

Insights

THE EMERGING MARKET FOR OFFSITE BIODIVERSITY NET GAIN

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SUMMARY

An ambitious new market in biodiversity units is being set up to support the requirement in the Environment Act 2021 for new developments to achieve biodiversity net gain. Things are at a very early stage, however, and there is much “fleshing out” to be done.

The Environment Act 2021 introduces new provisions into the Town and Country Planning Act 1990. These set out that, going forward, every planning permission granted for the development of land in England shall be deemed to have been granted subject to a condition that development cannot be begun until a biodiversity gain plan (showing that the biodiversity attributable to the development exceeds the pre-diversity biodiversity value of the development site by at least 10%) has been submitted and approved.

These new biodiversity net gain provisions are not yet in force, as there is still much detail to work through. The Department for Environment Food and Rural Affairs has recently launched a consultation to start the long fleshing out process.

The basic approach to showing biodiversity gain is already clear. Developers are going to have to try first and foremost to generate it on the development site itself. Where they cannot do so, they can utilise offsite gains achieved on third party sites – preferably as close to the development site as possible. As a last resort, they can purchase very expensive “biodiversity credits” from the Government.

How will biodiversity units be priced?

The utilisation of gains made on third party sites is going to be key to the workability of the concept of mandatory biodiversity net gain in the planning system, as it will not always be possible to accommodate the requisite habitat enhancements within a scheme design. The consultation makes clear that the supply of offsite biodiversity gains at third party sites will be achieved through market principles. In short, third party landowners or managers who create or enhance habitat will

be able to sell the resulting biodiversity “units” to developers, possibly through intermediaries such as brokers, with the unit price determined by agreement

Regulations and guidance on the operation of the market will be drafted at some point down the line. All that is known at the moment is that the private sector is expected to take the lead role in the operation of the market. There is expected to be an annual demand for about 6,200 offsite biodiversity units per year with a market value in the region of £135m. At this stage, who will emerge as the key intermediaries and how they will position themselves in the market is not known, nor the extent to which third party land will be offered up as biodiversity units.

Alongside the consultation, Defra has published market analysis which models the expected size and dynamics of the market for biodiversity units and their price in England. The analysis comes with a number of recommendations to inform policy development.

The market will, no doubt, take time to bed down and price units at a level that is high enough to tempt third party landowners to consider entering into the enforceable “conservation covenants” which are necessary, but not so high as to deter important development. The private sector is expected to be able to come up with ways that will ensure that biodiversity units from third party sites that are proximate to development sites come on stream in the right quantity, at the right time and at the right price that is consistent with the ‘spatial hierarchy’ preference for local enhancements. “Habitat banking” (creation of biodiversity net gain early and “banking” until allocated to a suitable project) will be allowed to smooth out supply and demand. Depending on how long this market takes to establish, developers may have to rely on expensive biodiversity credits to discharge the biodiversity net gain condition if there are no such units available to purchase.

How many biodiversity units can be created from a plot of land?

One issue that the market will have to accommodate, is the operation of the “Biodiversity Metric” (which is the tool used for calculating - in units - the biodiversity value of a piece of land, the gain/loss of biodiversity on that land following development, and the contribution of an offsite location towards the necessary biodiversity gain). As to why this is, the Biodiversity Metric allocates more or fewer units depending on “temporal risk” (how long the desired habitat takes to reach target condition) and “spatial risk” (the distance between the site of habitat loss and the site where the enhancement is provided). This means that biodiversity units associated with a piece of third party land are hard to pin down.

Concluding thoughts

Environmental protection is no stranger to market solutions, the obvious example being the EU emissions trading scheme (now the UK emissions trading scheme in the UK) which addresses carbon emissions. A market in biodiversity net gain units could work. However, much will need to be done by Government at a number of levels to enable the market to work effectively and prevent

development delays. The Government's next steps in this area are going to be very important indeed and need to be monitored very closely.

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