

Inspector's Q95

I would welcome the Council's observations on the representations commenting on the soundness of policy NE2; 1534 Alastair Bird of Barton Willmore on behalf of Catesby Estates Limited, 1639 Nicole Penfold of Gladman Developments Ltd; 1705 Cameron Austin-Fell of RPS Planning and Development on behalf of Richborough Estates, 1817 jonathan Liberman of Boyer Planning Ltd on behalf of Wates Developments Ltd, 2069 Steven Brown of Woolf Bond Planning on behalf of Persimmon Homes North London, 2216 and 2217 Michelle Kidd of the Environment Agency, 2226 Gareth Sibley of RCA Regeneration Ltd on behalf of Malvern Homes Ltd.

Representations/Responses

1534 Alastair Bird of Barton Willmore on behalf of Catesby Estates Limited

It is noted that draft Policy NE2 requires development on greenfield sites to achieve a net gain in biodiversity. However, this does not accord with Paragraph 109 of the NPPF, which sets out that the planning system should contribute to enhance the natural and local environment by minimising impacts on biodiversity and providing net gains in biodiversity 'where possible'. As such, it is considered that criterion (a) of draft Policy NE" should be amended as follows:

"On greenfield sites, where possible, a net gain in biodiversity will be sought..."

The proposed amendment would ensure that the policy fully accords with national guidance contained at paragraph 109 of the NPPF.

AVDC Response:

The Policy is *seeking to* achieve a net gain in biodiversity on greenfield sites. This does not mean AVDC will require and achieve a net gain in every case on greenfield sites - it is the aim, but the use of the phrase 'seek to achieve' gives some room for manoeuvre.

AVDC considered the NPPF paras 9 and 109 are trying to achieve the no net loss as an absolute minimum but encourage going further to providing net gains and identifying opportunities to do so. It is considered the VALP Policy NE2 strikes the right balance to achieve those aims.

1639 Nicole Penfold of Gladman Developments Ltd

Policy NE2 outlines how the protection and enhancement of biodiversity, geodiversity and the natural environment will be achieved. Whilst Gladman acknowledge the importance of protecting and enhancing the natural environment, Gladman objects to a couple of elements within this policy.

Policy NE2 (g) states "where there is a reasonable likelihood of the presence of protected or priority species or their habitats, development will not be permitted until it has been demonstrated that the proposed development will not result in a

negative impact on these species or their habitats.” Gladman objects to this element of Policy NE2 as there is no mention of mitigation and instances when this may result in schemes being considered acceptable.

Policy NE2 (l) refers to planning conditions/obligations being used to secure no net loss and net gains in biodiversity where possible by helping to deliver the Bucks and MK Biodiversity Action Plan. Gladman note that this Action Plan only runs to 2020, therefore the policy wording needs to be future proofed.

AVDC Response:

NE2 (g)

It is considered there is some misunderstanding here. The drafting of the policy with the section “...development will not be permitted until it has been demonstrated that the proposed development will not result in a negative impact on these species or their habitats” allows for mitigation and detailed studies as part of the ‘demonstrating’ i.e. a net position once mitigation has been applied.

NE2 (i)

AVDC agrees that the current Action Plan only has a plan period 2010-2020. However, policy NE2 (i) does not state that the policy criterion would only apply to the current version of the Action Plan, it will also apply to its replacement (i.e. the next Action Plan that would cover 2021 onwards). This will be addressed through the proposed early review of the local plan. So it is not considered a change to the VALP is needed.

The Buckinghamshire and Milton Keynes Natural Environment Partnership is in the process of preparing a new Action Plan covering the period to 2030. This is anticipated to take a further 18 months to be adopted. The Action Plan will include a contribution from all Buckinghamshire district councils.

Cameron Austin-Fell of RPS Planning and Development on behalf of Richborough Estates

The policy (criterion b) should also allow for off-site mitigation as a way of mitigating the harmful effects of a development. Several authorities (Warwickshire County) are now using landbanks as a way of ensuring a development has a net gain in biodiversity, by enabling financial contributions towards off-site mitigation.

Criterion D appears to replicate policy NE1 and should be deleted.

AVDC Response:

Criterion (b) line 2 does not specify if the mitigation should be on or off site and so it already allows for the possibility of the mitigation as agreed being off-site. This is considered to depend on the circumstances of each individual case.

Where development proposals affect a Priority Habitat (As defined in the

Buckinghamshire Biodiversity Action Plan or UK Biodiversity Action Plan) then mitigation should not be off-site. Where no Priority Habitat is involved then mitigation can be off-site. Examples of Priority Habitats are SSSIs, Ancient Woodlands and some Local Wildlife Sites.

In terms of SACs and SSSIs, as international and national important biodiversity sites these are mentioned in Policy NE2 (c). We consider they should be covered in Policy NE2 rather than NE1 because NE2 focuses on biodiversity and geodiversity. However, criteria (c) and (d) apply exclusively to SAC/ SSSI designated sites so there is still a distinction made to the importance of the asset as called for under NPPF para 113.

Therefore AVDC does not consider a change is needed. That said AVDC would have no concern if the Inspector feels that Criteria (c) or (d) of Policy NE2 are better put into Policy NE1.

Recommended Change to Plan – add the following in between paragraphs 9.13 and 9.14:

Where development proposals affect a Priority Habitat (As defined in the Buckinghamshire Biodiversity Action Plan or UK Biodiversity Action Plan) then mitigation should not be off-site. Where no Priority Habitat is involved then mitigation can be off-site. Examples of Priority Habitats are SSSIs, Ancient Woodlands and some Local Wildlife Sites.

1817 Jonathan Lieberman of Boyer Planning Ltd on behalf of Wates Developments Ltd

Policy NE2 seeks the protection and enhancement of biodiversity and natural habitats. Wates object however to the requirement for a 'net gain in biodiversity' on greenfield sites as set out in criteria a.

Wates consider that in relation to greenfield sites, the requirement for a "net gain in biodiversity" is unnecessarily onerous. The NPPF states in para, 109 that "the planning system should contribute to and enhance the natural environment by....minimising impacts on biodiversity and providing net gains in biodiversity where possible". Draft Policy NE2 part (a) should be amended as follows (text added in **bold**, text deleted ~~struck through~~):

- a. ~~On greenfield sites, a net gain in biodiversity will be sought and on other sites.~~
No net loss, and a net gain where possible, in biodiversity will be sought by....."

Wates also suggest the following amendments to Policy NE2 criteria

*b: "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 **either on site or off-site**, the development will not be permitted".*

AVDC Response:

The Policy is *seeking to* achieve a net gain in biodiversity on greenfield sites. This does not mean AVDC will require and achieve a net gain in every case on greenfield sites - it is the aim, but the use of the phrase 'seek to achieve' gives some room for manoeuvre.

AVDC considered the NPPF paras 9 and 109 are trying to achieve the no net loss as an absolute minimum but encourage going further to providing net gains and identifying opportunities to do so. It is considered the VALP Policy NE2 strikes the right balance to achieve those aims.

Criterion (b) line 2 does not specify if the mitigation should be on or off site and so it already allows for the possibility of the mitigation as agreed being off-site. This is considered to depend on the case by case context.

Where development proposals affect a Priority Habitat (As defined in the Buckinghamshire Biodiversity Action Plan or UK Biodiversity Action Plan) then mitigation should not be off-site. Where no Priority Habitat is involved then mitigation can be off-site. Examples of Priority Habitats are SSSIs, Ancient Woodlands and some Local Wildlife Sites. This could be clarified by a modification if helpful.

Recommended Change to Plan – add the following in between paragraphs 9.13 and 9.14:

Where development proposals affect a Priority Habitat (As defined in the Buckinghamshire Biodiversity Action Plan or UK Biodiversity Action Plan) then mitigation should not be off-site. Where no Priority Habitat is involved then mitigation can be off-site. Examples of Priority Habitats are SSSIs, Ancient Woodlands and some Local Wildlife Sites.

2069 Steven Brown of Woolf Bond Planning on behalf of Persimmon Homes North London

Whilst we support and encourage policies that seek to protect and enhance biodiversity, geodiversity and the natural environment, we object to the specifics of Policy NE2 in so far as part (a) requires a net gain in biodiversity for all Greenfield sites.

Whilst we have no particular objection for that to be set out as a policy aspiration, we are concerned that the policy could be used to ensure a net increase in biodiversity on every site for housing. In our view, such an approach is too restrictive and could serve to prevent otherwise sustainable development from coming forward.

Summary

Substitute the wording in part (a) of the Policy for the following:

“On Greenfield sites, a net gain in biodiversity will be ~~sought~~ **encouraged**”

AVDC Response:

The Policy is *seeking to* achieve a net gain in biodiversity on greenfield sites. This does not mean AVDC will require and achieve a net gain in every case on greenfield sites - it is the aim, but the use of the phrase 'seek to achieve' gives some room for manoeuvre.

AVDC considered the NPPF paras 9 and 109 are trying to achieve the no net loss as an absolute minimum but encourage going further to providing net gains and identifying opportunities to do so. It is considered the VALP Policy NE2 strikes the right balance to achieve those aims.

2216 and 2217 Michelle Kidd of the Environment Agency

Point (a) in policy NE2 states:

“On greenfield sites, a net gain in biodiversity will be sought and on other sites no net loss and a net gain where possible in biodiversity will be sought by protecting, managing, enhancing and extending existing resources, and by creating new resources. These gains must be measurable using best practice in biodiversity and green infrastructure accounting and in accordance with any methodology set out in a future Supplementary Planning Document.”

We would like to understand why greenfield sites and 'other sites' are being treated differently as this does not reflect the supporting text in paragraph 9.17 as we understand it. The value of greenfield sites and 'other sites' vary and should be given the same protection. Some brownfield sites are highly valuable for protected species due to the habitats found. This policy wording needs to be much clearer to ensure that it is interpreted as intended.

Point (i) in policy NE2 states:

“i. Planning conditions/obligations will be used to secure no net loss and net gains in biodiversity where possible by helping deliver Bucks and MK Biodiversity Action Plan targets in the biodiversity opportunity areas. On greenfield sites, the Council is seeking to achieve a net gain in biodiversity.”

As with point 'a' this wording doesn't appear to be consistent with the supporting text.

AVDC Response:

AVDC considers that greenfield sites are usually larger than brownfield sites (at least in terms of the VALP, allocated greenfield sites are larger in the sense of site size and quantum of development). Greenfield sites also have fewer constraints or larger developable area and more opportunities for on-site mitigation. There is therefore on greenfield sites more potential to secure a net gain rather than the

absolute minimum of no net loss.

2226 Gareth Sibley of RCA Regeneration Ltd on behalf of Malvern Homes Ltd

We consider that parts (a) and (b) of policy NE2 are currently unenforceable without the supplementary SPD which sets out the biometrics calculator. Within the draft Local Plan, there is currently no agreed method to calculate the net gain in biodiversity and without it the Council are expecting the applicant to second guess the calculation.

This creates uncertainty and confusion between the Council's ecologist and the applicant's ecologist over how this should be calculated. The most appropriate approach would be for each development to be affected on its individual merits being informed by Phase 1 Habitat Surveys and detailed surveys or required with mitigation proposed or part of that development. This would ensure that compensation is in accordance with the actual impact of the development.

Moreover, biodiversity gain could be considered desirable (with more weight attributed in the planning balance), but neutral schemes should not be refused because of this alone. We therefore do not consider this policy would be effective in its current guise.

Change the plan as follows (text added in **bold**, text deleted ~~struck through~~):

Protection and enhancement of biodiversity, geodiversity and the natural environment will be achieved by the following:

a. On greenfield sites, ~~a net gain in biodiversity will be sought~~ **development should achieve at least a neutral impact in biodiversity** and on other sites no net loss and a net gain where possible in biodiversity will be sought by protecting, managing, enhancing and extending existing resources, and by creating new resources. These gains must be measurable using best practice in biodiversity and green infrastructure accounting and in accordance with any methodology set out in ~~a future Supplementary Planning Document~~ **the accompanying justification to this Policy.**

AVDC Response:

The Policy is *seeking to* achieve a net gain in biodiversity on greenfield sites. This does not mean AVDC will require and achieve a net gain in every case on greenfield sites - it is the aim, but the use of the phrase 'seek to achieve' gives some room for manoeuvre.

AVDC considered the NPPF para 109 is trying to achieve the no net loss as an absolute minimum but encourage going further to providing net gains and identifying opportunities to do so. It is considered the VALP Policy NE2 strikes the right balance to achieve those aims.

The biometrics calculator referred to will be in place for all of Buckinghamshire by the end of 2018. All the district Councils have signed up to this happening. Also a system for offsetting with a list of off-site projects is being compiled and should be delivered by early/mid 2019 and contributions would be required should a site show no net loss/net gain on the biometric calculator. It is therefore not possible to include the details of the calculator in the plan but the plan still needs to accord with national planning policy.

In terms of the SPD referred to in NE2 (a) and para 9.17, this will be produced by the Buckinghamshire and Milton Keynes Natural Environment Partnership with the assistance of the district councils and will guide the use of the biometric calculator and the system of offsetting by contributions to agreed projects. The SPD will consider best practice in its production including the work done by Warwickshire County Council.

Recommended change to plan:

Insert the following after para 9.17:

Before the SPD is adopted, net gains in biodiversity will be measured using the Buckinghamshire biometric calculator, to be in force by the end of 2018, before the adoption of VALP. In terms of biodiversity offsetting where this is necessary, until a system for offsetting with list of off-site projects has been adopted (expected early/mid 2019, the off site projects will be determined by AVDC on a case by case basis informed by consultation responses on the planning application. Contributions will be required to show no net loss/net gain (greenfield sites) on the biometric calculator.