



BY EMAIL: bio.offsets@defra.gov.uk

Biodiversity Offsetting
1/16 Temple Quay House
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7th November 2013.

Dear Sir/Madam,

Biodiversity Offsetting in England Green Paper

The Cotswolds Conservation Board understands the Government's need to encourage economic growth, and the focus that gives to removing unnecessary constraints on building and infrastructure development. However, we have a number of fundamental concerns with the proposals for biodiversity offsetting as they are being canvassed in the Green Paper (we refer to these also in our answers to the specific questions).

The protected landscapes (National Parks and Areas of Outstanding Natural Beauty) have been designated as the nation's most special landscapes and should not be compromised as a result of biodiversity offsetting. Therefore the Board's starting point is that whilst biodiversity offsetting may have a place in reconciling development and conservation, it must not be at the expense of the established protection given to designated landscapes and sites.

- The Board is mindful of the protections required by the National Planning Policy Framework (NPPF) for Areas of Outstanding Natural Beauty (AONBs), National Parks (NPs), European sites and SSSIs. Paragraph 116 requires that planning permission should be refused for major developments in designated areas except in exceptional circumstances and where it can be demonstrated they are in the public interest; hence development proposals would normally need to be located on another more appropriate site, and only in such exceptional cases would offsetting be required to mitigate the impact of the development on the protected area. This point is made in the Secretary of State's preface to the Green Paper, but the text of the document seems to lose sight of it, drifting towards the possibility of a routine trade-off of offsetting for planning permission. It is important that the Secretary of State's view should be held to, rather than the looser interpretation of policy implied elsewhere in the document.
- The proposals seem to ignore or downplay the complex nature of biodiversity and the numerous practical difficulties of trying to compensate for losses in one area with gains in others; and it overlooks how little we know about ecosystems in many important respects. While offsetting may work in some cases, the Green Paper gives insufficient recognition to the scientific and practical difficulties of creating or restoring biodiverse habitats.

Conserving, enhancing, understanding and enjoying the Cotswolds Area of Outstanding Natural Beauty

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- There are substantial operational difficulties associated with creating the necessary bureaucratic infrastructure of assessment, scrutiny, assurance and financial probity if biodiversity offsetting is to be implemented successfully. We do not believe that these have been adequately dealt with in the consultation.
- Biodiversity offsets must be seen in context. Existing government biodiversity policy, following the Lawton Review and the Natural Environment White Paper, stresses the need for actions to improve England's biodiversity by developing bigger, better and more joined up ecological networks. Biodiversity offsets could be invaluable in helping to implement this policy. They could also be disastrous if, for example, the biodiversity resource that would be removed for a new development is part of a system that is already 'joined up'. A good example of this is a river corridor.
- No thought is given in the Green Paper to the connection between biodiversity offsetting and landscape. Landscape, its geology, landform, aspect, land use etc, greatly influences the habitats and biodiversity of an area. Likewise, habitats and biodiversity form part of the character which defines a landscape. Indeed the word 'landscape' occurs only once in the whole document, and there is only a passing reference to landscape character analysis and Natural England's National Character Areas. For bodies like AONBs and NPs, whose primary duties are about landscape, this is not reassuring.

Landscape is therefore a critically important aspect of context. It is not a constraint: understanding landscape always provides opportunities. Working with that understanding is one of the most creative ways of ensuring that development proposals are sensitive to local conditions

Of course, this is a Green Paper about biodiversity offsetting, not landscape offsetting, but land has different environmental values and even if it is possible to offset a biodiversity loss in one area with a biodiversity gain in another, it does not follow that the landscape values on the same piece of land can be similarly offset.

- Habitats are also imbued with levels of meaning for people. These meanings – places where children played, lovers met and families picnicked – cannot be "offset". If the site that holds these meanings is lost, they are destroyed forever. The Green Paper shows no recognition that such values, often associated with green spaces, are important to people. Of course this argument should not be pursued to the point that all change must be resisted, but it is wrong to see biodiversity values as solely scientific - nature is important to people for its associations and memories, and its loss will be felt by the community deprived of access to it even if the biodiversity loss is offset by a similar habitat created elsewhere.

- Our final broad concern is that the proposals are premature. The pilot schemes will not be completed for another 6 months. The results of these should be thoroughly analysed, along with overseas experience, in order to present reasoned, evidence-based support for any proposed policy changes. The timing gives the impression that the lessons learnt from the pilots are being pre-judged.

Question 1: Do you think the Government should introduce a biodiversity offsetting system in England?

The Board considers that the concept of an offsetting scheme to compensate for biodiversity losses in one place by gains elsewhere through habitat improvement and creation has in principle some merit, subject to a the revised and strengthened mitigation hierarchy proposed below. There could also be opportunities for benefits to landscape, cultural heritage and public access.

Any scheme which is introduced needs to ensure proper calculation of biodiversity units, compensation and offset implementation and to guarantee its enforcement over many years. However, ecology and biodiversity are complex phenomena. Offsetting will always have costs, including unknown costs resulting from limited scientific understanding. It is imperative that biodiversity is not reduced to a tradeable commodity simply to remove a block to development.

Biodiversity offsetting should be a last resort as stated in the mitigation hierarchy and in paragraph 118 of the NPPF. To make the Government's intentions clear, the mitigation hierarchy should be amended on the following lines:

Firstly, avoid damage. Important landscapes and habitats must not be destroyed, so the protection given to these should not be weakened through any offsetting scheme.

Where habitats of lesser importance are concerned, then damage should be mitigated by good design of the development that minimises land-take and destruction of ecosystems.

Offsetting should only be considered as a last resort to compensate for damage that can't be avoided or mitigated - and it must deliver a net benefit for the environment.

We are concerned that although the Green Paper points to existing biodiversity offsetting systems in various countries, it gives no indication of the Government's consideration of what might be learned from this overseas experience. Any system to be introduced in England should be evidence-based and expressly designed to avoid any weaknesses or pitfalls identified elsewhere. Comparing results from extensive ecosystems in one country (Australia) with the smaller scale and more intricate ecosystems of England is not comparing like with like.

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

The objectives and characteristics as stated seem broadly right. However, it is difficult to see how a scheme designed to meet these objectives will result in no additional cost to business compared to on site mitigation as currently implemented.

Question 3: Do you think it is appropriate to base an offsetting system on the pilot metric? If not is there an alternative metric that should be used?

The metric has been a good basis for the pilots themselves, but will need careful reconsideration in principle and amending when the results of the pilots are reported and fully analysed.

The metric, as described in the Technical Paper - March 2012, was designed to be thoroughly tested by the Biodiversity Offsetting pilot. The six 2-year pilots are not due to finish until April 2014. It is not possible to determine how successful the pilots have been and how the metric has worked until the pilots have been completed and properly assessed.

The Green Paper has been produced 6 months before the end of the pilots and substantially underplays the design and intention of the metric used in the pilots. The Green Paper versions by comparison appear crude. It appears to the Board as if the Green Paper is deliberately watering down the metric and what it is designed to achieve.

In the light of experience with the pilots and the outcome of this consultation, there should be testing of further pilots.

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

- a. Are there any other factors which should be considered when quantifying biodiversity loss and gain?
- b. Are the weights given to the different factors appropriate?
- c. Are there any other changes you think should be taken into account?

(Please also refer to questions under section 6)

The Board is very concerned that the Green Paper makes no reference to landscape until (briefly) in section 6.7. The metric needs to take account of landscape character and features as these affect biodiversity, and particularly when considering where an offset is to be provided.

As an example, dry stone walls are missing from the habitat list. In the Cotswolds, dry stone walls are a characteristic feature of the landscape but also an important habitat for invertebrates, herpetiles and rare species such as the snail *Lauria sempronii* and feather moss.

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

Yes, but only where necessary and not as a generality. The local planning authority should be required to identify when an offsetting assessment is needed at an early stage in the planning application process.

Question 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? If not, why, and how do you think offsetting should be approached in the planning system?

If introduced, biodiversity offsetting should be part of the democratic planning process and therefore the responsibility of planning authorities to operate. This would enable the planning authority to involve third parties who have an interest in and knowledge of biodiversity. It is of concern that the role of third parties is not referred to at all in the Green Paper.

Each first tier¹ local authority should be required to produce an Offsetting Strategy, drawn up in consultation with relevant bodies, including in protected landscapes the AONB management body or National Park Authority, to determine how the process of offsetting will be implemented in their area. Protected landscapes Management Plans will provide much useful guidance for such areas.

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

Yes, but biodiversity offsetting will generally be irrelevant to development consent regimes designed to protect the cultural and historic rather than the ecological heritage, such as scheduled monument or listed building consent.

Question 8: Do you think developers should be able to choose whether to use offsetting? If so what steps could Government take to encourage developers to use offsetting?

The mitigation hierarchy and the NPPF paragraph 118 makes it clear that offsetting is to be a last resort. It would be inappropriate therefore for the developer to be free to choose. The planning authority should determine the approach used in discussion as part of the decision making process. This would enable other factors such as landscape, historic environment and access to be taken into account alongside offsetting. There should not be 'encouragement' to use offsetting.

¹ County and unitary councils

Question 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? What level should the threshold be?

Thresholds are inappropriate when considering biodiversity. A small development can have a high impact. Each application should be considered on an individual basis.

Question 10: Do you think there should be constraints on where offsets can be located? If so what constraints do you think should be put in place?

Landscape character is a constraint on where offsets should be located. In the Cotswolds, for example, it would be inappropriate to establish woodlands through offsetting within some of the characteristically open landscapes of the Cotswolds or to plant new hedges in areas characterised by dry stone walls.

There is also a tension between two valid aspirations in terms of how funding generated through an offsetting scheme should be allocated. On the one hand there is an argument that the money should be spent within the vicinity of the development site in order to provide a benefit to the local community affected by the development. On the other hand, biodiversity offsetting offers a strategic opportunity to deploy new financial resources where the best results can be achieved in terms of habitat creation and connectivity. Knowledge of these opportunities is improving, not least because of the work on Nature Improvement Areas. Some of these areas are likely to be remote from the development sites, and not necessarily even in the same local authority area. This is very likely to be the case in the Cotswolds AONB.

It may well be the case that local authorities may not wish to see funds spent outside their area that were raised from developments within it.

In order to balance these two aspirations, the Board considers that a national mechanism would be needed to provide funding for strategic deployment of biodiversity offsets on habitat restoration and creation projects of national significance. This would also ensure a degree of 'high impact' work and avoid the danger of the scheme's impact being dissipated through lots of small projects.

Question 11: Do you have any comments on the analysis set out in the impact assessment?

We have not considered this.

Question 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

The Board has no such evidence.

Question 13: Do you think offsetting should be a single consistent national system without scope for local variation?

No. Planning authorities should be able to add conditions to the metric to reflect local circumstances and priorities, where this can be supported by a clear rationale. This approach is part of the pilot metric currently being tested.

Question 14: Do you agree with the proposed exceptions to the routine use of biodiversity offsetting? If not, why not? If you suggest additional restrictions, why are they needed?

The Board agrees with the proposed exceptions on the basis that paragraph 118 of the NPPF and legislation covering SSSIs and European sites identifies these areas as a last resort for development if there are no other suitable locations and it is in the national interest.

Question 15: Which habitats do you think should be considered irreplaceable?

It is very difficult, if not impossible, to create new habitats to replace many kinds of existing habitats. It must be recognised that many created habitats are not the equivalent of the long established ones that would be lost under an offsetting scheme.

Ancient woodland is the habitat usually recognised as irreplaceable. But another example is ancient grassland which usually contains a unique composition of species developed in response to that site's location, aspect, latitude, gradient and climate etc, as well as that location's own unique history of land use. This degree of meaning cannot be replicated at another location and the site is, therefore, irreplaceable.

Many habitats are of this character, and further research is required to identify them before an offsetting scheme could be implemented.

Question 16: Do you think offsetting should in principle be applied to protected species

Proper assessment and use of the metric should mean provision is made for any affected species. Protected species such as great crested newts and bats are already covered by existing legislation by which impacts are addressed.

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

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

Question 19: Do you have any comments on the Government's thinking on how to apply offsetting to great crested newts?

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

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

Question 22: Do you think management agreements should be put in place as part of an offsetting system? If they are required, who do you think should be responsible for agreeing management agreements?

It is evident that without some form of guarantee to ensure that the offset is provided and managed for the long term to achieve the required outcomes, the intended biodiversity gains will not be realised or sustained. The proposal involving covenants which are enforceable on subsequent landowners and supported by management agreements seems a reasonable approach. However, consideration needs to be given to the effect of a restrictive covenant on land value and how this would be viewed by landowners and their willingness to become involved as an offset provider.

A body will need to be responsible for the significant tasks of certifying the biodiversity gain the offset will provide and for enforcing the covenant and management agreement. Whilst a national agency could fulfill this role, arrangements to delegate the role to National Park Authorities and AONB Conservation Boards could also be helpful to assist this important aspect of the process given sufficient additional resources through the offsetting process, and not at the expense of other activity.

Question 23: Do you think an offset register should be put in place as part of an offsetting system? If so, who do you think should be responsible for maintaining an offset register?

Yes, an offset register will be required for transparency and to avoid any subversion such as using a single offset for several projects. It could also make the system more efficient by tracking delivery and demonstrating how a landscape scale approach can be developed by agreeing the right offsetting in the right place.

The local planning authority would be best placed to maintain the register.

Question 24: How long should offsets be secured for?

An offset should be secured in perpetuity; otherwise the whole intention of the scheme will be undermined.

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

Factors that will impact on the ability to deliver offsetting include climate change, commodity prices and disease. These factors could make it difficult in some instances to secure land for offsets or to maintain the offsets in the long term.

There is also little point in establishing offsets on land under threat from future development.

A vital element of any scheme will be putting into place clear arrangements for monitoring offsets and ensuring compliance with agreements. The Board has noted that the proper monitoring of ESA and HLS agreements has proved impossible in many instances. Similarly, the effective monitoring and enforcement of planning conditions requiring the implementation and management of landscaping and biodiversity measures has proved problematic for planning authorities. This is a weakness of the whole scheme and could develop into significant costs for whoever is left with managing offsets.

As noted in the response to question 22, National Park Authorities and AONB Conservation Boards could also be helpful to assist this important aspect of the process given sufficient resources through the offsetting process.

Question 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?

In reality, no. It would mean re-negotiating planning applications.

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

No. A case by case approach needs to be taken.

Question 28: Do you think any additional mechanisms need to be put in place to secure offsets beyond conservation covenants? If so why and what are they? If this includes measures not listed above, please explain what they are.

Question 29: Do you think there should be constraints on what habitat can be provided as an offset? If so what constraints do you think should be put in place, and how should they work in practice?

The assumption should be like for like unless there is an identified opportunity for a higher priority habitat to be restored appropriate to the area. A good example for the Cotswolds would be the creation/restoration of unimproved limestone grassland as an offset for loss of secondary woodland.

This approach would also enable offsets for habitat creation/restoration to be joined together to create a landscape scale project.

To guide this, an agreed offset strategy needs to be in place.

Question 30: Do you agree an offsetting system should apply a strategic approach to generate net ecological gain in line with *Making Space for Nature*? If so, at what level should the strategy be set and who by? How should the system ensure compliance with the strategy?

Yes, the system should be in line with the approach and recommendations in *Making Space for Nature*. Delivery strategies should be agreed at the planning authority level, but a national steer can be provided by the National Character Area profiles. As noted in the response to question 6 protected landscape Management Plans will provide much useful guidance for such areas.

The incentive model in section 6.4 of the Green Paper should be used to ensure compliance with the strategy.

Question 31: Do you think habitat banking should be allowed? Do you think a provider must show intent to create a habitat bank to be allowed to sell it as an offset? Do you think habitat banks should be “retired” if they are not used to provide an offset? If so, after how long?

No, habitat banking should not be allowed. It would create too much uncertainty for the developer, planning authority and offset provider.

Question 32: Do you think maintaining an environmental gain that might otherwise be lost should count as an offset? If so, how should a value be attached to the offset.

It may be what is implied here is that offsetting could be a replacement for agri-environment schemes, a means of retaining biodiversity gains acquitted through ESAs for example. That would seem in principle to be wrong – if offsetting has a place, it must be to achieve a net gain for nature, not to replace one system of protection with another offering no net benefit.

Question 33: Do you think it is acceptable or not to use biodiversity gain created for other purposes as an offset? If you do, how should it be decided what is allowed to be used as an offset

No. This would make offsetting too complex. The system should be seeking opportunities to create new habitats.

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

Planning authorities should be ensuring robustness of assessments working to a national framework. However, planning authorities have run down their staff in this area and may be hard put to carry out the necessary assessments. National Park Authorities

and AONB Conservation Boards could also be helpful to assist this important aspect of the process given sufficient resources through the offsetting process.

Question 35: How should differences of opinion over assessments be addressed?

By the planning authority through an appeal process.

Question 36: Do you think the metric should take account of hedgerows? If so do you think the current approach is the right one or should it be adjusted?

If hedgerows are taken as a habitat, they should already be covered by the metric. The only difference is the multiplier used in the metric and this could be retained for hedgerows.

Paragraph 62 is the only mention of landscape in the Green Paper. Why just pick out hedgerows? Other features have more than just biodiversity value such as ponds and trees. In some situations, the planting of new hedgerows can be damaging to landscape character and the historic environment.

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

Yes, where hedgerow planting is not appropriate in terms of landscape character and the historic environment. See response to Q29

Question 38: If conservation covenants are put in place, do you think providing for offsetting through planning guidance will be sufficient to achieve national consistency? If not, what legislative provision may be necessary?

Yes, planning guidance should be sufficient.

Yours faithfully,



Malcolm Watt
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Cotswolds Conservation Board