

Wildlife and Countryside Link response to the Green Paper on biodiversity offsetting

1. Introduction

Wildlife and Countryside Link (Link) brings together 42 voluntary organisations concerned with the conservation and protection of wildlife, countryside and the marine environment. Our members practise and advocate environmentally sensitive land management, and encourage respect for and enjoyment of natural landscapes and features, the historic and marine environment and biodiversity. Taken together our members have the support of over eight million people in the UK and manage over 750,000 hectares of land.

This response is supported by the following 15 organisations:

- Amphibian and Reptile Conservation
- Badger Trust
- British Ecological Society
- British Mountaineering Council
- Buglife – The Invertebrate Conservation Trust
- Butterfly Conservation
- Friends of the Earth
- National Trust
- Open Spaces Society
- Ramblers
- Royal Society for the Protection of Birds
- Salmon & Trout Association
- Wildlife Gardening Forum
- Wildfowl and Wetlands Trust
- Woodland Trust

2. Executive Summary

Link believes that the current development control system is failing to deal with the decline in our wildlife, habitats and landscape character. Much of this could be addressed through fuller implementation of existing systems and regimes and a greater recognition of the importance of biodiversity through the planning system. In particular, we are concerned that there is a lack of parity in the application of planning commitments on the natural environment compared with, for example, those for allocating land for housing. Equally, if the mitigation hierarchy were more robustly enforced, and if there more local planning authorities (LPAs) with Local Plans, which included biodiversity opportunity mapping, less nature would be being lost to development.

Nonetheless, a more systematic approach to assessing the potential harm to biodiversity from development could bring conservation benefits. Similarly, a clear system for offsetting harm, as the ‘compensation’ element of the mitigation hierarchy, could also support conservation efforts. It may be possible to achieve some net gains for biodiversity by capturing those losses that currently go unaddressed by the planning system, and strategically offsetting these losses in line with appropriate local policies and priorities in a way that improves ecological connectivity and delivers landscape-scale conservation.

However, there are significant risks associated with offsetting, not least the practical difficulty of recreating habitat and the danger that a market led approach would separate available offsets from the scientific assessment of conservation need, and the local, social value of biodiversity and landscape. The longest historic exercise in the use of offsetting mechanisms operates in the context of wetland loss in the US. Evaluation has found that wetland mitigation is at best problematic, and

for important criteria such as ecosystem function, it does not deliver no net loss.¹ Worryingly, there is no consistent evidence that biodiversity offsetting is an effective way to protect and restore biodiversity, and the UK's own offsetting pilots are not yet complete. Rapid introduction of offsetting in England would therefore be premature.

That offsetting biodiversity loss is incredibly difficult is evidenced by the fact that there are no systems in the world that have been able to demonstrate no net loss of biodiversity, and a wealth of studies showing (often considerable) net losses.² We would therefore question the repeated statements in the Impact Assessment – that offsetting will 'improve biodiversity' – given the absence of any peer reviewed evidence that demonstrates an achievement of no net loss via biodiversity offsetting.

The mitigation hierarchy dictates that offsetting should be a measure of last resort when all efforts to avoid or mitigate harm have been exhausted.³ It cannot be a mechanism to avoid legitimate refusal of planning permission. We concur with the Green Paper's view that we need to focus on the mitigation hierarchy, and the recognition that the hierarchy is inconsistently applied at present. As such, any new focus on offsetting must be accompanied by clear guidance on how to adhere to every stage of the mitigation hierarchy, supported by adequate ecological expertise within LPAs.

We believe that there are a number of key principles which must be followed for offsetting to be a solution to the problem rather than an additional threat.

Any biodiversity offsetting scheme must:

- Adhere to the planning hierarchy of avoiding, then mitigating and finally compensating only unavoidable, residual impacts;
- Build on the existing system of statutory biodiversity protection under the UK planning system and international law, and also existing policy priorities (including the Aichi targets under the Convention on Biological Diversity; European targets under the EU Biodiversity strategy; national targets under Biodiversity 2020; local targets adopted by local authorities under their Local Plan or other strategies);
- Ensure that biodiversity offsetting helps to achieve no net loss of biodiversity, and that this is clearly defined;
- Where appropriate, support net gain through strategic location of offsets;
- Be both mandatory and regulated;
- Be applicable to all developments that generate unavoidable biodiversity impacts, including small-scale developments;

¹ Environment Defenders Office (Victoria) Ltd. (2013) *Reforming Native Vegetation Offset rules in Victoria*.

² Merono-Mateus *et al.* (2012) 'Structural and functional loss in restored wetland ecosystems', *PLOS Biology*; BenDor (2009) 'A dynamic analysis of wetland mitigation process and its effects on no net loss policy', *Landscape Urban Planning*; Hossler *et al.* (2011) 'No net loss for nutrient function in salt marshes', *Ecosphere*; Bull *et al.* (2013) 'Biodiversity offsets in theory and practice', *Oryx*; Suding (2011) 'Towards restoration in ecology: success, failure, and opportunities ahead', *Annual Review of Ecology, Evolution and Systems*; Gibbons (2010) 'The case for biodiversity offsets', *Decision Point*; Matthews & Endress (2008) 'Performance criteria, compliance success, and vegetation development in compensatory wetlands', *Environmental Management*; Quigley & Harper (2006a) 'Compliance with Canada's Fisheries Act: a field audit of habitat compensation projects'; Quigley & Harper (2006b) 'Effectiveness of fish habitat compensation in Canada in achieving no net loss', *Environmental Management*.

³ Department for Communities and Local Government (2013) *National Planning Policy Framework*, paragraph 118.

- Integrate with a strategic approach to local planning, where LPAs work together to deliver the best outcomes;
- Integrate with a strategic programme of nature conservation, e.g. *Biodiversity 2020*;
- Be underpinned by a robust, nationally agreed metric that acts as a disincentive to harm, and which ensures that:
 - irreplaceable habitats do not become part of the system;
 - rare, threatened and vulnerable habitats are not replaced with ones that are common and easy to recreate;
 - species are fully taken into consideration;
 - offsets are additional to compensation for damage to national and international protected areas provided as part of other legislative and regulatory obligations;
 - do not deny people access to nature;
 - offsetting contributes to the achievement of conservation objectives and obligations⁴;
- Use independent, expert quantification and verification of impacts and required offsets in decision-making, ideally provided by the LPA, in order to standardise offsets and create a level playing field. At the same LPAs must have sufficient, and sufficiently trained, staff capacity to manage the system;
- Use offsets which are equivalent and effective;
- Include independent registering, tracking and evaluation of offsets in an accessible central database, which clearly shows the contribution that offsetting is making to existing priorities (as listed above), and the net effect on priority species and habitats⁵;
- Be underpinned by a long-term financial and legal framework for monitoring, evaluation, reporting and implementation; and
- Protect offsets in perpetuity.

In addition, experts have agreed that the Government should take sufficient time in the development of any offsetting system, to address gaps in the knowledge and evidence around how offsetting would work, including learning from the pilots, before establishing a system and a market.⁶ We are disappointed that we do not have the benefit of the analysis of the pilot projects to assist with this consultation.

Whilst the system must allow for refinement and adaptation, it has to be fit for purpose at the point of introduction. It is not acceptable to introduce a sub-standard system on the basis that it will be an 'iterative process'. Such a scenario would lead to iterative losses of biodiversity and we would strongly object to the introduction of a system that does not have the requisite legal, policy and guidance framework in place.

⁴ The Government has obligations under the Convention on Biological Diversity, and, at a European level, responsibility to achieve favourable conservation status for European protected species, duties regarding sites protected by European law and obligations under the European Biodiversity Strategy. Finally, there are also domestic biodiversity obligations and legislation protecting, for example, SSSI quality.

⁵ By priority species and habitats, we mean those listed under Section 41 of the Natural Environment and Rural Communities Act 2006.

⁶ For example at the Offsetting summit that Defra held in May 2013, and at the British Ecological Society meeting, 'The BES and biodiversity offsetting: What does the science say?'

Further ecological research is needed to ensure that any offsetting system is resilient and able to reflect future changes in environmental conditions. An offsetting system must be based on, and reflect, the best available scientific evidence. We note that, after assessing the effectiveness of restoration in biodiversity offsets, a paper by Maron *et al* concluded that ‘many of the expectations set by current offset policy for ecological restoration remain unsupported by the evidence.’⁷ Worryingly, a further paper by Curran *et al* concluded that a ‘restoration offset policy leads to a net loss of biodiversity, and represents an inappropriate use of the otherwise valuable tool of ecosystem restoration.’⁸

3. Response to questions

Question 1: Do you think the Government should introduce a biodiversity offsetting system in England?

Link believes that development remains a serious threat to biodiversity conservation within England and that, despite the recent changes to the planning regime, the current system still fails to adequately value biodiversity. In particular, smaller developments frequently fail to address biodiversity and this leads to considerable cumulative losses. Biodiversity offsetting cannot single-handedly achieve the rapid and widespread restoration of the natural environment and ecosystems required under the UK’s Nagoya biodiversity commitments, the Natural Environment White Paper – *The Natural Choice, Biodiversity 2020*. And it certainly cannot meet the Natural Capital Committee’s aspiration that we should ‘enhance’ our natural capital assets.⁹ It could not therefore be the principle mechanism for achieving restoration objectives (e.g. *Biodiversity 2020* (outcome 1b), or European Biodiversity Strategy (target 2)) and, by definition, serves only to offset damage. Any attempt to expand the ambitions of offsetting to achieve significant biodiversity gain is likely to be challenged as being disproportionate.

Biodiversity offsetting could help to play a role in addressing the patchy attempts to mitigate the loss of nature and damage to landscapes through development; a well-managed and scientifically based biodiversity offsetting regime may offer a positive alternative to the losses of biodiversity under the current planning system. But, done badly, offsetting can undermine biodiversity conservation: poor science, poor and/ or lax standards and poor enforcement could combine to increase biodiversity loss. Before the USA overhauled and properly regulated its wetland offset system in 2008, it was causing a net loss of wetlands.

Recreating complex natural processes is inherently difficult and full of risk, since it involves guaranteeing ecological loss now in return for uncertain gains in the future. Even if the offset is successful, in many cases there will be a temporal loss of biodiversity that can never be retrieved. As such, in-situ conservation is always preferable.

We would consider the failure of LPAs to avoid and mitigate harm from development to be a far more serious problem for biodiversity and local landscape character than the poor implementation of any necessary compensation. This is largely due to a culture of not valuing biodiversity and not giving due weight to policies concerned with biodiversity – a point supported by Defra-commissioned research into the implementation of PPS9, and recognised in the POST note on

⁷ Maron, M., Hobbs, R.J., Moilanen, A., Matthews, J.W., Christie, K., Gardner, T.A., Keith, D.A., Lindenmayer, D.B. & McAlpine, C.A. (2012) ‘Faustian bargains? Restoration realities in the context of biodiversity offset policies’. *Biological Conservation*, 155: 141-148.

⁸ Curran, M., Hellweg, S. and Beck, J. (In Press) ‘Is there any empirical support for biodiversity offset policy?’ Ecological Applications; Ecological Society of America on line pre-print (www.esajournals.org/doi/abs/10.1890/13-0243.1?af=R).

⁹ Natural Capital Committee (2013) *The State of Natural Capital*, p.5.

planning and biodiversity decisions.¹⁰ Government must ensure that LPAs and the Planning Inspectorate give appropriate weight to biodiversity and landscape policies, just as they do to, for example, housing policies.

LPAs need better guidance on how to avoid and mitigate harm, and it is crucial that a single guidance document is published on every aspect of the mitigation hierarchy. This must contain very clear guidance on how to assess harm, avoid harm, mitigate harm, and finally, as a last resort – offset harm.

It is because of the uncertainty and risk associated with offsetting that the mitigation hierarchy must be adhered to, as required by the NPPF. Offsetting should only ever be undertaken when all attempts to avoid harm or mitigate it have been exhausted, in line with the NPPF and local policies. We welcome the statements in the Green Paper that the mitigation hierarchy is adhered to, but this assertion is undermined and contradicted by the explicit desire for offsetting to free up more land on site for development (because mitigation will no longer be necessary). This is a blatant disregard of the mitigation hierarchy, to which we strongly object.

Question 2: Do you think the Government's objectives for the system and the characteristics the Government thinks a system would display are right?

Improve delivery

We accept that the Government hopes that the system would be easier and quicker for developers than current compensation measures used as part of the mitigation hierarchy; but it must also deliver measurable benefits for biodiversity in the form of at least no net loss of biodiversity from development. We are concerned that any primary focus on making development easier *per se* or the need to generate a market led system that would distort consideration of biodiversity, generate perverse incentives or generate other outcomes detrimental to biodiversity conservation.

We are also concerned that this objective tips the balance in favour of developers and may result in some companies trying to push through inappropriate development, or increase pressure on local authorities to approve development if developers agree to fund an offsetting scheme.

Achieve net gain for biodiversity

We strongly support the Government's desire for a new system to address biodiversity losses that are currently ignored. Such a step is fundamental in stemming the net losses of biodiversity that currently result from planning decisions. For this to occur, the new system must capture the losses from smaller scale developments that currently go unaddressed - and this means the new system has to be applied to all developments that generate unavoidable biodiversity impacts.

Large and complex development projects will typically require bespoke biodiversity mitigation and compensation packages. A standard and explicit system for assessing potential harm to biodiversity would only bring marginal conservation benefits if solely applied to major developments, whereas there would be significant benefits if it was applied to all developments that generate unavoidable biodiversity impacts. We would consider the capturing of the small-scale cumulative losses to be the main potential benefit of a new system.

Furthermore, there is significant scope to turn these small-scale cumulative losses into cumulative gains, by strategically locating offsets in a way that improves ecological connectivity and delivers landscape-scale conservation, in line with the Government's ambitions in *The Natural Choice*. In order to maximise this potential, neighbouring LPAs will need to work with each other and with their

¹⁰ David Tyldesley Associates (2012) *Review of the implementation of PPS9*; Parliamentary Office of Science and Technology (2013) *Biodiversity and Planning Decisions*, www.parliament.uk/briefing-papers/POST-PN-429.

Local Nature Partnerships (LNPs), and other local and national biodiversity information sources for example the National Character Area assessments, Species Taxon Groups, specialist NGOs,¹¹ to identify strategic locations where cumulative offsetting could do most to improve ecological connectivity and deliver landscape-scale conservation. This strategy should then be embedded in the Local Plan. Strategic locations should be based on a proper understanding of ecological functional areas rather than necessarily local authority boundaries.

However, it is also important to recognise the limitations of offsetting. For instance, it is important to be clear that offsetting is direct compensation for a specific loss that has only been allowed to occur because it can be compensated for. So whilst there is some scope to turn small-scale losses into net-gains through strategic offsetting, it only has limited potential to address historic losses. *National* network level effects beyond a strategic level are risky. We cannot, and should not, rely on the goodwill of developers to achieve our national commitments to protecting and enhancing species and habitats, especially since the Government has clearly stated that it will not increase costs to developers. For these reasons we are significantly concerned that any attempt to achieve the *Biodiversity 2020* targets via offsetting would fail, leading to significant failure for biodiversity protection and enhancement.

The current proposals suggest that it may be acceptable for offsetting to be applied in different geographical locations to those where the development impact is taking place. This is not acceptable as a broad brush approach and extreme caution should be exercised when developing proposals around this concept from both ecological and social perspectives. For example, if you have a habitat that supports a range of species that are associated with this habitat, it provides no compensation to those impacted populations to locate the offsetting at distances that makes it outside of their range. Biodiversity offsets should primarily aim to deliver for the needs of the species and habitats being compensated for and be flexible enough to ensure this. The optimal location may be local or it may need to be considered strategically at either a regional or national scale.

Furthermore, offsetting cannot fund wider conservation or, for example, compensate for the loss of agri-environment funds. Such a scenario would simply amount to offsetting the harm of a development at the expense of existing conservation activity, and would result in net-losses of biodiversity. Offsetting has a potential role to play in delivering some of the Government's ambitions for conservation that are set out in *Biodiversity 2020*. The vast majority of the work that is needed to achieve these goals will still, however, require funding that cannot include money from biodiversity offsetting. In any case, assuming that the volume of units derived from residual impacts is small, the overall contribution of offsets to delivering the large ambitions stated in the Lawton review are miniscule.

It is also important to recognise that while strategically locating offsets has the potential to deliver ecological gains, distancing communities from biodiversity can also incur a social cost. For instance, taking a small wildlife reserve from an ecologically deprived location could have a significantly negative impact on that community's quality of life. LPAs will, therefore, need to carefully balance the needs of people and wildlife, with both issues being explicitly addressed when planning for the strategic implementation of offsets.

In addition, achieving net gain via national networks pulls against the social and cultural need for offsetting to be as local as possible; as the Secretary of State recently said, offsetting should be 'reasonably local.'¹² We share the concern that levels of development and offsetting are needed to

¹¹ As required by the Duty to Co-operate.

¹² House of Commons Environmental Audit Committee, evidence session 23 October 2013, www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/news/biodiversity-offsetting-evidence-1/.

generate a market for offsetting. We see this as a major risk, primarily as this may create a perverse incentive to increase habitat damage, but also because scope for appropriate offsetting in appropriate locations may be hard to achieve.

A baseline for measuring 'net loss', should be provided.

Avoid additional costs to developers

We acknowledge the Government's commitment to avoid additional costs to developers over this spending period, but this commitment should not come at the expense of the Government's commitments to restore and enhance the natural environment. That compensation can come at additional cost to developers is only reasonable, as it is the developer benefitting from the development, and the development is causing the damage. If a developer cannot afford to compensate for the environmental cost of a development, the development should be refused. It would not be acceptable for a LPA to accept inappropriate compensation from a habitat bank or in a specific location, simply because it is the cheaper option for the developer.

In fact, biodiversity offsetting should not present a new cost to developers – it simply provides a mechanism for implementing the protection of the natural environment already required as a result of residual impact that can't be avoided or mitigated. It is developers who have not been meeting the requirements to date who may see an increase in costs.

A system of biodiversity offsetting would have to adhere to the 'polluter pays' principle, which underpins the Government's commitment to 'achieving a sustainable economy.'¹³

Guidance must be clear that, after steps to avoid harm and to mitigate harm have been taken, applications which are still likely to result in significant harm must be refused unless the LPA is confident that appropriate compensation is likely.

Nonetheless, we are concerned that some of the wider aspirations of offsetting will result in a net increase in costs – if these are not to be met by developers, where does this responsibility lie? Will there be an expectation on offset providers to fund long-term management of sites?

Question 3: Do you think it is appropriate to base an offsetting system on the pilot metric? If not is there an alternative metric that should be used?

A robust, national metric that focuses on ecological and social considerations is vital. It should provide the parameters within which local authorities can decide on local distinctiveness, and should also include cumulative biodiversity and environmental limits. It must also take account of the biodiversity potential of the land.

All offsets must be subject to monitoring for the duration of any agreement, and biological data from the offset site and the developed site should be held in a national database. These data are crucial to understanding the net impact of offsetting on biodiversity, and for informing the refinement of metrics for species and habitats. They are also crucial to understanding the cumulative impacts of development on environmental limits.

The value which people place on their local nature is vitally important for health and wellbeing, and should be a key consideration. This is in line with the commitment in *The Natural Choice* to 'improve access to nature in local neighbourhoods, giving more people the opportunity to gain more benefits from connecting with it.'¹⁴ It is also in line with the evidence. For example, we know that the benefits

¹³ HM Government (2005) *Securing the future - delivering UK sustainable development strategy*, www.gov.uk/government/publications/securing-the-future-delivering-uk-sustainable-development-strategy.

¹⁴ HM Government (2010) *The Natural Choice: securing the value of nature*, p.49.

of access to nature include benefits to businesses, such as reduced sick days, increased productivity and greater staff retention.¹⁵

The offsetting metric developed for the pilots offers a valuable starting point for discussion: an assessment of the issues that the pilots – including the unofficial pilot scheme in Somerset – have had with the metrics should be a first step in refining and developing a more inclusive metric. It would not be appropriate to base an offsetting scheme on this metric until it has been adequately appraised, which means waiting until the pilots themselves have finished.

Following this appraisal and development, more work needs to be done to make the pilot metric a comprehensive assessment of the impacts. In particular, species, measures of biodiversity connectivity should be included in metric, and there should be national guidelines that set minimum scores for nationally important priority habitats and species. The metric must also have systems to reduce or buffer uncertainty, without which offsets would be more likely to fail.

In addition, the current metric does not account for landscape-scale connectivity provided by the original habitat. Any connectivity function provided by the original site does not have to be replicated by the receptor site.

Question 5: Do you think offsetting assessment should be used when preparing a planning application for a project?

We strongly believe that there should be a mandatory ‘biodiversity assessment’ that is submitted alongside a planning application (see Question 9 on thresholds). This should always include an assessment of existing biodiversity and the potential harm resulting from the proposal. However, only under certain circumstances will the biodiversity assessment contain proposals for offsetting significant harm, when it cannot reasonably be avoided or mitigated. An ‘offsetting assessment’ implies a presumption that offsetting will occur. Such an assumption is unacceptable and undermines the fundamental principle that biodiversity offsets must always adhere to the mitigation hierarchy.

Question 6: Do you agree that it should be the responsibility of planning authorities to ensure the mitigation hierarchy is observed and decide what offset is required to compensate for any residual loss? If not, why, and how do you think offsetting should be approached in the planning system?

It should be the responsibility of planning authorities to ensure the mitigation hierarchy is observed and decide what offset is required to compensate for any residual loss. This should be supported by local development plans that provide an assessment of local biodiversity needs and priorities, and ensure appropriate conservation goals are identified and integrated into planning decisions and forward planning. Local Authorities also have a duty to consider the aims of LNPs when planning for strategic issues and identifying suitable areas for receiving offsets. However, just over a third of local authorities have the necessary in-house skills.¹⁶

There is a need for this process to be open, clear, and subject to challenge where necessary by both directly affected parties and third party interests.

¹⁵ Natural England (2012) *Microeconomic Evidence for the Benefits of Investment in the Environment – review*, <http://publications.naturalengland.org.uk/publication/32031>.

¹⁶ 35% of local authorities in England had access to an in-house ecologist. Association of Local Government Ecologists (2004) *Implications of the Comprehensive Spending Review on biodiversity work within local government*.

The metric applied to offsetting is only a simple articulation of what will often be a complex decision. It takes significant ecological expertise to be able to assess the ‘value’ of a site and to understand how, or if, its loss can be compensated. Such an exercise will necessarily require a degree of judgement, and while it is the responsibility of the developer to provide the initial assessment, an LPA cannot fulfil its role as a competent decision-maker if it is unable to verify the information.

The integrity of, and public faith in, the planning system depends on independent arbitration. The decision to approve an application may hinge on matters relating to biodiversity and it would be unacceptable for a local planning authority to have to simply accept the developer’s recommendation on offsetting – even if the report is written by an ‘accredited’ expert. Accredited or otherwise, a consultant is ultimately being paid by a developer, who will have a clear vested interest in obtaining planning permission. Likewise, we would not consider a broker to be independent, as they would also have vested commercial interests in a development proceeding. We suggest that an effective programme of compliance auditing be established alongside this system of process of independent arbitration to ensure that approved schemes are fully implemented.

We would strongly recommend a system of accreditation but this cannot be a substitute for LPA ecological expertise. Many planning consultants are ‘accredited’ by the Royal Town Planning Institute, but no-one would seriously suggest that this negates the need for local authority planning officers. It is equally unacceptable for LPAs not to have any ecological expertise, simply because consultants are accredited.

In addition to using in-house ecological expertise, LPAs should, where appropriate, also consult outside experts, including Natural England, LNPs, local record centres and competent NGOs.

Local authorities also need access to good data often with interpretation provided. Mechanisms, such as local record centres, need to be available, and supported to provide this function.

Question 7: Do you think biodiversity offsetting should have a role in all development consent regimes?

Yes, if biodiversity offsetting were introduced. Damage to biodiversity and landscape character happens at all scales and across all developments whether considered by a LPA or as part of a major infrastructure project. We believe that if both the mitigation hierarchy process and offsetting were used following national guidelines for all developments (including highways), there would be a saving in terms of the need for guidance, advice and cost.

Question 8: Do you think developers should be able to choose whether to use offsetting? If so, what steps could Government take to encourage developers to use offsetting?

In order for any biodiversity offsetting scheme to be effective it would need to be, mandatory and regulated, and part of the plan-led system. We do not believe that any of the other options, especially the Government’s favoured permissive option, will deliver on the core objective to deliver no net loss. Evidence from the pilots suggests that the range of incentives already deployed to engage developers and incentivise their involvement have more or less failed to do so. The overwhelming academic opinion is that offsetting either only provides a neutralising effect only with strict rules and compliance¹⁷ or is unlikely to achieve this effect at all.¹⁸

¹⁷ Bekessy, S., Wintle, B., Lindenmayer, D., McCarthy, M., Colyvan, M., Burgman, M., Possingham, H. (2010) ‘The Biodiversity Bank cannot be a lending bank’, 3 *Conservation letters* 151.

¹⁸ Walker, S., Brower, A., Stephens, T., William, L. (2009) ‘Why battering biodiversity fails’ 2 *Conservation letters* 149.

A mandatory, regulated scheme would create certainty and consistency for both developers and local authorities. It would also save local authorities having to run two systems of dealing with the biodiversity impacts of development.

The decision as to whether offsetting is appropriate in any individual planning application will come through the planning decision process.

Question 9: If you think developers should be required to use offsetting do you think this requirement should only apply above a threshold based on the size of the development? What level should the threshold be?

No. As discussed earlier (Question 5), if a mitigation hierarchy assessment was undertaken for all development proposals then only a minority of applications would need to be considered for offsetting. The introduction of an arbitrary threshold is both counter-productive and misleading, and it offers developers the opportunity to parcel large schemes into smaller lots purely to avoid the requirements to undertake an offsetting assessment. Offsetting should therefore be applicable to all new developments that generate unavoidable biodiversity impacts, which will capture the smaller developments that often fail to compensate for harm. We would consider the capturing of the small-scale cumulative losses to be the main potential benefit of a new system, and this potential must be realised.

Offsetting applied at this scale could help to address the fact that, at present, it is frequently only larger and more complex schemes that address biodiversity (particularly those requiring Environmental Impact Assessment). Applications outside of this boundary infrequently consider biodiversity and assessment of potential harm is often poor.¹⁹ This is a major factor in the alarming losses of wildlife inside and outside of protected areas. Indeed, these cumulative losses and the fragmentation of habitats outside of protected areas have significant negative impacts on our protected area network.²⁰

A standard and explicit system for assessing potential harm to biodiversity would only bring marginal conservation benefits if solely applied to major developments - whereas there would be significant benefits if it was applied to all new housing development, new commercial buildings and to large commercial extensions.

Question 10: Do you think there should be constraints on where offsets can be located? If so what constraints do you think should be put in place?

Yes. Any offsetting should in principle be as local to the original site as possible, in order to best support ecological coherence and enhancement (including limiting damage to local landscape character) and support the interaction of people with nature. It is important that no net loss of accessible public space is incurred. We note recent research which demonstrates the importance of access to nature for children and, at the same time, the low number of children who are currently connected to nature.²¹ The benefits of access to nature for children include positive impacts on education, physical health emotional wellbeing and personal and social skills.²²

¹⁹ David Tyldesley Associates (2012) *Review of the implementation of PPS9*.

²⁰ Lawton *et al.* (2012) *Making Space for Nature: a Review of England's Wildlife Sites and Ecological Network*

²¹ RSPB (2013) *Connecting with nature: finding out how connected to nature the UK's children are*, www.rspb.org.uk/ourwork/policy/education/research/connection-to-nature.aspx.

²² HM Government (2011) *The Natural Choice: securing the value of nature*, p.12, HM Government: London; London Sustainable Development Commission (2011) *Sowing the seeds: reconnecting London's children with nature*, Greater London Authority: London.

The Government's Accessible Natural Greenspace Standard²³ recommends that everyone should have greenspace:

- of at least 2 hectares in size, no more than 300 metres (5 minutes' walk) from home;
- at least one accessible 20 hectare site within two kilometre of home;
- one accessible 100 hectare site within five kilometres of home; and
- one accessible 500 hectare site within ten kilometres of home; plus
- a minimum of one hectare of statutory Local Nature Reserves per thousand population.

Offsetting should be integrated into regional priorities via local mapping which shows the areas of greatest biodiversity and landscape value (i.e. those least appropriate for development), biodiversity potential (i.e. potential offsets) and least biodiversity value (i.e. most appropriate for development). To support this, local partnerships, such as LNPs, should develop ecological network, National Character Area and Nature Improvement Area visions and maps. These should be based on up-to-date data and information and be an integral part of the Local Plan. Mapping should also ensure that land which has already been allocated for development is not allocated as a receptor site for an offset.

It should be noted that some habitats can only be recreated in certain locations. Furthermore, it would be nonsensical for offsetting to proceed without reference to the extent of habitats or species lost against those being gained, and there needs to be scope to steer appropriate outcomes by directing locations for offset provision. Although it will be up to the LPA to decide where the offset is delivered, it would be unacceptable for the offset to be located on a cheaper site if this compromised its ecological or social objectives.

As stated earlier, there could be significant gains from strategically locating offsets in accordance with jointly produced supplementary planning documents. However, if the offset is located outside of the authority that granted permission and where the development took place, either the recipient authority or the authority that granted permission must have a clear responsibility to enforce the offset and they must have the ability to do so.

It is concerning that there is no mention of nationally designated landscapes in the Green Paper. Any development would also need to meet the major development test in paragraph 116 of the NPPF. If a development were, as a last resort, approved in a National Park or AONB after application of the mitigation hierarchy, and offsetting was deemed necessary, then it should be located within the boundary of the designated area.

By contrast, offsetting derived from development elsewhere should not be allowed within National Parks, as this equates to additionality, because these areas should already be being managed for biodiversity benefits. This is the case within Australian law (Threatened Species Conservation Act 1995). In addition, it would not make sense for offsets to be located in areas already earmarked for any kind of long-term development, or sites at risk of coastal erosion.

Question 13: Do you think offsetting should be a single consistent national system without scope for local variation?

The use of a single, consistent, nationally agreed framework, including metrics and guidance, would make for a more straightforward and auditable scheme. However, there should be the opportunity to vary local targeting of both donor and receptor sites in the light of local biodiversity knowledge and local opportunities with partners that might deliver over and above the wildlife gains detailed through the scheme.

²³ Natural England (2013) 'Accessible Natural Greenspace Standard (ANGSt)', www.naturalengland.org.uk/regions/east_of_england/ourwork/gi/accessiblenaturalgreenspacestandardangst.aspx.

The national framework must be accompanied by national guidelines that set minimum scores for nationally important priority habitats and species, so that, for example, a local authority in Dorset could not set a low score for nationally rare heathland, on the basis that it is not considered rare in that district.²⁴

However, the distinctiveness of a habitat may vary depending on local context. While LPAs must adhere to a consistent framework, there must be scope to adjust scores within that framework so that they reflect the local value of a habitat. For example, woodland may be extremely rare in an urban authority and this would need to be reflected in the 'score' used to express its value. It will be important that LPAs have a sufficient evidence to justify at appeal any decision to elevate a non-nationally important habitat or a habitat of low-quality in to a higher tier. Such evidence will require a proper assessment of the ecological characteristics of the local authority, and it may sometimes be appropriate to take into account population densities and access to nature.

As noted in Q.10, LNPs could have a key role to play setting local priorities within a national framework, but there would need to be strong guidance, good information and support to ensure they were fit for purpose to undertake this task.

Question 14: Do you agree with the proposed exceptions to the routine use of biodiversity offsetting? If not, why not? If you suggest additional restrictions, why are they needed?

Offsetting of any habitat that is high value should only ever be a last resort and we would object to the casual use of the word 'routine'. We agree that any new offsetting scheme should not over-ride pre-existing protection provided through legislation, including planning protections around Natura 2000 sites, Green Belt, Sites of Special Scientific Interest (SSSIs), protected landscapes (including AONBs and National Parks) and protected species.

Any offsetting of Natura 2000 sites (i.e. any application affecting the integrity of the Natura 2000 network), must be determined in accordance with Article 6(4) of the Habitats Directive. Likewise, any compensation for development affecting SSSIs, irreplaceable habitats or protected landscapes only occurs if the decision to grant approval has met the strict tests that are set for development affecting these sites, in paragraphs 118 and 115/ 116 of the NPPF respectively.

However, if a democratic decision is made that allows development there should be scope within the metrics to recognise the national importance of these habitats.

Question 15: Which habitats do you think should be considered irreplaceable?

Any habitat of principal importance should be considered irreplaceable if the timescale involved in recreating it goes beyond the planning horizon. Such habitats include: ancient woodland, ancient/veteran trees, ancient hedgerows and ancient soils (including mediaeval meadows/ ancient grasslands (ridge and furrow, and flood)), limestone pavement, dunes, peatbogs, mires, lowland raised bog, raised bog, aquifer-fed naturally fluctuating water bodies, water bodies, inland rock outcrops and scree, and maritime cliff and slopes.

Other habitats show variation in ease of creation and there are a number of habitats for which there is lack of knowledge or experience of successful creation, where caution should be exercised in automatically allowing offsetting. We would suggest that there is a need to provide more guidance on the level of risk involved in creation of the range of habitats

²⁴ The definition of nationally important habitats and species should, initially, be based on the BAP lists for priority habitats and species, but will need continual revision to reflect changes in conservation status.

As stated above, this should not imply that other habitats can simply be lost, replaced or traded; collectively our habitats and species represent irreplaceable natural capital. Assessments of local impacts needs to be set in the context of local geology and distribution of habitats, and the context of national conservation priorities. Locally distinctive or highly rare habitat types e.g. alkaline fens, for which like-for-like offsets cannot be reasonably or practically found within a meaningful spatial scale should be considered irreplaceable and development should not be allowed to go ahead in these instances. Equally, some sites should be conserved as a priority because of their national importance.

The lack of accounting for below-ground diversity, the extremely long timescales involved in restoring below ground diversity and effects this has on ecosystem functioning are also a concern which has been raised by ecologists.

Question 16: Do you think offsetting should in principle be applied to protected species?

In principle, we believe that all species should be included in the assessment of potential harm that a development would cause. The complexity of including species in the metric is part of the reason that we believe time will need to be taken in developing an offsetting system. Where protected species are found, relevant existing legal protections should be applied (see Q.14). Since offsetting should be a disincentive to harm, this should mean that a potential impact on a protected species should place more emphasis on avoidance, and mean that a development is less, rather than more likely to receive planning permission in its current form.

As noted in Q.14, where a development would result in harm to species – or site – protected under the Habitats or Wild Birds Directives, the development would have to meet the standards of the Habitats Regulations. These are such that if a species protected under European law is found, offsetting is very unlikely to be an acceptable option. Nonetheless, a well-developed species-led metric might be of some use in assessing impact.

However, biodiversity is not just about rare and protected species. In order to make the programme resilient to change we believe that all Species of Principal Importance for Conservation in England (Natural Environment and Rural Communities (NERC) Act [Section 41]) and those included on Red Data Lists, Nationally Scarce lists (where available) and Regionally Scarce lists (endangered and threatened species) need to be accounted for when offsetting habitat.

Question 17: Has the Government identified the right constraints and features that need to be addressed when applying offsetting to protected species?

We welcome the intention to invest in underlying data, and to use this to give developers a better, earlier idea of where important populations are to be found. Building a better picture of species populations nationally is vitally important, but we note that it should always be complemented by robust pre-application surveying on proposed sites. Poor surveying of invertebrates is a particular problem. Most ‘unexpected costs and delays’ can usually be avoided by proper project planning, and ensuring that consideration is given, at an early stage of the project, to the possibility of protected species being present.

Ecological surveys should take place at the right time of year, in order to get a true picture of biodiversity and landscape value. For example, a hedgerow survey should take place between spring and autumn, as it is likely to be very difficult to assess the species richness of an ancient hedgerow in winter. All developers ought to be aware of these timing constraints and plan to avoid them.

Pre-application surveying will allow developers to identify which species are actually present, which is particularly important for small populations of rare species. It will also help to build the national

picture of species populations. We do not envisage that, in the foreseeable future, the underlying data will be sufficiently strong to allow offsetting to be a 'default' option.

Questions 18 and 19: Do you agree that great crested newts should be the first area of focus? Do you have any comments on the Government's thinking on how to apply offsetting to great crested newts?

We refer to the detailed response of our member organisation, Amphibian and Reptile Conservation.

Question 20: Should offsetting be considered for any other species in the near future taking account of the constraints on species offsetting?

As per our answer to Q.16, we think that a robust metric that includes all species should be developed and trialled in advance of implementing any system of biodiversity offsetting. Currently, there is a lack of understanding about many species distributions and their requirements and population dynamics. If this approach is taken forward, there will therefore need to be investment in both local records centres and scientific work to establish a reliable and up to date evidence base. A species profile database should ensure that offsetting adequately delivers for species that have no faithful association with a particular habitat/ range of habitats (as occurs in the Australian system).

Question 21: Do you think conservation covenants should be put in place as part of an offsetting system? If they are required, who do you think should be responsible for agreeing conservation covenants? If not, how else do you think offsets could be secured for the long-term?

Conservation covenants or another legally binding mechanism should be an essential and integral part of delivering an offsetting scheme. At present there is no clear legal mechanism available for securing offsets. While the planning obligations under s106 of the Town and Country Planning Act 1990 provide some opportunities for offsets, this is constrained by requirements in the Community Infrastructure Levy ("CIL") Regulations 2010 (regulation 122). By contrast, conservation covenants offer a positive mechanism by which to secure certain key aspects required for implementation of a biodiversity offset system that will succeed in securing no net loss of biodiversity in perpetuity. They would allow for cheaper biodiversity offset options as they would not require the organisation offering the offset to buy the land.

As currently conceived by the Law Commission, the mechanism clarifies the enforcement and non-compliance measures safeguarding the conservation benefits should a covenant not be complied with. It would be improbable for conservation covenants associated with offsetting to be entered into without there being substantial funding packages to cover long term management and monitoring costs. Clearly the feasibility of this remains untested, but a reasonable security of permanence is required for conservation covenants to be a reliable mechanism to underpin offsetting.

The covenant must also be agreed and signed by all parties prior to granting of permission. It would not be acceptable to grant permission subject to a condition that requires a legally binding compensation agreement to be put in place. If permission is agreed subject to such a condition, the LPA would be under undue pressure to agree to an unsatisfactory agreement if a length of time had passed without being able to find, for example, a more appropriate site or provider. That the covenant should be secured prior to the granting of permission must be clearly set out in any guidance. This guidance should also include model terms.

Link believes that, if conservation covenants can ensure a site is protected in perpetuity, then it would be a useful addition to the methods available to deliver biodiversity offsetting. It would provide a legal mechanism that ensures a developer has to provide, and maintain, an agreed level of

commitment. Offsetting must be managed in the long-term to enable the new habitats to develop to a satisfactory level.

We are, however, significantly concerned that the Green Paper says that ‘the covenant could be released if, through a planning decision, it was considered developable land.’ This would mean that biodiversity offset site could be damaged with no certainty of compensation being delivered, and is therefore unacceptable. If the offsetting scheme is to become a trusted part of the planning system then it should not allow an offset site to be developed.

We would also raise a concern about the scope for enforcement and the funding arrangements. For example, if those bodies responsible for either enforcing or delivery of the covenant change their legal status or experience financial difficulties.

Furthermore, the offset site should be given the same level of protection through the planning system as the site that was developed. So, for instance, if a Local Wildlife Site is developed, the offset site should receive the same level of protection as a Local Wildlife Site is given through the Local Plan.

If local authorities are to be responsible for agreeing covenants, they will need to be resourced to undertake this task.

Question 22: Do you think management agreements should be put in place as part of an offsetting system? If they are required, who do you think should be responsible for agreeing management agreements?

Yes. Natural processes require very large areas of natural land that are seldom found in England. This renders most habitats and species, and thus most offset sites, in need of continual management to achieve favourable condition (habitats) or conservation status (species). Ongoing management is thus an additional cost on top of the upfront costs associated with creating the habitat.

In this context, a management agreement is therefore an important tool. The type and nature of the habitat to be created and its subsequent management should be outlined within the offsetting assessment and agreed by all parties as part of the development permission. All agreements should include a fully resourced monitoring and evaluation programme, to ensure that the regime continues to be effective and meet the ecological objectives set. The proposal for conservation covenants includes an ability to prescribe and audit a management regime.

If local authorities are to take responsibility for management agreements, they will need to be resourced to undertake this task. An effective programme of compliance auditing may be needed including scope for enforcement, support or provision of additional funds (e.g. for unexpected problems) to ensure effective implementation. Cost of both remedial and ongoing management and responsibilities for funding/ funding mechanisms need to be considered fully at the outset.

Question 23: Do you think an offset register should be put in place as part of an offsetting system? If so, who do you think should be responsible for maintaining an offset register?

There should be an accessible, independent register of offsets, where you could register intent to create an offset. Equally an offset register will avoid receptor sites being double counted. The register could also usefully be used to keep track of changes, ownership, progress with implementation, potential connectivity, oversight and enforcement. We would advocate that offset land be identified as a land charge.

Question 24: How long should offsets be secured for?

For most habitats and species the offsets should be secured in perpetuity, if offsetting is to have a meaningful impact on biodiversity conservation and local landscape character.

We would only support short-term proposals under exceptional circumstances, for example, where ownership is transferred to a stable organisation with a clear conservation remit that can afford ongoing maintenance costs.

Question 26: Do you think biodiversity offsetting should be “backdated” so it can apply in relation to any planning applications under consideration at the point it is introduced?

No, because it would be difficult to do retrospectively and it would be an unfair burden on developers.

Question 27: Do you think an offsetting system should take a national approach to the question of significant harm and if so how?

The severity of impacts on biodiversity and social needs will depend on local circumstances, for example whether species populations in question are, or are not, locally or nationally important, and how the site interacts and connects with the surrounding landscape/ other relevant habitat. We also note that there is a distinction between the ecological and social decision around whether a harm is significant, and the planning officer’s decision over whether a harm can be avoided.

In making these decisions, local authority officers should be working with their Local Plan and biodiversity strategy, to ensure that decisions reflect local circumstances and priorities. Biodiversity offsetting should, in this way, support the plan-led system and not undermine it by operating a parallel scheme of offsets that do not correspond to pre-identified local needs and priorities.

However, guidance should be very clear that development of a high value site should constitute significant harm and that the site must be protected accordingly. This means that permission should only be granted on sites that have a high ‘score’ in exceptional circumstances. The bar for what constitutes necessary development should rise commensurate with the score - and the likelihood of granting permission should decrease. Furthermore, if a high value habitat is lost, we would expect that habitat to be replaced like-for-like, wherever possible.

Question 28: Do you think any additional mechanisms need to be put in place to secure offsets beyond conservation covenants? If so why and what are they? If this includes measures not listed above, please explain what they are.

Any offset would require robust long-term monitoring, compliance auditing and enforcement to ensure that biodiversity aims are being met, backed up by clear legal and financial arrangements. Without clear legal and financial arrangements in place at the outset there is no guarantee that an offsetting provision would be reliable. A robust legal agreement must set out clear responsibility for the implementation and management of an offset. Critically, this has to enable enforcement to be taken against a specified party at any time, for the duration of the agreement. In particular, it must also be possible to take punitive action against a third-party that fails to fulfil its obligations. As such, it is inconceivable that a third-party would not be bound by a legal agreement at the planning stage, as the delivery of the offset is integral to the decision to grant planning permission.

It is, therefore, alarming that the Green Paper suggests that provision of an offset by a third-party could avoid the need for detailed requirements regarding compensatory measures in section 106 or similar agreements. You cannot grant planning permission, subject to a legal agreement, if the legal agreement does not secure all of the measures necessary to make the development acceptable.

Funding for long-term costs will need to be found before any biodiversity offsetting system is put in place.

Holding a trust in perpetuity for the management of the land provides some protection, since this management payment can be shifted to an alternative provider in the case of negligence by the offset manager. If the offset is small and fails in spite of the best efforts of the provider then the risk metrics should be sufficient to offset the harm.

However, if the individual offset is large it will need to be covered by liability insurance, since offsets can fail despite the best efforts of the provider. If the offset failure is due to negligence then some form of insurance should recover the lost costs, and which should then be transferred, along with the remainder of the funds, to a new provider.

Question 29: Do you think there should be constraints on what habitat can be provided as an offset? If so what constraints do you think should be put in place, and how should they work in practice?

Offsets must deliver at least the same amount of biodiversity value as is to be lost and there should be no down-trading of habitats. In any area there should be the ambition to achieve the right amount of the right habitats in the right places, supported by effective local biodiversity plans with measurable outcomes. Because the range of ecological values involved is complex there is a risk that these biodiversity values within the metric will be over-simplified. The metric should therefore ensure that offsets have a strong, robust scientific evidence base that is supported by ongoing research and monitoring: it is essential that the knowledge is there to support the work being undertaken. At present that knowledge is at best not consistently understood.

We believe that the hybrid model of ring fencing some habitats for like-for-like offsetting is the most appropriate option. There should also be a clear justification for any habitat that is not replaced like-for-like, and the alternative should meet the broader objectives of local biodiversity strategies.

The metric should apply like-for-like habitat, if the habitat up for development is:

- (a) Technically difficult to create;
- (b) Highly distinctive;
- (c) Habitat being under-delivered from the perspective of *Biodiversity 2020*.

Habitat types with low distinctiveness should not necessarily be replaced with any other habitat type as this is unlikely to support the composition of species present (or which could be present). We therefore suggest that trade up should ideally be within the same habitat type increasing the quality of that same habitat. This is a lower risk approach that accounts for the potential loss of priority species.

Question 30: Do you agree an offsetting system should apply a strategic approach to generate net ecological gain in line with *Making Space for Nature*? If so, at what level should the strategy be set and who by? How should the system ensure compliance with the strategy?

Adopting a strategic approach would provide significant scope to turn small-scale cumulative losses from development into cumulative gains, by strategically locating offsets in a way that improves ecological connectivity and delivers landscape-scale conservation, whilst taking local strategic planning and biodiversity considerations into account – in line with *Making Space for Nature* and the Government's ambitions in *The Natural Choice*. Local biodiversity opportunity maps will be required to identify strategic opportunities for biodiversity enhancement. There should also be an appropriately local approach taken to maintaining and enhancing the link between people and nature (please see answer to Q.10).

In order to maximise this potential, neighbouring LPAs will need to work with each other and with their LNPs²⁵, to identify the right location for offsets. This strategy should then be embedded in the LPA's Local Plan.

Question 31: Do you think habitat banking should be allowed? Do you think a provider must show intent to create a habitat bank to be allowed to sell it as an offset? Do you think habitat banks should be “retired” if they are not used to provide an offset? If so, after how long?

Habitat banking has the potential to reduce the risks associated with offsetting. As such, we would not object to habitat banking in principle. However, it is crucial that the availability of banked habitat does not distort the decision-making process. It would, for example, be completely unacceptable for a LPA to agree to inappropriate compensation of the wrong type or in the wrong location, on the basis that there was not a preferable offset available. Habitat banking must not take away from the primary principle of ensuring offsets deliver for the ecological needs of the species and habitats affected by a development. There is also significant concern that this would remove the link between developers and the harm they cause, and that it would be difficult to ensure ‘as local as possible’ or like-for-like (or better) offsetting. Link members are also concerned that this could lead to trading, which would further damage the local dimension of biodiversity loss and impact on local landscape character.

Furthermore, we would be concerned that if existing areas of ‘good habitat’ are used to offset development as this would lead to a net loss of biodiversity. There is therefore a risk that this may encourage pre-emptive damage to sites to ensure they remain sub-optimal and therefore ‘tradable’. This may require formal designation of areas that may be available for offsetting and identification of those, by virtue of their biodiversity interest that are not. This will vary between habitats and localities and would need to be determined via some quality assessment and may not simply be related to a fixed time period – however for many habitat types this may be expected after 10-15 years. This in turn may need an additional level of land designation (and ‘baseline’ assessment) to ensure offsets do not result in net losses. Having a clear spatial plan and clearly defined biodiversity goals may provide a framework for making such assessment.

Guidance must be very clear that if an appropriate offset cannot be secured, the application must be refused. The market must be dictated by the decision, not vice-versa.

We think the provider *should* show intent to create a habitat bank in order to be allowed to sell it as an offset. This may not be easy. However, banking would make it more difficult to ensure that offsetting was additional, because of the inevitable difficulties in ensuring that those creating habitat bank receptor sites were doing it with the sole intention of using it as an offset. A potential recourse would be for the owner to make a declaration when submitting the site as a potential offset.

If commuted sums were taken by LPAs for smaller developments in lieu of any offset provision, the monies would have to be ring-fenced and used for conservation to enhance and add to actual area of habitat in good ecological condition, and there must be a robust legal agreement in place with the subsequent offset provider that can be enforced through a civil mechanism.

We do not think habitat banks should be ‘retired’ if they are not used to provide and offset. This has potential to devalue sites and therefore disincentivise land owners from signing up to habitat banking. There is always potential for the site to be used as an offset. A requirement to ‘retire’ the site after a specified period may also act as a disincentive to create the habitat. Furthermore, there may be no obligation to continue to manage the site to maintain its ecological value, and depriving the provider of future funds may simply result in them ceasing to manage the site.

²⁵ As required by the Duty to Co-operate

Question 32: Do you think maintaining an environmental gain that might otherwise be lost should count as an offset? If so, how should a value be attached to the offset?

While gaining protection or achieving management on an area previously in receipt of neither will constitute a gain, we would consider such an approach likely to result in a net loss of biodiversity overall. We have concerns about this concept and would need to see parallel mechanisms developed within any offsetting scheme that ensured no net loss. We would also expect any such scheme to provide an in perpetuity benefit, as any offsetting with only short-term benefits would not be acceptable, and may result in sequential offset provision by the same piece of land.

Question 33: Do you think it is acceptable or not to use biodiversity gain created for other purposes as an offset? If you do, how should it be decided what is allowed to be used as an offset?

No. Offsetting should aim to replace what is lost and be additional to biodiversity gain created for other purposes. If the primary function is not biodiversity, there can be conflicts of interest in how the habitat is managed, limiting the biodiversity benefit and level of species richness that an ecology-focused project would achieve.

Question 34: How do you think the quality of assessments should be assured and who by?

We would strongly recommend a system of accreditation for assessment providers, which would help to provide the necessary training and drive up professional standards. However, this does not negate the need for LPA ecological expertise so that the LPA can verify assessments. The integrity of, and public faith in, the planning system depends on independent arbitration. The decision to approve an application may hinge on matters relating to biodiversity and it would be unacceptable for a local planning authority to have to simply accept the developer's recommendation on offsetting – even if the report is written by an 'accredited' expert.

Question 35: How should differences of opinion over assessments be addressed?

Differences of opinion should be addressed in the same way that they are for any other planning application. If the developer does not like the decision of the LPA, they have a right of appeal to the Planning Inspectorate. The appeal should then be determined by the Planning Inspectorate of the Secretary of State.

Question 36: Do you think the metric should take account of hedgerows? If so do you think the current approach is the right one or should it be adjusted?

The metric should include all habitats, and therefore also hedgerows. As with other habitats, the metric should recognise the cumulative impacts of both the species richness of the hedgerow, network connectivity. It is unclear whether the existing, simple multiplier adequately does this job. Further consideration of how the metric could fit with the Hedgerows Regulations (1997) could be explored.

Question 37: Do you think it should be possible to offset the loss of hedgerows by creating or restoring another form of habitat?

This should be dependent on the biodiversity assessment, which determines the species present, and whether the conditions and functions provided by the hedgerows are unique or whether they can be delivered through other habitat. We note, in this context, that hedgerows are priority habitat.

As with all offsetting, the aim must be to maintain appropriate types and extents of species and habitats. This should be assessed via an overview provided by an appropriate spatial conservation plan. In general, the most effective way to avoid net loss is to look for like-for-like replacement of habitats and/or species.

**Wildlife and Countryside Link
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