

National Association For Areas Of Outstanding Natural Beauty (AONBs) - Comments On Offsetting The Impact Of Development On Biodiversity

The NAAONB is a voluntary body whose membership includes all the AONB Partnerships in England and Wales, as well as many of the local authorities with statutory responsibility for AONBs, the Trust which manage AONBs in Northern Ireland, as well as a number of voluntary bodies and individuals with an interest in the future of these iconic landscapes.

A number of AONBs may have responded individually to this consultation and the comments of the NAAONB should be seen as supportive and supplementary to these.

Thank you for the opportunity to comment on this document.

The principle of biodiversity offsetting

The principle of biodiversity offsetting is supported. The Government's efforts to devise a system of biodiversity offsetting which can be applied widely are welcome. This support comes with an important caveat however: **in no circumstances must greater use of offsetting weaken existing levels of protection for biodiversity through the planning system.** It is vital that no offsetting scheme should be agreed until it has been shown that the related development is fully acceptable in planning terms and after all the necessary planning conditions have been negotiated for the site in question. Precise, legally firm language is needed that makes it absolutely clear that in no circumstances should biodiversity offsetting be used to permit an unsatisfactory development proposal to proceed.

As a generic technical term for what is involved, "biodiversity offsetting" looks acceptable, as might be "biodiversity compensation", but as a marketing term it is poor. One suggestion might be "*Making Good for Nature.*"

Benefits of the biodiversity offsetting approach

We agree with the four potential benefits for biodiversity which have been identified in the discussion paper.

In our view the second benefit is the most important – the ability to pool resources to create bigger, higher quality areas for wildlife. This chimes well with the conclusions and recommendations in the Lawton report.

The third benefit - developing a network of offset providers – would also be welcome. Here, we suggest that there is a potential important role for AONB Conservation Boards and Partnerships. This is reinforced by a key conclusion in the Lawton report that action within the network of protected landscapes (the National Parks and AONBs) has a vital role to play in delivering the required improvements for biodiversity.

An omission is reference to helping to meet the UK's EU obligations for biodiversity and to delivering more in relation to our commitment to the Convention on Biological Diversity (CBD) where the UK is a signatory. Well targeted offset investment could also support landscape aims, geodiversity conservation, provision of green space and green infrastructure, water quality objectives and better functioning ecosystem services more generally. An aim of biodiversity offsetting should be that it should contribute to a wider range of objectives wherever possible. The wider the range of public benefits secured, the greater the likely public support for an offsetting approach.

The obvious downside is a real risk, despite assurances otherwise, that development will be allowed in areas where the biodiversity (or other environmental) value should preclude it, on the basis that compensatory habitat will be provided elsewhere. Biodiversity is not a tradable commodity and the belief that you can always replace an existing habitat (which you can't) must not be encouraged. There will also be a temptation to exaggerate the benefits that such a scheme could provide. Schemes must be tested rigorously to ensure their biodiversity claims stand up.

Local priorities

The paper suggests that offsetting should be delivered locally and that local strategies should be developed for locating offsets in the right area to deliver local priorities. As a broad principle we would endorse such an approach. However, as noted above, much biodiversity is of wider than local significance and may be of EU or even wider international importance. The use of biodiversity offsets should aim to fulfil EU and international obligations and be applied with a full understanding of the international significance of much biodiversity in the UK.

The approach of local strategies also has the great advantage of being able to deliver, potentially, a wider range of benefits. As noted above, properly targeted offset investment, with targets identified in local strategies, could help deliver landscape aims, geodiversity conservation, green space and green infrastructure, water quality objectives and better functioning ecosystem services more generally. This should be a priority objective of such a scheme.

Great care will be needed in selecting suitable land for offsetting. The Lawton report notes that receptor areas for creating habitat must not be places of existing high wildlife value. At the other end of the scale it will be important to avoid use of high grade agricultural land and particularly best and most versatile (BMV) land.

Mapping work in the South West (the South West Nature Map) has identified priority areas for habitat creation and would be a model for other areas to follow. Information in AONB and National Park management plans should also provide useful guidance, as should National Character Areas descriptions and the new integrated objectives for each NCA being developed by Natural England, based on protect, manage and plan where “plan” addresses restoration and creation of habitats.

An issue, of course, is: what is local? Is it a County Council area, District Council area, National Character Area, National Park or AONB – and who should lead on producing the strategy? (see comment below).

Principles for guiding a wider, more consistent approach to offsetting

The eight broad principles set out in the paper seem sensible. An important objective should be adding value to nature. Accordingly, we suggest that the fourth principle be amended to read “Build on, and add value to, existing levels of protection for biodiversity.”

Also in light of comments made above, an additional principle should be “Helping to fulfil our international obligations for biodiversity.” The offsetting principles set out in the Lawton report are detailed and comprehensive. In view of points already made above, we particularly welcome Lawton’s concern that offsetting should only be used to compensate for genuinely unavoidable damage, that each offset scheme should achieve a net gain for biodiversity, and that opportunities should be taken to pool compensation from different developments so that larger habitat blocks can be created. We also welcome the idea that developers might buy additional conservation credits as part of their social responsibility commitments.

We are pleased to note that Lawton emphasised that there must be a recognition that some habitats such as ancient woodland cannot be re-created while others can take decades to develop their wildlife interest; and that good monitoring and on-going management will be essential if any offsetting scheme is to have credibility.

How could offsetting work in practice?

We note that the Government is presenting biodiversity offsetting in part as an important element of the localism agenda and neighbourhood planning, to be delivered where appropriate as part of the process for granting planning permission. While this may be an important objective for the scheme, the wider potential for biodiversity offsetting to contribute to achieving our EU and international obligations for biodiversity should be recognised explicitly.

The basic process

The basic approach envisaged seems to be that local authority development plans would contain biodiversity policies and that biodiversity offsetting would be used to help deliver the policies, informed by an agreed strategy for delivering biodiversity priorities. Loss of biodiversity as a result of a planned development would be assessed as part of the planning process and the developer would be required to provide an appropriate offset payment through a Section 106 agreement or other mechanism. The money would go to the authority to fund and maintain an appropriate project through an offset provider.

As a firm foundation for any scheme, we argue that sound policies in the local development plan and an agreed strategy for delivering against priorities are an essential pre-requisite and **that no offsetting scheme should be introduced in an area until such a plan and strategy have been formally adopted.** The plan and strategy should directly address biodiversity priorities but also identify related benefits for the landscape, open space and green infrastructure provision etc. which can be achieved through a biodiversity offsetting approach.

Mechanisms

We do not consider that the S 106 mechanism is the right mechanism unless there can be far more flexibility in its application. ODPM Circular 05/2005 says that

A planning obligation must be:

- (i) relevant to planning;*
- (ii) necessary to make the proposed development acceptable in planning terms;*
- (iii) directly related to the proposed development;*
- (iv) fairly and reasonably related in scale and kind to the proposed development; and*
- (v) reasonable in all other respects.”*

Any funds required have to be clearly related to the development taking place. *“Obligations must also be so directly related to proposed development that the development ought not to be permitted without them – for example, there should be a functional or geographical link between the development and the item being provided as part of the developer’s contribution.”*

With this strict interpretation, it is difficult to see how such funding could be used to provide biodiversity gains some distance from the site which has no geographical connection with the development, or to pool the money received in some larger “pot” with no immediate prospect of being spent.

A possibly better option would be use of the Community Infrastructure Levy, under which a proportion of the tariff set by a local authority would be used to secure biodiversity benefits elsewhere in their area. Cranborne Chase AONB Partnership has already done some work on suggesting what the tariff would need to be to support AONB management. Under this arrangement, a local authority policy for Community Infrastructure tariffs would need to explain the justification for compensatory sums for biodiversity, how the sums will be arrived at and what they will be used for.

Scale

We agree that the scale of a single district council area is probably too small and not all such local authorities would have the necessary skills in house. If the process is to work through the planning system, there is some logic that groups of local authorities should work together and develop joint strategies and that they should share technical expertise. Working at the scale of National Character Areas would be logical, as these are cohesive landscape and biodiversity units, as might Ecological Restoration Zones - but both could be administratively challenging. There is a strong case for working at the scale of protected landscapes – AONBs and National Parks – given that the Lawton report recognised the particular potential of protected landscapes to deliver for biodiversity.

Providing and managing offsets

We note that it is suggested that offsetting projects might be on land offered by a farmer or individual landowner, or on land owned by a local authority or conservation body; that developers might wish/be able to provide their own offsetting project; and that third parties might be brought in to deliver projects. We agree that for offsetting projects to be successful there would need to be a robust implementation and management plan for each project with associated monitoring to ensure the desired outcome, and robust financial management to ensure creation of the habitat and its on-going management for at least 25 years.

Effective independent monitoring will be essential, together with mechanisms to ensure full delivery of projects if agreements are breached. Given its statutory remit in relation to biodiversity and landscape, we suggest that responsibility for monitoring should be rest with Natural England.

A proportion of the offset contribution will need to be made available to fund the costs of both implementation and monitoring.

On the concept of habitat banking, we consider that this would be worth trialling on a pilot basis. Established conservation organisations such as the National Trust, RSPB and the wildlife trusts should be invited to come forward with proposals.

Standards and registry

It is noted that a centrally designed scheme is not currently envisaged. Instead, it is suggested there could simply be a need for guidance and standards on such things as management plans, arrangements for managing the funding, and for “third party brokers.”

In our view, it is vital that whatever arrangements are finally agreed there is a high degree of consistency of approach. This makes national rules and some form of national guidance essential.

There has to be consistency for everyone to feel confident in the approach (developers, conservationists, planners, farmers). Ensuring openness, transparency and integrity in the system will be vital to building public confidence. Corruption (or quasi-corruption) would be quite possible and must be guarded against.

A list of organisations that might lead the development guidance is given. As with independent monitoring, we suggest that this is a task that should be led by Natural England, in consultation with the full range of key organisations that would have an interest in offsetting.

We welcome the suggestion that there should be a registry of offsets with national coverage, and the recognition of the need for assessment of effectiveness. While evaluations of effectiveness would be on the basis of locally-provided information, there should also be some kind of independent national evaluation on a sample basis. The location of registered land should be in the public domain: MAGIC would be a suitable vehicle.

Thresholds

It is suggested that there might be a threshold below which developments with low impact on biodiversity would be exempt, or, alternatively for small developments, developers would make a payment to a locally administered fund to deliver biodiversity conservation projects in the area.

A special fund would be a complication. As indicated above, our preference would be use of the Community Infrastructure Levy approach through which part of the tariff would be directed to fund biodiversity projects

Calculating what offsets are required

It is suggested that it would be possible to allocate different types of habitat to “tariff bands” based on their conservation value, and that the requirements associated with different bands could be tailored to local conditions and local offsetting strategies. This seems unduly complicated and not consistent with the principle of being as simple and straightforward as possible for developers and local authorities.

A final point we wish to stress: technical understanding of habitat restoration and habitat creation is still patchy and projects may not always deliver what is expected of them. If there are many such examples of unfulfilled claims and projects that fail, the whole system will fall into disrepute and be discredited in the eyes of the public. So it is important that all offsetting schemes are based on the best science. Once again, we would expect Natural England to play an important role in ensuring that this happens.

This NAAONB response will be sent by email to:

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Response developed by Richard Lloyd, NAAONB Board Member
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