

REVISED COST PER BIODIVERSITY UNIT (BU)

Cabinet Member for Housing, Ecology and Climate Change



Date: 6/12/2022
Agenda Item: 6
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Key Decision? YES
Local Ward Members: All

CABINET

In accordance with Procedure Rule 25(c) of Part 4 of the Constitution the Leader of the Council has authorised this item to be considered as a matter of urgency to enable a new price for Biodiversity Units to be set and implemented at the earliest opportunity.

1. Executive Summary

- 1.1 Lichfield District Council has been involved in works surrounding Biodiversity Net Gain in the planning system since 2014. LDC was the first council in the country to make it policy that development must provide a net gain to biodiversity. This is where the environment is left in a measurably better state post development. When a development cannot make up for their impact on site, a Biodiversity Offset may be required. This is where another site is managed to make up for the loss of ecology on the development site. When a Biodiversity Offset is required, one option for developers is to provide a financial contribution to the council, who then take on the responsibility to manage habitat on the developer's behalf. The contribution is calculated by; number of habitat Biodiversity Units required to achieve net gain (TIMESX) LDC cost per Biodiversity Unit. This is usually secured via an S106 legal agreement.
- 1.2 The previous cost of £21,000 per Biodiversity Unit (BU) has not been revised since 2016. The cost per BU has not risen each year with the cost of inflation. It has been recognised that this cost is out of date. As Biodiversity Offsets usually involve an agreement of no less than 30 years, it is not advised the council take on any more schemes where the financial contribution may not be sufficient, as this involves taking on a legal responsibility. The council has been unable to make a decision on applications which require a Biodiversity Offset whilst the figure has been in review, causing delay to development management, which cannot progress until the new cost per BU approved.
- 1.3 The council has now been informed the new recommended cost per BU is £35,000 (index linked, backdated to 2022). This appears the minimum level where you can attain a reasonable level of contingency and certainty that the offsets will be delivered and, after a 'sense-check' of the market, seems a current national standard. Now this figure is known, it is important to review and vote on the new cost as soon as possible so that no further delays occur to the planning system. There is a recommendation this figure is reviewed each year, and this is delegated to the Cabinet Member for Housing, Ecology and Climate Change.

2. Recommendations

- 2.1 Cabinet approve the new cost of £35,000 per Biodiversity Unit (BU).
- 2.2 The annual review of the cost per Biodiversity Unit (BU) is delegated to the Cabinet Member for Housing, Ecology and Climate Change in consultation with the Chief Operating Officer and Assistant Director of Finance and Commissioning (Section 151).

3. Background

- 1.4 To work out the recommended cost, four biodiversity metrics have been completed to determine the likely gains of four hypothetical habitat banks. The costs have been calculated and analysed in a range of ways to give incite about the gains/risks associated with delivering ‘high distinctiveness’ and ‘strategically desirable’ habitat in Lichfield.
- 1.5 The risk was tested against BU costs at £5k integers from £15K-£40K. Based on current UK prices (i.e., post 2022-23 super inflation) any purchase price less than £25K is very likely to lead to negative capital by year 30 (i.e., bankruptcy). Whilst £25K per BU is (technically) viable, it is high risk with tiny yearly contingency budgets and almost no capital surplus by the end of 30 years. £35,000 (index linked, backdated to 2022) appears the minimum level where you can attain a reasonable level of contingency and certainty that the offsets will be delivered and, after a ‘sense-check’ of the market, seems a current national standard.
- 1.6 With the upcoming Environment Act, Biodiversity Net Gain will be mandated for all councils in the country next year 2023. Lichfield District Council are ‘BNG ready’ but it is also important LDC have a figure which is correct and protects the organisation, so that we can have assurance any agreements and Biodiversity Offset schemes are achievable and sustainable.

Alternative Options	<ol style="list-style-type: none"> 1. Cabinet do not agree the new cost and remain with the previous cost of £21,000 per Biodiversity Unit (BU). This cost is known to be out of date and not sufficient to enter into a long-term management agreement and take on the legal responsibility. 2. Cabinet do not agree the new cost and choose not to provide the ‘council financial contribution’ option to developers for Biodiversity Net Gain. This would cause delays in the planning system, and reverse progress made for the Local Planning Authority to be ‘BNG ready’ (Biodiversity Net Gain) for 2023, mandated by the Environment Act 2021.
Consultation	<ol style="list-style-type: none"> 1. Senior Leadership. 2. Cabinet Member for Housing, Ecology and Climate Change. 3. Development Management. 4. Legal.
Financial Implications	<ol style="list-style-type: none"> 1. If the new cost is not accepted, the council could continue to use the previous cost of £21,000 per BU which is known to be out of date and not sufficient to enter into a long-term management agreement. This could lead to shortfall by the end of the scheme. Any shortfall in funds would have to be paid for by the Council from the Revenue budget. 2. If the new cost is accepted, there is potential for the council to benefit from some of the contributions; habitat management works, admin and monitoring costs. 3. His Majesty’s Revenue and Customs (HMRC) normally accepts that any payment made under a S106 agreement is outside the scope of Value Added Tax (VAT)
Approved by Section 151 Officer	Yes

Legal Implications	<p>1. Cabinet do not agree the new cost and remain with the previous cost of £21,000 per Biodiversity Unit (BU).</p> <p>The council take on offsetting schemes at the previous cost per BU, and are unable to fulfil their legal obligations outlined in S106 to deliver habitats.</p>
Approved by Monitoring Officer	Yes

Contribution to the Delivery of the Strategic Plan	<ul style="list-style-type: none"> • Enable people to: <ul style="list-style-type: none"> ○ live healthy and active lives • Shape place to: <ul style="list-style-type: none"> ○ keep it clean, green and safe ○ preserve the characteristics ○ make sure sustainability and infrastructure needs are balanced • Develop prosperity to: <ul style="list-style-type: none"> ○ encourage economic growth ○ enhance the district for all ○ invest in the future • Be a good council that is: <ul style="list-style-type: none"> ○ financially sound ○ transparent and accountable ○ responsive and customer focussed <p>The Corporate Fees and Charges Policy approved by Council on 22 February 2022 included specific principles that where applicable have been applied in the calculation of this charge:</p> <ul style="list-style-type: none"> • Contribute to the achievement of corporate and service objectives • Maximise potential income, to achieve financial objectives, unless there is an explicit policy decision to subsidise the service • Be capable of being justified, in comparison with other similar providers • Take account of the ability of different users to pay, through the use of discounts and concessions, where appropriate • Differentiate between differing levels of a service being provided • Take account of the views of and minimise the impact upon users, where new or significantly higher charges are proposed, and where this is possible • Optimise the ease of collection of charges and minimise the costs of collection • Be regularly reviewed, using the latest available market information, and revised/updated, based upon such new information
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Equality, Diversity and Human Rights Implications	None.
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Crime & Safety Issues	None.
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Environmental Impact (including Climate Change and Biodiversity).	<p>1. Cabinet do not agree the new cost and remain with the previous cost of £21,000 per Biodiversity Unit (BU).</p> <p>The habitats conditioned to be achieved through the planning system to offset a loss to ecology cannot be achieved. There is a net loss to ecology in the district. The recovery of the nature network in the district and Staffordshire is expected to</p>
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	provide solutions tackling Climate Change related issues i.e., through carbon capture.
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GDPR / Privacy Impact Assessment	None.
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	Risk Description & Risk Owner	Original Score (RYG)	How We Manage It	Current Score (RYG)
A	New cost is not agreed, remain with the previous cost of £21,000 per Biodiversity Unit (BU) - likely to lead to a shortfall by year 30.		A new cost and/or mechanism is agreed which provides a reasonable level of contingency and certainty that offset schemes can be delivered.	
B	New cost is not agreed, council choose not to provide the 'council financial contribution' option to developers for Biodiversity Net Gain – reversing progress to be 'BNG' ready by 2023, mandated through Environment Act 2021.		A new cost and/or mechanism is agreed which provides a reasonable level of contingency and certainty that offset schemes can be delivered.	
C	The council take on offsetting schemes at the previous cost per BU, and are unable to fulfil their legal obligations outlined in S106 to deliver habitats.		A new cost and/or mechanism is agreed which provides a reasonable level of contingency and certainty that offset schemes can be delivered.	

	Background documents Costed Model for Possible Biodiversity Offsetting – calculations behind recommended cost.
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	Relevant web links https://naturalengland.blog.gov.uk/2022/03/30/counting-down-preparing-for-mandatory-biodiversity-net-gain/
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