



## Report of the Cabinet Member for Corporate Services & Performance

### Climate Change and Nature Scrutiny Performance Panel – 3rd October 2023

#### Planning Enforcement: Nature and Biodiversity (Discussion on how to encourage people to look at biodiversity within planning applications, for example, checklist/toolkit on biodiversity)

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| <b>Purpose</b>                        | To provide an overview of how the Planning System seeks to incorporate Nature and Biodiversity in the decision-making process  |
| <b>Content</b>                        | This report includes a summary relevant planning policies and supplementary planning guidance in relation to Nature and Biodiversity and how these policies are applied to the decision making process |
| <b>Councillors are being asked to</b> | Consider the information and give their views  |
| <b>Lead Councillor(s)</b>             | Cllr David Hopkins, Cabinet Member for Corporate Services and Performance  |
| <b>Lead Officer(s)</b>                | Phil Holmes – Head of Planning and City Regeneration, Ian Davies – Development Manager   |
| <b>Report Author</b>                  | Ian Davies - Development Manager<br><a href="mailto:ian.davies@swansea.gov.uk">ian.davies@swansea.gov.uk</a> Tel : 07970 680549  |
| <b>Legal Officer</b>                  | Sally Ann Evans  |
| <b>Finance Officer</b>                | Peter Keys   |
| <b>Access to Services Officer</b>     | Rhian Miller   |

### 1. Background

- 1.1 The Development Plan is at the heart of the planning system with a requirement set in law that planning decisions must be taken in line with the Development Plan unless material considerations indicate otherwise (Section 38 of The Planning and Compulsory Purchase Act 2004)

- 1.2 In Wales, the Development Plan consists of both National and Local Planning policies. National Planning Policy is set out by Welsh Government in the following documents:
- Future Wales - The National Plan 2040
  - Planning Policy Wales (Edition 11, February 2021)
- 1.3 Future Wales – the National Plan 2040 is the national development framework, setting the direction for development in Wales to 2040. It is a development plan with a strategy for addressing key national priorities through the planning system, including sustaining and developing a vibrant economy, achieving decarbonisation and climate-resilience, developing strong ecosystems and improving the health and well-being of our communities.
- 1.4 Planning Policy Wales (PPW) sets out the land use planning policies of the Welsh Government. It is supplemented by a series of Technical Advice Notes (TANs), Welsh Government Circulars, and policy clarification letters, which together with PPW provide the national planning policy framework for Wales.
- 1.5 Local Planning Policy is set out the Swansea Local Development Plan 2010-2025 – the LDP. The LDP provides a clear planning framework to address key issues facing the County, providing certainty and the basis for efficient planning decisions. Its policies and proposals will enable the delivery of sustainable development, and ensure that social, economic, environmental and cultural well-being goals are all suitably balanced in the decision-making process so that the right development occurs in the right place.

## **2 Nature and Biodiversity in the Planning System**

- 2.1 Policy 9 of Future Wales states that in all cases, action towards securing the maintenance and enhancement of biodiversity (to provide a net benefit), the resilience of ecosystems and green infrastructure assets must be demonstrated. Policy ER 9 of the LDP supports this and states that proposals will be expected to maintain, protect and enhance ecological networks and features of importance for biodiversity. In addition, policies ER 6 (Designated Sites of Ecological Importance) and ER 9 (Ecological Networks and Features of Importance for Biodiversity) seek to protect sites that are important for biodiversity.
- 2.2 When the Local Planning Authority (LPA) considers applications for planning permission, one of the issues that needs to be considered is whether the proposal takes action towards securing the maintenance and enhancement of nature and biodiversity. As part of the consideration of this issue, Development Management officers consult with Planning Ecologists who appraise the applications and provide advice on the acceptability or otherwise of a proposal. The Planning

Ecologists also advise on the requirement for any further survey work, as well as mitigation/compensation/enhancement measures and the Conditions and Informatives that should be included on any Decision Notice. The Planning Ecologists ensure that the applicants demonstrate that they have considered the Stepwise Approach, to help deliver net benefit for biodiversity (Identify & Assess, Avoid, Respond & Design, Mitigate, Compensate, Enhance, Manage and Monitor). The Stepwise Approach is explained in full within the Biodiversity and Development Supplementary Planning Guidance (SPG) (see 2.3). In some cases, the application proposals will make provision for ecological enhancement and where the provision is acceptable, a condition is attached to the planning permission requiring the development to be undertaken in accordance with the approved details. In cases where no details are provided, or the details provided are inadequate, a condition will be attached to any planning permission granted requiring details of ecological enhancement measures and an implementation timetable to be submitted and approved before development commences. The condition also requires the scheme to be implemented in accordance with the approved scheme and timetable.

- 2.3 In order to ensure development within Swansea maintains and enhances the County's biodiversity and delivers long term ecosystem resilience, the Council has produced Supplementary Planning Guidance (SPG) entitled 'Biodiversity and Development'. This document provides guidance to augment LDP policies ER 6, ER 8 and ER 9 and provide clarity on the interpretation of those policies. The SPG can be viewed via the following link: [Biodiversity and Development - Swansea](#). This aligns with the Council's duties under s6 of the Environment (Wales) Act 2016 and the Resilient Wales Goal of the Well Being of Future Generations Act 2015 and is consistent with National Development Plan (Future Wales) Policy. The SPG guides applicants on how to consider biodiversity at each stage of the development management process. It provides the framework to demonstrate that proposals have responded to a robust ecological understanding of a site, and that appropriate ecological mitigation, compensation, enhancement and aftercare will be provided. Officers have promoted the policy requirements and SPG in workshops with stakeholders so that they are aware of the requirements and advice available.
- 2.4 In addition to the SPG, there is advice regarding Biodiversity and Development on the Swansea Council website including: [Sustainable Drainage Systems \(SuDS\) & Biodiversity](#), [Biodiversity Enhancements](#), [Ecological Survey & Assessment Process](#), [Protected Species & Development Licences](#) and [Natural Environment Legislation & Policy](#). There is also information on [Tree Preservation Orders \(TPOs\)](#) and [wildlife crime](#).

- 2.5 The onus on ensuring any development complies with the approved plans and conditions rests with the developer. Whilst conditions are attached to planning permissions to ensure schemes are acceptable, it does not always follow that the conditions are complied with. Where development is not undertaken in accordance with the approved plans or conditions, a breach of planning control occurs, and the Local Planning Authority could take enforcement action to remedy any such breach of planning control.
- 2.6 Where a complaint is received that a condition has not been complied with, officers will investigate and where a breach is identified, seek to ensure compliance. Initially, this will be through negotiation, but can be through the service of a formal enforcement notice if negotiation is unsuccessful. Consequently, if it is established that a biodiversity-related condition is breached, the above course of action will be taken to secure compliance with the condition.
- 2.7 The vast majority of complaints in respect of alleged breaches of planning control investigated by the Development Management Team are as a result of complaints received by the department. In 2022/23, 412 complaints were received for investigation. This volume of work, together with a backlog that increased during the Covid Pandemic, means that there is no capacity within the Development Management Team to undertake pro-active monitoring of planning permissions.
- 2.8 It should be noted that, except in the case of 'major development' (20 major applications received 2022/23), there is no statutory requirement for a developer to notify the LPA that development is commencing. As a result, there is no mechanism for the LPA to check whether conditions attached to a planning permission have been discharged as they have not been informed that the planning permission has been implemented. Although the mechanism exists for conditions to be discharged through a Discharge of Conditions application, there is no process that notifies the LPA that the conditions are implemented on site and/or in accordance with the approved plans.
- 2.9 It should also be noted that once development lawfully commences, there is no time limit for the works to be completed. Planning conditions that require developers to take action will contain trigger points. These triggers relate to timescales for submitting details for approval and/or timescales for undertaking the works required by condition. The timescale for biodiversity conditions will be dependent on the nature of the requirement (e.g. a mitigation strategy for a protected species or provision of an ecological enhancement). Even if the LPA is aware that development has commenced there are no resources available to continually monitor development to ensure that implementation timescales are met as there is no specific date for compliance – it will vary depending on when development is completed.

- 2.10 The scrutiny performance panel is also requested to note that biodiversity conditions are only one type of condition attached to a planning permission and there are conditions in relation to areas such as highways, drainage, external materials that also need to be complied with.

### **3. Conclusions/Key Points Summary**

- 3.1 Whilst the LPA is actively using the decision-making process to maintain and enhance biodiversity, secure the resilience of ecosystems and green infrastructure assets, the ability of the LPA to ensure compliance with approved plans and conditions is severely restricted by the resources available to pro-actively monitor development. Developers are the key component in ensuring that their developments maintain and enhance biodiversity and ecosystem resilience. Continued awareness-raising and engagement with applicants, developers and the wider public is therefore essential to increase understanding of the role they can play in helping to deliver nature recovery.

### **4. Legal implications**

- 4.1 None

### **5. Finance Implications**

- 5.1 None

### **6. Integrated Assessment Implications**

- 6.1 Not required

***Glossary of terms:** Please add glossary of terms if you are using acronyms*

**SPG – Supplementary Planning Guidance**

**LPA – Local Planning Authority**

**PPW – Planning Policy Wales (Edition 11) Feb 2021**

**TAN – Technical Advice Notes**

**LDP – Swansea Local Development Plan 2010-2025**

**Background papers:**

*None*

**Appendices:**

Biodiversity SPG: <https://www.swansea.gov.uk/biodiversityspg>

Biodiversity and Development Guidance Notes:

<https://www.swansea.gov.uk/biodiversitydevelopmentguidance>