would need to be carried out at a landscape scale, ideally using the principles articulated in the Lawton review. This may lead to local communities losing 'their' local biodiversity and not seeing any benefit from offsets because these are delivered elsewhere. The use of offsetting to provide a contribution to multifunctional green infrastructure is more likely to deliver benefits for a local community. We suggest that this idea is considered instead of a scheme purely designed for biodiversity offsets. This is not a new concept for development or planning; it could essentially work in the same way as contributions for education, transport and the emerging Community Energy Fund for developments to achieve 'zero carbon'. Consideration should also be given to using offsetting for maintaining or improving ecosystem services. Local communities might well be more interested in offsets that lead to, for instance, the restoration of peatlands if that could lead to reduced flood risk in their locality.

Q: Are there better ways of achieving government's goals for minimising the impacts of development on biodiversity than the approach suggested here?

Without a comprehensive review of the effectiveness of current planning policy in conserving biodiversity it is difficult to establish whether current approaches are succeeding. One key issue, that will remain even if a biodiversity offsetting programme is introduced, is that local authorities often do not possess the expertise to assess the impacts developments are likely to have on biodiversity. The current pressure on public spending makes it unlikely that many authorities would be in a position to obtain that expertise. Natural England is similarly constrained and unlikely to be able to fill the gap.

A second major factor is the difficulty of finding reliable information on the location and extent of semi-natural habitats. The information held by local biological records centre is patchy, and although efforts have been made to address this, again funding constraints are a problem. Local Biodiversity Action Plans may also contain useful information but again this may not be that precise in terms of quantity and may not be based on up-to-date records. Until these two issues are addressed it is unlikely that the impacts of development on biodiversity will be addressed.

Q: How can we recognise the range of potential benefits from restoring habitats, without over complicating offsetting? Local strategies for locating offsets in the right area to deliver local priorities (such as protection for watercourses) could be one way of achieving this link with other priorities, but are there others?

Please see our comments on using offsets to provide green infrastructure above.

Substantial work has already gone into the production of Local Biodiversity Action Plans which identify the key priorities for in habitat restoration, usually at a county or district level. Many local authorities participate in the LBAP partnership for their area. These documents should inform any system of biodiversity offsets designed to function at a local level. This approach could be extended to create a link to the initiatives being undertaken by the Wildlife Trusts and the RSPB to restore or recreate habitat at a landscape scale. It may be possible to design a scheme which would allow developers to contribute a set amount to one of these projects, equivalent to the

amount required to restore or recreate at least the amount and type of habitat that was lost. The NGOs should be approached to see if they would feel that such an approach would be feasible.

Other potential forums include Green Infrastructure delivery partnerships.

Q: Do you think the suggested process described above, using Section 106, could work for offsetting? We think this approach could give developers more clarity about what they're required to do on biodiversity earlier in the planning process – do you agree?

The suggestions in the consultation document imply there would be a straightforward process of assessment followed by the purchase by the developer of offset credits. We acknowledge that this would give greater clarity to developers and local authorities and could speed up the process of granting planning permission. The simplicity of the proposed tariff system is attractive but in practice we are doubtful about how practical it will be to calculate the number of conservation credits required. In addition it is difficult to see how such a system could be achieved without undermining the avoid-mitigate-compensate hierarchy as described above or avoiding net loss of biodiversity. The main advantage to a developer would be if they could automatically use the system to bypass the need for on-site mitigation or compensation. If this is not the case then it is difficult to see how much benefit they would gain from buying offset credits through a Section 106 agreement. If there is no benefit to developers, then most are unlikely to participate in an offsets system voluntarily.

For those local authorities without access to ecological expertise it may be difficult to establish exactly what offset credits would be required or to monitor whether they have been successfully delivered.

Q: What other mechanisms could underpin the delivery of greater use of offsetting, either existing planning tools such as the Community Infrastructure Levy or other means? How could this work?

The Community Infrastructure Levy (CIL) would provide a standardised and transparent approach to funding biodiversity offsets. It should be noted though that the Community Infrastructure Levy regulations state that only five planning obligations can be pooled to fund a scheme which is eligible for CIL funding. The amount that could be generated for the purchase of offset credits or even direct purchase of land for habitat restoration/recreation is going to be constrained by the size of development that to which the obligations relate. The regulations also state that obligations must be necessary to make the application acceptable in planning terms and be directly related to the development. Using CIL to fund biodiversity offsets would require a strong statement within the proposed National Planning Framework that biodiversity loss (that cannot be avoided or mitigated) must be compensated for on a scale of at least one to one and that this can be done by purchasing off-site credits. If this is not done then applicants may argue that the being required to purchase of biodiversity credits does not meet the requirements of the CIL regulations.

Q: What kind of scale do you think would be needed for offsetting to work most effectively? What existing groups, forums and mechanisms could work with groups of local authorities to develop strategies for offsetting in a particular area? How could local communities be involved? What skills and resources would be needed at local level to make this work?

For offsetting to work most effectively for the conservation of biodiversity it should be based on the principles laid out in the Lawton review (Making Space for Nature, Defra 2010):

- (i) Improve the quality of current sites by better habitat management.
- (ii) Increase the size of current wildlife sites.
- (iii) Enhance connections between, or join up, sites, either through physical corridors, or through 'stepping stones'.
- (iv) Create new sites.
- (v) Reduce the pressures on wildlife by improving the wider environment, including through buffering wildlife sites.

Offsetting strategies at a county or district level should be designed around these principles; the priority given to each principle should depend on the existing distribution of semi-natural habitats in that area.

Local Biodiversity Action Plan partnerships already exist in most counties; these partnerships usually involve the nature conservation NGOs, the local authorities and the statutory agencies. Organisations such as the Country Landowners and Businesses Association may also be represented. The LBAP partnerships are the most obvious forum for developing strategies for offsetting in any particular area as they will have the essential knowledge of the biodiversity priorities for their area. However, the extent to which LBAP partnerships represent landowners or developers interests varies considerably and these two groups should have some input into developing these strategies if they are to succeed. The extent to which local communities are involved in BAP partnerships also varies considerably. Again if a biodiversity offsetting strategy is to be accepted and even supported then the general public must have an opportunity to influence the content.

Q: Would you be interested in providing offsets? What support would you need to make this possible for you? In particular, if you are a developer that has experience of delivering net gain for biodiversity, we would be interested to learn more about these examples.

N/A

Q: If your organisation might want to obtain offsets, what would you look for in a potential provider?

Local authorities would need to be confident that potential providers are capable and willing to deliver the biodiversity offsets. The extent to which local authorities can monitor the delivery of biodiversity offsets delivered as planning obligations will be constrained both by staff resources and expertise. A certification scheme, which guaranteed that providers meet the required standards would be the best way to encourage local authorities to use providers.

Q: What rules could be needed to govern habitat banking?

While strategies or schemes may be designed locally they should be required to meet certain standards. These should include the:

- Principles suggested by the Lawton review which are referred to in the consultation document;
- A clear set of rules for any system of trading credits;
- The scaling factors to be applied (e.g. at least like for like, but preferably more to allow for the time lapse before restored or recreated habitat reaches ecological maturity);
- Geographic limits (e.g. how from the application site could the offsets be delivered? Within the district, within the county or within a landscape unit such as the National Character Areas?);
- Clearly identify which habitats cannot be compensated for and those which can be restored or recreated.

Q: Which organisations could be well-placed to carry out monitoring of offset sites?

If biodiversity offsets are delivered as planning obligations then local authorities will have to carry out some monitoring to ensure that the obligations are being delivered. As stated above, this work is likely to be severely constrained by lack of resources and expertise. We note and support the suggestion that the obligations should include a small sum to allow for monitoring. This would allow local authorities to sub-contract the work to private consultants or NGOs. If providers were certified as suggested above then some of the monitoring work could be done by whichever body was responsible for checking that providers met the relevant standards as part of their checking procedure.

Q: What aspects of offsetting do you think would need some kind of central guidance or standards? Who is best placed to provide this?

The general standards that offsetting schemes should reach (see question on rules for habitat banking) should be provided in the form of central guidance. The best organisation to provide this would be Defra (or Natural England on their behalf) with endorsement from the Department of Communities and Local Government.

If offsets are to be relied to deliver at least no net loss in biodiversity, then there will need to be a body of evidence that is directly applicable to habitats and species in England. Local authorities and developers will need an independent source of advice on issues such as which habitats cannot be compensated for, which habitats are 'equivalent' to each other, what the ratio should be between habitat lost and habitat recreated e.g. 1 to 1 or more than that. Local authorities, even those with access to ecological advice, cannot be expected to compile this information themselves as they do not have the resources or the expertise. Again this is guidance that is best provided by Defra or Natural England.

Q: What information should be recorded in a central registry? Who would be best placed to manage this?

Suggested information for a central registry:

- Nature of the biodiversity loss including the location, the extent and type of habitat loss;
- Nature of the compensatory measures
 - Location, extent and type of habitat restoration or recreation;

- Any measures to compensate for species loss such as translocation;
- Proposed management measures and how these will be funded;
- Contact details for provider;
- Timescale;
- Proposed indicators for when restoration/recreation would be judged as being successful.

Holding this data on a central registry should make it simple to monitor the effectiveness of the offsets approach. To aid compilation of the information it would be helpful if a pro forma could be produced as part of any guidance produced centrally. Applicants could then be asked to complete the pro forma to provide a standardised set of information for use both by local authorities and by the central registry. The best placed organisations to manage a central registry would be either Defra or Natural England.

Q: Would a payment in lieu be appropriate in some situations? What would a sensible impact threshold look like?

For small developments, for instance those with a footprint between 0.1 and 0.5 ha, local authorities could request a standard contribution from developers towards biodiversity offsets. This does though raise the question of whether applicants should, if the site is of low biodiversity value, be asked to contribute to biodiversity offsets when these are not necessary to make their development acceptable in planning terms. This is a departure from existing planning policy and would need to be addressed in the new National Planning Policy Framework.

If this approach is accepted then one approach would be for local authorities to publish a 'menu' of standard contributions that developers could choose from. These could be tailored to local conditions or could be direct cash contributions to specific LBAP projects, for those LBAPs such as the Maidstone Borough LBAP which contain lists of projects.