

# Nature Conservation in Europe: Approaches and Lessons

## Annex UK.7. Offsetting Policies and Initiatives in England

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Provisions in the Countryside and Rights of Way Act 2000 (CROW Act), and the Natural Environment and Rural Communities (NERC) 2006 Act (in particular the 'biodiversity duty') and planning guidance, gave local authorities in England and Wales<sup>1</sup> powers to address development related biodiversity losses, but were weak and ambiguous; and have not been effectively used by most authorities. A clearer requirement to implement the mitigation hierarchy, by avoiding, minimising and, if necessary, offsetting residual biodiversity impacts was introduced in the National Planning Policy Framework (NPPF) for England in 2012. This gave local planning authorities the power to refuse permission if 'significant harm' to biodiversity from a proposed development is expected. However, although this may have strengthened impact avoidance and mitigation, it did not seem to stimulate widespread offsetting of residual impacts. For example, Tyldesley *et al.* (2012) reviewed 46 cases with residual biodiversity losses and found that only 15% were compensated. One of the reasons for the limited offsetting was the variable interpretation of the term 'significant harm'; with some authorities taking it to mean substantial impacts on Biodiversity Action Plan (BAP) Priority Habitats and Species<sup>2</sup> – especially as offsetting was considered to be expensive and could result in even more costly delays.

In an attempt to address residual impacts through offsetting more widely, and to reduce costs and delays, the Department for Environment, Food and Rural Affairs (DEFRA) commissioned a study of the appropriateness, desirability and feasibility of offsetting (Treweek *et al.*, 2009), and launched a 2-year pilot biodiversity offsetting initiative in 2012 to test approaches and gather evidence. Six pilot offsetting strategies and schemes were developed by local authorities according to agreed principles (DEFRA, 2011). To establish a consistent and transparent framework, the pilots all used a metric for measuring biodiversity losses, and expected gains from offsets (DEFRA and Natural England, 2012), adapting recommendations from the Treweek *et al.* study. The metric focussed on habitats only, calculating biodiversity units by multiplying their area, by their distinctiveness (i.e. inherent quality) and condition. Each habitat's quality and condition were ascribed to one of three levels (BAP Priority Habitats being the highest).

Although each of the pilots produced offsetting strategies, and used the metric to assess proposed developments, the use of offsets by developers was disappointing overall, with only one in place at the end of the pilot period. The primary reason for this was clearly the voluntary nature of the policy, and the resulting lack of demand did not encourage a supply of land for the offsets. This resulted in developers having difficulty in finding suitable offsets, as well as high transaction costs. Other constraints included the requirement of most local authorities for offsets to be within their own boundaries, the limited resources in local authorities and Natural England to assist with the offsetting schemes, and precautionary or negative views on offsetting from some NGOs and members of the public, which put-off some developers.

However, the pilot exercise produced some useful information, including demonstrating the practical value of the metric as a standardised communication tool for objectively demonstrating the biodiversity impacts of the proposed developments (Baker *et al.*, 2014, 2018). The use of the metric alone often resulted in the proposed developments being adapted to reduce their impacts, thereby strengthening the mitigation hierarchy. Nevertheless, concerns were also raised over the simplicity of the DEFRA metric, with a wide range of stakeholders suggesting that it did not adequately reflect the 'full complexity of habitats' (EAC, 2013), with many preferring a species component to be added to

<sup>1</sup> Amended in Wales by the Environment (Wales) Act 2016, which created an 'enhanced' biodiversity duty.

<sup>2</sup> Now habitats and species of principal importance in England, in accordance with Section 41 of the NERC Act. [www.gov.uk/government/publications/habitats-and-species-of-principal-importance-in-england](http://www.gov.uk/government/publications/habitats-and-species-of-principal-importance-in-england)

the metric. It has also been highlighted that the metric's results are very sensitive to decisions on what types of habitat are present and assumptions on the potential value of offsets, as well as being used too mechanistically and without sufficient expert oversight (Woodfield, 2018).

The pilot initiative also demonstrated that in some cases offsetting can result from NPPF requirements and be carried out efficiently and effectively. This was most obviously demonstrated in the pilot involving the Coventry, Solihull and Warwickshire Association of Planning Officers (Baker *et al.*, 2018). In the area a strong interpretation of 'significant harm' of biodiversity, linking to local development plans, allowed a mandatory form of biodiversity offsetting to be put in place. Importantly, this was also enabled by high-quality biodiversity maps, and a relatively large team of ecologists.

Despite the pilot exercise's finding that a clearer mandatory requirement for offsetting is required for the policy to be effective at scale, and a similar recommendation by the business-led Ecosystem Markets Taskforce (2013), the policy was not further developed for some time. This was probably due to concerns over the costs to developers and disincentives for housebuilding (which was, and remains, a very high political priority). Political support may also have been dampened by concerns amongst some NGOs and others that offsetting may be used inappropriately (e.g. weakening the protection of protected areas); a view fuelled by proposals to use offsetting to compensate for housing impacts at Lodge Hill SSSI (Woodfield, 2013).

Nevertheless, since the pilot offsets, the DEFRA metric (or various derivatives) has become widely used in the planning process as a means of biodiversity accounting (Woodfield, 2018). Also, an increasing number of public authorities and businesses have carried out voluntary offsetting to some degree, or now aim for net gain. This has been aided by the establishment of the Environment Bank, biodiversity offsetting broker that connects developers requiring offsets with landowners that can provide them. It also assists with the calculation and recording of biodiversity impacts and credits, and offset trading.

Recognising that housing and infrastructure developments will inevitably lead to some substantial unavoidable impacts, the UK Government announced in its *25 Year Environment Plan* (HMG, 2018), its intention to introduce requirements in England for developments to result in a net gain in biodiversity. Following a consultation, provisions for achieving net gain were included in the draft Environment Bill, with the aim of achieving at least a 10% increase in biodiversity as measured by an improved version of the DEFRA metric<sup>3</sup>, for at least 30 years. The proposal was for the requirement to apply to all developments that require planning permission under the Town and Country Planning Act 1990. However, a major gap was that it would not apply to Nationally Significant Infrastructure Projects (NSIPs) (e.g. major road and rail schemes, airports and ports) or maritime developments. In response to concerns about the exception, and the findings of an HM Treasury review of the economics of biodiversity (Dasgupta, 2021), the Bill was amended, and the Environment Act (2021) now also requires net gain to be achieved for NSIPs.

A remaining weakness is that the legal requirement is only to provide a net gain for 30 years. This is inconsistent with DEFRA's former offsetting design principles (DEFRA, 2011), as it severely limits the potential for creating many habitat types (unless created and banked in advance) and could be said to merely delay a development's impact. Instead, it seems to reflect the practical need for landowners to provide sites, as few were willing to offer their land for longer-term offsetting during the pilots (Baker *et al.*, 2014), and the costs that developers are willing to meet.

The requirement for a net gain in biodiversity comes into force in November 2023 for most projects, except SNIPs where the requirement will be introduced no later than 2025. Guidance is being developed by DEFRA on the implications of biodiversity net gain for developers, landowners (i.e. as potential net gain providers) and local authorities.<sup>4</sup>

<sup>3</sup> [www.gov.uk/guidance/biodiversity-metric-calculate-the-biodiversity-net-gain-of-a-project-or-development](https://www.gov.uk/guidance/biodiversity-metric-calculate-the-biodiversity-net-gain-of-a-project-or-development)

<sup>4</sup> [www.gov.uk/guidance/understanding-biodiversity-net-gain](https://www.gov.uk/guidance/understanding-biodiversity-net-gain)

Following a consultation in 2022<sup>5</sup>, an approach is being prepared to apply net gain requirements to developments within the marine environment.

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<sup>5</sup> [https://consult.defra.gov.uk/defra-net-gain-consultation-team/consultation-on-the-principles-of-marine-net-gain/supporting\\_documents/Consultation%20on%20the%20Principles%20of%20Marine%20Net%20Gain.pdf](https://consult.defra.gov.uk/defra-net-gain-consultation-team/consultation-on-the-principles-of-marine-net-gain/supporting_documents/Consultation%20on%20the%20Principles%20of%20Marine%20Net%20Gain.pdf)