

## **Biodiversity Offsetting – the new planning buzz-word (GNS News March 2014)**

In September 2013 the government, via the Department for Environment and Rural Affairs, published a Green Paper entitled “Biodiversity offsetting in England” as a consultation document; the consultation period ended on 7<sup>th</sup> November 2013 and the responses are now under consideration.

To quote from the Green Paper “(Biodiversity) Offsetting is a simple concept. It is a measurable way to ensure we make good any residual damage caused by development which cannot be avoided or mitigated. This guarantees there is no net loss from development and supports our ambition to achieve net gain for nature. For developers it can offer a simpler, faster way through the planning system. It can be quicker and more straightforward to agree a development’s impacts and can create a ready market to supply compensation [1] for residual damage to nature”. The quotes are from the Foreword to the Green Paper by Owen Paterson, Secretary of State for Environment, Food and Rural Affairs.

So how does biodiversity offsetting work? There are pilot schemes in place in England and the Green Paper quotes the systems in place in Victoria, Australia and in the USA; “these systems are underpinned by a metric which allows impacts on nature to be quantified in standard biodiversity units” [2]. What that actually means is any habitat to be lost is assigned a numerical value based on the metric – calculated by multiplying together area and quality of each habitat type, then adding together the products of the different types within the development area to give a net figure. The intention then is that a new habitat, or improvement of an existing habitat, must be put in place elsewhere with a similar or greater numerical value to redress the balance and achieve the “no net loss” aspiration. Later in the paragraph the comment is “A metric provides a framework non-experts [3] can use to assess how different choices impact on biodiversity and whether harm can be avoided or reduced”.

Another quote from the same paragraph is “Using biodiversity units makes it easier to apply the mitigation hierarchy”. This statement implies that the mitigation hierarchy would be applied before the need to calculate an offsetting value arises. Again, from the Green Paper, the mitigation hierarchy is explained –

“The mitigation hierarchy is a policy for ensuring (development) activities do not have unnecessary impacts on the environment:

- In the first instance harm should be avoided, for instance by locating development at a different site
- Where this is not possible the impacts should be mitigated, for instance through the detailed design of the development
- Lastly any residual impacts should be compensated for, for instance by restoring or recreating habitat elsewhere

The mitigation hierarchy is embedded in many areas of environmental legislation and regulation. For example, under the National Planning Policy framework “if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.”

The National Planning Policy Framework (see Planning Reform – Balance, or a means to unlimited development; GNS News, December 2011, pp 15-17) is in the government’s own words a “streamlining of the planning process” – in other words, the facilitation of development (as a means to stoke the sluggish economy) by the adjustment or removal of the perceived barriers inherent in the planning consideration, decision, review and appeal process.

The Green Paper itself questions whether or not the initially proposed metric is adequate or lends sufficient weight to the quality of the habitat threatened; it does go on to set out a number of considerations proposed to ensure that the numerical value alone does not allow small areas of very high quality habitat to be replaced with larger areas of lower quality. It takes into account that there are some protected species that require a higher level of consideration or set certain habitats apart

from similar, but less well-blessed habitats; it recognises that some habitats take inordinately long periods of time to evolve or mature and that others based on for example geological types, simply cannot be recreated. There are other considerations, safeguards and penalties suggested which, if included in the legislation and utilised effectively, should deal with some of the concerns raised by the underlying thought that this is a piece of legislation aimed at unlocking and speeding up development that is otherwise achieved only slowly within the current planning process.

There is always an innate suspicion in many minds of any “jam tomorrow” promise that the government proposes, especially when it appears that the spin doctors have been at work alongside the drafters of the proposal. There is a similar suspicion surrounding developers and their motives, not helped by past performance and pre-development spoiling of landscapes as has been alleged for example by the RSPB regarding Cirl Bunting habitat (“The RSPB has sent a formal letter of complaint to Devon NHS bosses concerning the wilful destruction of land near Exminster”, November 2013). And of course, whilst some developments recently have been stopped or modified because of specific habitat or species protection, there is a belief that the existing planning process has itself failed miserably closer to home at Cinderford Northern Quarter.

In the last few days (early January 2014), Owen Patterson’s comments in The Times regarding Biodiversity offsetting have been seized upon by critics who have called such plans a licence “to trash nature”. As always, we will have to wait and see how this pans out; if the good intentions expressed in the Green Paper really do come to fruition it could be helpful to wildlife and habitats, on the other hand, like that other form of BO, there are those who believe it stinks.

The Wildlife Trusts have issued a statement entitled “An overview of The Wildlife Trust Position” in respect of biodiversity offsetting which begins by stating that they “cautiously welcome biodiversity offsetting” but goes on to make quite clear that it should only be applied for the right reasons, in the right way, explains what both of those expressions mean and equally explains what are considered to be the wrong reasons and the wrong way.

If the mitigation hierarchy is applied properly, then biodiversity offsetting should be the position of last resort; If the offsetting proposals are suitable and sufficient compensation for the losses, this has the potential for good, both in terms of wildlife and in terms of allowing appropriate and necessary development for the good of the economy, employment prospects and the infrastructure and built environment we need. However, the position of last resort can become the norm and we know from hindsight that conditions attached to development can be forgotten, ignored, not properly and diligently applied and not reviewed post completion.

A worrying aspect is that replacement habitats improved or created under biodiversity offsetting do not have to be anywhere adjacent to the original (Patterson has been quoted as thinking that it would be “appropriate for a replacement site to be about an hour away by car” – possibly 50 miles or more); if that is the case, the time lapse, distance and potential difference between the damaged habitat and that created or re-created, does not allow for the wildlife to move on. The Green Paper discusses options for covenanting, registering and protecting offsets and suggests that this process should be overseen by a variety of Government agencies or even a private sector company under contract. The track record of some departments and contractors in that respect though is not good.

Development rarely benefits wildlife, least of all wherever buildings and infrastructure are put in place. Biodiversity offsetting and the Green Paper perhaps offers hope for the future, but the road to Hell is paved with good intentions...

Copies of the Green Paper, the Wildlife Trusts’ response and overview statement will be placed on the GNS web-site for all to read and refer to at [www.glosnats.org](http://www.glosnats.org) in the “News” section.

**My Thoughts...**

[1] *“a ready market to supply compensation” appears to suggest that there will be an opportunity for contractors to exploit this situation and become specialist suppliers of mitigation measures on behalf of the developers. This could be a good thing if those contractors are responsible, have the interests of the environment at heart and produce a suitable solution, but equally could be an issue if the mitigation measures are driven only by the least cost option.*

[2] *“Biodiversity units” is an expression that must be a matter for concern. The reduction of habitats and the species and ecosystems within them to simple numerical values is a dangerous devaluation expressed in emotionless economist-speak; these things that we hold dear emphatically do not have a numerical or monetary value, they are intrinsically invaluable and in some cases irreplaceable.*

[3] *The application of the “metric” by “non-experts” sounds frightening. Does “non-expert” suggest that the naturalists and ecologists might not figure in the decision making process? There is already a belief that in some cases Environmental Impact Assessments which have to be carried out by developers are at best suspect if not actually fraudulent and how does a non-expert properly assess the quality of a habitat if he is not sufficiently expert to recognise what he is assessing?*

Andrew Bluett  
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