



## **Biodiversity Offsetting in England Consultation Response by National Parks England – November 2013**

### **1. Do you think the Government should introduce a biodiversity offsetting system in England?**

National Parks England supports the policy-making process by co-ordinating the views of the ten English National Park Authorities. It is governed by the Chairs of the ten Authorities. Our response represents the collective view of officers who are working within the policies established by the National Park Authorities (NPAs) and follows internal consultation amongst Planners and Ecologists. We are happy for our response to be made publicly available and would be happy to discuss any of the points we make further with officials if that would be helpful.

We recognise that biodiversity offsetting, as part of a clear mitigation hierarchy, has potential to benefit biodiversity in a way that is compatible with the National Planning Policy Framework (NPPF) and the Biodiversity 2020 Strategy. We believe that within certain circumstances, biodiversity offsetting could be compatible with the delivery of National Park purposes. We do, however, consider that there are key caveats that must be satisfied in order for us to support a biodiversity offsetting system. These are set out below and in our answers to the remaining questions in the consultation paper.

- ***Biodiversity offsetting must never enable inappropriate development***

Biodiversity offsetting must never be a mechanism that could permit development that would have an unacceptable adverse impact on biodiversity. Any offsetting system must demonstrate genuine net benefits for biodiversity, with these benefits assured by the use of robust, transparent and evidence-based tools.

- ***Biodiversity offsetting should be delivered through the planning system***

We believe that planning authorities should be central to biodiversity offsetting delivery, working with appropriate consultees and the applicant - within a robust statutory framework - to decide what offset is required. Delivery through the planning system would be cost-effective and consistent with streamlining planning. As local planning authorities, NPAs would be able to ensure that offsetting complemented, and contributed to the delivery of, relevant strategies and plans. It should be recognised that the effective implementation of offsetting will have some resource implications.

- ***Biodiversity offsetting should be compulsory***

Evidence from Defra's pilots shows that take up of offsetting on a voluntary basis is likely to be poor. Making offsetting compulsory would make biodiversity a mainstream development consideration and result in greater gains through economies of scale in habitat restoration and creation.

- ***Biodiversity offsets should aim to be of a 'like for like' nature; and must be assured for the long term, and monitored to ensure effectiveness***

There should be a presumption that the offset will be of the same or similar habitat to that being lost; with exceptions where a sound ecological basis for 'trading up' to deliver a more valuable habitat exists. The long term security of biodiversity offsets should be secured by the use of conservation covenants and management agreements. The timespan for these should be decided on a case-by-case basis with a presumption of perpetuity and a minimum of 25 years. Transparent monitoring of effectiveness should be built in to the scheme.

- ***A national system with local flexibility is the optimum model***

Consistency of approach nationally would ensure clarity in the overall system; however we believe that some local flexibility will be needed in order to ensure appropriate application for local circumstances. For example, thresholds for offsetting may be best decided locally based on the type of development likely to be taking place. Flexibility would allow National Park Authorities to tailor schemes for optimum delivery of the statutory purposes and duty of the National Park.

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

We are content with the objectives and characteristics as set out in paragraphs 14 and 15. It is absolutely essential that any system achieves a net gain for biodiversity and that appropriate enforcement and monitoring are in place to provide clear evidence of this. It is also vital that the mitigation hierarchy is strictly observed; biodiversity offsetting must never be a mechanism that enables inappropriate or unacceptable development to take place. We welcome the recognition under paragraph 15 that it should be accepted that in some circumstances offsetting will not be appropriate, in view of the importance of the biodiversity that will be affected or the difficulty of creating similar habitat. This should be given prominence in guidance on biodiversity offsetting.

## **3. Do you think it is appropriate to base an offsetting system on the pilot metric?**

Yes – with some changes.

*If you would want to see changes to the metric, what changes?*

The pilot metric provides a very valuable starting point. However, the metric at present does not include the important factor of habitat connectivity. It should take into account the value of the site in terms of adjoining habitats and wider habitat networks. It would be prudent to consider whether any changes to the metric are needed in light of the results from the offsetting pilots; therefore this should be considered when the pilots come to an end. Clear guidance around the metric and its use will be essential.

The application of the metric should not prevent an assessment of other impacts arising from the habitat loss, for example values associated with landscape, visual amenity, health and well-being and residential amenity. Any biodiversity offsetting system should recognise that habitats are often important components of valued landscapes, in addition to their biodiversity functions. Landscape components, such as woodland, could be lost and would not be compensated for by providing for similar habitat elsewhere. Planning policies seek to achieve a balance between a range of interests, and nationally important landscapes cannot be re-created. An ecosystem services approach may be helpful in ensuring that biodiversity is not looked at in isolation from other services being provided by a particular area or habitat.

**4. If you think the pilot metric is the right basis for an offsetting system:**

*Are there any other factors which should be considered when quantifying biodiversity loss and gain?*

No comment.

*Are the weights given to the different factors appropriate?*

Feedback from the conclusion of the current pilots should inform this decision.

*Are there any other changes you think should be taken into account?*

See answers to Q9.

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

Yes.

*Comments on your response. In particular if you have answered "no", how do you think offsetting should be approached in the planning system?*

**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?**

Yes.

*Comments on your response.*

It is vital that the metric and accompanying guidance are very clear so that the planning authority is able to liaise effectively with developers and statutory consultees; and make well-informed, transparent and defensible decisions regarding offsetting. The process should always include the input of a qualified ecologist, and may be done in accordance with a local strategy for biodiversity. Biodiversity offsetting should be covered in the new national online planning guidance.

Care must be taken to avoid creating a perverse incentive for landowners or prospective developers to degrade a site before applying for planning permission, so as to decrease the biodiversity offsetting potential. It would also be necessary to manage expectation as the biodiversity offset would be a material planning consideration and would not in itself guarantee that planning permission would be granted.

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

No comment.

*Comments on your response. In particular if you have answered "no", which regimes should be excluded?*

**8. Do you think developers should be able to choose whether to use offsetting?**

No.

*Comments on your response. In particular what steps could Government take to encourage developers to use offsetting?*

Feedback from the pilots to date suggests that a voluntary scheme is unlikely to develop to its full potential. A compulsory scheme will provide greater uptake, enabling potential economies of scale described in the consultation document as well as allowing biodiversity to become a mainstream development consideration. A compulsory scheme gives greater certainty and clarity for everyone involved in the process.

We do not believe that a Community Infrastructure Levy based approach is appropriate, as the offset requirement needs to be linked to the impact of the particular development.

**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?**

No comment.

*Comments on your response. In particular what level should the threshold be?*

Local flexibility is likely to be needed as the scale of development can vary considerably. In National Parks, where development is often on a relatively small scale, a lower threshold may be appropriate. The system must take into account the cumulative impacts of developments even when individually these developments are small scale.

**10. Do you think there should be constraints on where offsets can be located?**

Yes.

*Comments on your response. In particular, if "yes" what restraints do you think should be put in place?*

In general, offsets should be located where they will provide the greatest benefit towards achieving a coherent and resilient ecological network. In doing so the social and cultural values associated with biodiversity, for example access to nature and amenity use of green spaces, should not be neglected.

The possibility of composite offsets should be allowed for within the system. This model enables damage to the local values of a development (including for example amenity value) to be offset locally, while recognising that gains for biodiversity may be greater if a portion of the offset goes to provide compensatory habitat elsewhere. This acknowledges that there are cases where the loss of a small area of 'low value' habitat may be better compensated for through a contribution to a bigger scheme than the creation of a small and isolated local scheme with no organisation responsible for future care and maintenance.

The composite offsetting model would enable delivery of offsetting benefits in line with the conclusions of the Making Space for Nature report – delivering ‘bigger’, ‘more’ and ‘joined’ habitats. National Parks, highlighted in this report as important areas of focus for biodiversity conservation efforts, would be well-placed to act as receptor sites for offsets generated elsewhere and this could have benefits in terms of large scale restoration, creation and connection of habitats. We recognise that sites that provide people with access to nature should be compensated for locally so that any new scheme benefits the same community.

We do not support the suggestion in paragraph 27 that biodiversity offsets could be located overseas. In addition to posing difficulties for monitoring and enforcement, creating gains elsewhere at the expense of biodiversity losses in England would be contrary to the aims of Biodiversity 2020.

#### **11. Do you have any comments on the analysis set out in the Impact Assessment?**

The summary description and scale of key monetised costs by main affected groups states that “local authorities will face costs of checking offsets meet planning requirements but in place of imposing previous planning requirements”. If biodiversity offsetting is introduced, many authorities may still wish to provide guidance to assist developers in anticipating what offset requirements are likely to be identified for the sites likely to come forward for development. Depending on the degree to which authorities are expected to advise landowners and developers at the pre-application stage, the case by case cost burden on authorities could increase. Local planning authorities will need to be properly resourced to deliver an effective offsetting system.

#### **12. Do you have evidence that would help refine the Government’s analysis of the costs and benefits of the options considered in this paper? In particular, evidence relating to:**

- a. The amount of compensation already occurring where there is residual biodiversity loss which cannot be avoided or adequately mitigated*
- b. The method for estimating costs and their magnitude*
- c. The method for estimating benefits and savings and their magnitude*
- d. How to capture the wider social and environmental benefits of maintaining England’s stock of biodiversity and delivering a coherent ecological network*
- e. Likely take up of offsetting under a permissive approach*

We consider that appropriate evidence should be drawn from the current pilots once they are completed.

#### **13. Do you think offsetting should be a single consistent national system without scope for local variation?**

No - there should be local variation.

*Comments on your response. In particular if you have answered “no”, why?*

We believe that a national system with local flexibility is the optimum model. Consistency of approach nationally would ensure clarity in the overall system; however we believe that some local flexibility will be needed in order to ensure appropriate application for local circumstances. For example, thresholds for offsetting may be best decided locally based on the type of development

likely to be taking place. Local variation would enable the system to take into account the distinctiveness and rarity of habitats, and their contribution to ecological networks, at a local level. Flexibility would allow National Park Authorities to tailor schemes for optimum delivery of the statutory purposes and duty of the National Park.

**14. Do you agree with the proposed exceptions to the routine use of biodiversity offsetting?**

Yes

Comments on your response. In particular if you have answered “no”, and think additional restrictions are necessary, why are they needed?

**15. Which habitats do you think should be considered irreplaceable?**

*Ancient Woodland* - Yes

*Limestone Pavement* - Yes

*Other (please specify)* - Yes

*Please specify which habitats should be considered irreplaceable that are not listed above.*

Blanket and raised bog, lowland raised mire and flushes should be considered irreplaceable.

Consideration should be given to including habitats where specific conditions such as those relating to hydrology or soil are required to support the habitat. Habitats that might be replaceable in theory, but only at prohibitive levels of cost, difficulty and timescale should also be given further consideration. We know relatively little about relationships between organisms (especially soil organisms, fungi, invertebrates) and how these develop over time and contribute to the functioning of ecosystems. Where there is little knowledge, the precautionary principle should be invoked and research on a small number of schemes undertaken.

In line with these principles we suggest further consideration be given to semi-natural habitats on peat soils; species-rich neutral or calcareous grassland; maritime slopes; intertidal habitats; mires; rush pasture; and montane heath.

**16. Do you think offsetting should, in-principle, be applied to protected species?**

No comment.

*Comments on your response.*

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

No comment.

*Comments on your response. In particular, if you have answered “no” what is missing?*

**18. Do you agree that great crested newts should be the first area of focus?**

No comment.

*Comments on your response. In particular, if you have answered “no” what should be the first area of focus?*

**19. Do you have any comments on the Government’s thinking on how to apply offsetting to great crested newts?**

No comment.

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

No comment.

*Comments on your response. In particular, if you answered “yes” - what species and why? Or, if you answered “no”, why not?*

**21. Do you think conservation covenants should be put in place as part of an offsetting system?**

Yes.

We believe conservation covenants should be put in place to ensure that the biodiversity gain is secured in the long term, with obligations being transferred to any subsequent landowners. We are concerned about the potential for covenants to be released and offset sites to be considered developable land as a result of future planning decisions, as described in the consultation. To minimise this occurrence the offsetting metric should require significantly more to be done if the damage occurring is to an existing offset site. When development on offset sites is under consideration the site should be viewed in terms of the resultant habitat that is being created, rather than its state at the time of the proposed development. This is particularly important for those habitats that take a longer time to create.

*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?*

No comment.

**22. Do you think management agreements should be put in place as part of an offsetting system?**

Yes.

*If they are required, who do you think should be responsible for agreeing management agreements?*

*If they are not required, why not?*

No comment.

**23. Do you think an offset register should be put in place as part of an offsetting system?**

Yes. A register would help to co-ordinate offsets and to ensure that there is no double-counting. It may also help to ensure the principle of additionality, i.e. that offsets are not used to deliver projects that would have happened anyway.

**24. How long should offsets be secured for?**

*In perpetuity*

*A fixed time span (please specify)*

*Case by case (no fixed time) - Yes*

*Comments on your response.*

The time that each offset is secured for should be agreed on a case-by-case basis. The presumption should be in perpetuity but as a minimum with a timespan of 25 years (longer if the offset habitats will take longer to become fully functional). A justification should be given and recorded on the register if the offset is not to be secured in perpetuity.

**25. Are there any long-term factors, besides climate change, that should be taken into account when securing offsets?**

Improving habitat connectivity to maintain, enhance or create functioning local ecological networks. Consideration should also be given to the other ecosystem services being delivered by a habitat or site (additional to biodiversity).

**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 comment.

*Comments on your response. In particular if you have answered "no", why not?*

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

Yes.

*Comments on your response. In particular if you have answered "yes," how? Or, if you have answered yes "no", why not?*

We would support a hybrid approach with national agreement on some things that are always considered significant, but also flexibility for planning authorities to give weight to local importance which will vary in different places. This would be similar to the approach for sensitive areas in the existing EIA screening system.

**28. Do you think any additional mechanisms need to be put in place to secure offsets beyond conservation covenants?**

Yes.

*If "yes" why and what are they? If this includes measures not listed in the document, please explain what they are.*

An insurance scheme is necessary to ensure that if developers go bankrupt or cease to trade, offsets will still be delivered. This insurance could be provided by Government to enhance public confidence in biodiversity offsetting as a viable and worthwhile system.

**29. Do you think there should be constraints on what habitat can be provided as an offset?**

Yes.

*If "yes" what constraints do you think should be put in place, and how should they work in practice?  
If "no", why?*

Higher value habitats (as assessed by the metric) should be offset by the creation of the same type of habitat on a 'like for like' basis, delivered within the local area wherever possible. It may be appropriate for lower value habitats to be offset by higher value habitat creation, but not vice versa. The composite model described in our answer to Q10 would allow habitats of low distinctiveness in areas with high development pressure to be offset by the creation of more highly distinctive habitats in neighbouring areas of lower development pressure, including National Parks.

**30. Do you agree an offsetting system should apply a strategic approach to generate net ecological gain in line with Making Space for Nature?**

Yes.

*If "yes," at what level should the strategy be set and who by?*

Strategies should be set at a local level to reflect existing local biodiversity plans and strategies as well incorporating the overarching principles articulated in Making Space for Nature. In practice it is likely that the local strategies and plans are already informed by these principles and so there will be good read-across between national and local strategy. Existing landscape-scale partnerships and networks including National Parks, AONBs, NIAs and LNPs should have a strong role in the local strategic approach.

*If "yes" how should the system ensure compliance with the strategy?*

No comment.

*If "no", why?*

**31. Do you think habitat banking should be allowed?**

Yes.

*If "yes," do you think a provider must show intent to create a habitat bank to be allowed to sell it as an offset?*

Yes. Habitat banks should be listed on a register to show intent.

*If "yes", do you think habitat banks should be retired if they are not used to provide an offset?*

No comment.

*Do you have any general comments on habitat banking and, in particular, if you don't think habitat banking should be allowed, why?*

We consider that habitat banking should only be allowed if certain criteria are met. Land which is simply undeveloped should not qualify; there must be evidence of intent and that the land has been managed and improved to provide an enhanced habitat which represents genuine net biodiversity gain. It will not always be appropriate to make use of a habitat bank, for example when it is geographically remote from the application site. If carefully managed, we see potential for habitat banking to provide a positive incentive to manage land for biodiversity benefit, and importantly it could help habitats to develop and species to move before other habitats are lost, overcoming some of the time lag issues that otherwise come into play. We wish to see more detailed consultation on the precise mechanism of habitat banking before it is implemented.

**32. Do you think maintaining an environmental gain that might otherwise be lost should count as an offset?**

No.

*Comments on your response. In particular if you have answered "yes" how should a value be attached to the offset? Or, if you have answered "no," why?*

We consider that this should be achieved by other mechanisms.

**33. Do you think it is acceptable or not to use biodiversity gain created for other purposes as an offset?**

No.

*If you do, how should it be decided what is allowed to be used as an offset?*

*Comments on your response. In particular if you have answered "no", why not?*

We do not consider that this would fulfill the key requirement for additional biodiversity gain.

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

We do not have a recommendation for who should undertake this role; however the process must be robust and transparent, with recourse to independent advice.

**35. How should differences of opinion over assessments be addressed?**

Differences of opinion should be resolved by a party with independence from the assessment in question, i.e. not the local planning authority.

**36. Do you think the metric should take account of hedgerows?**

Yes.

*If "yes" do you think the current approach is the right one or should it be adjusted?*

Hedgerows should be treated in the same way as other habitats, albeit with a metric based on length rather than area. Important hedgerows that are currently protected in the Hedgerow Regulations should not be removed, as this would be a backward step from their current protection.

*Comments on your response. In particular if you have answered "no", why not?*

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

No.

*Why?*

Hedgerows provide habitats for a large range of species and play a very important role in habitat connectivity. Given that hedgerows are a common feature in many landscapes, it should not be prohibitively difficult to offset hedgerows near to the site where they will be lost. If particularly problematic cases were to arise these could be resolved on a case-by-case basis.

**38. If conservation covenants are put in place, do you think providing for offsetting through planning guidance will be sufficient to achieve national consistency?**

No comment.

*Comments on your response. In particular if you have answered "no", what legislative provision may be necessary?*

**39. Do you have any other feedback or comments that have that not been captured in the previous questions?**

We consider that appropriate enforcement and monitoring of biodiversity offsetting will be essential for the success of any system that is introduced. Greater clarity is needed on how this will be achieved. Transparent monitoring is needed to ensure compliance; to achieve community support; to establish that genuine net gain for biodiversity is being delivered; and also for research purposes as it could yield valuable insights into biodiversity processes. A long term review process is needed so that the system can be amended should it be found that genuine biodiversity gain is not being delivered. High quality and comprehensive biodiversity data will be needed to establish a robust baseline in advance of implementing a biodiversity offsetting system.

We would welcome greater clarity on how biodiversity offsetting would relate to or interact with existing planning policies and mechanisms. These would include Section 106 agreements requiring contributions for biodiversity improvements, and the Community Infrastructure Levy. It is important

that green spaces and areas for biodiversity are still integral to new development, to continue to deliver high quality development that enhances quality of life. Clarity is also needed on how temporary development would be addressed, as where development is temporary biodiversity losses may still be permanent or very long term. Local Plans and neighbourhood planning have an important role to play in the identification of biodiversity offset sites which have high value as green infrastructure sites for local communities and therefore should be protected, even if they have relatively low biodiversity value with regard to priority species and habitats.

Clarity is needed on how the system will function with regard to administrative and ecological boundaries. It is unclear at present whether the application site and offset site may be within different administrative areas. It is likely that this will be an issue, as ecological boundaries are different from administrative boundaries and there will be cases where it makes sense to offset in a different administrative area.