



**FOR PUBLICATION**

**DERBYSHIRE COUNTY COUNCIL**

**IMPROVEMENT AND SCRUTINY COMMITTEE - CLIMATE CHANGE,  
BIODIVERSITY AND CARBON REDUCTION**

**MONDAY, 16 SEPTEMBER 2024**

**Report of the Executive Director - Place**

**Strengthened Biodiversity Duty**

**1. Purpose**

- 1.1 To provide the Improvement and Scrutiny Committee for Climate Change, Biodiversity and Carbon Reduction with information on the work being undertaken to ensure the Council is compliant with its Strengthened Biodiversity Duty that is now a requirement through the Environment Act 2021.
- 1.2 To seek endorsement from the Committee to the work outlined in this report.

**2. Information and Analysis**

- 2.1 The Natural Environment and Rural Communities (NERC) Act 2006 (Section 40) placed a new 'biodiversity duty' on all public authorities in England. This wide-reaching duty required that, in exercising their functions, all such authorities must have regard to the conservation of biodiversity, including having regard the need to conserve, restore or enhance habitats or populations of species, particularly those identified by government as being priorities for conservation.
- 2.2 Shortly after the NERC Act Biodiversity Duty came into force, Buglife, the invertebrate conservation charity, brought what has been seen as the first test case under the new duty, challenging the execution of this duty by a development corporation in their consideration of a planning

application. The court refused Buglife’s application for a judicial review of the associated planning decision. This judgement was seen as highlighting the lack of protection afforded by the NERC Biodiversity Duty. Accordingly, whilst the NERC Biodiversity Duty remained in place, the prominence of this element of the NERC Act was significantly diminished, and the weight afforded to it by many public authorities was reduced.

- 2.3 To a certain extent, part of the Environment Act 2021 tries to rectify this situation. Through sections 102 and 103 of the Environment Act, the NERC Biodiversity Duty has been strengthened so that all public authorities in England are now, not only subject to a general biodiversity duty requiring that they conserve and enhance biodiversity in the exercise of their functions, but also that they must take a considered and documented approach to this, recording, evidencing and publishing information about the steps they have taken to conserve and enhance biodiversity.
- 2.4 The condition of the natural environment is of increasing public concern. Biodiversity is a primary indicator as to the ‘health’ of the natural environment. By creating a duty to report on actions in relation to biodiversity, the public will be able to, in balance with other local issues, hold local authorities to account, not least through democratic processes.
- 2.5 This Strengthened Biodiversity Duty sits across all Departments and Services in the Council and is not limited to just those services with a specific function in land management.

#### **Work Undertaken to Date**

- 2.6 The first stage of the Strengthened Biodiversity Duty is to create a First Considerations Report. This needed to be in place by 1 January 2024 and was completed by the Council’s Climate Change Team in collaboration with the Conservation Heritage and Design Service. There is no requirement to submit this document to central Government or for it to be published.
- 2.7 This first report is essentially an internal scoping exercise of the Council’s plans, strategies, and functions relevant to the Biodiversity Duty and a high-level investigation of each Service’s understanding of their obligations.
- 2.8 It should be noted that the Strengthened Biodiversity Duty is a separate work stream to climate change projects, Biodiversity Net Gain (BNG)

and the Local Nature Recovery Strategy (LNRS), which have different outputs and resource implications.

### **Future Work**

- 2.9 The next stage of the Strengthened Biodiversity Duty is for public authorities to agree specific objectives based on the first considerations report. This stage must be completed as soon as possible after 1 January 2024. Given the cross-cutting nature of the biodiversity duty, all Services are affected by it, and it is likely that individual services across the Council will need to take the lead in developing their own biodiversity action plans. Actions may range from reviewing and updating policies to consider biodiversity, to taking specific actions as a result of policies already in place.
- 2.10 The Council is then tasked to deliver the action plans, monitor the work, and develop future plans to comply with this duty. The Council must publish its first 'Biodiversity Report' by 26 March 2026, to cover the period 1 January 2023 to 1 January 2026. In this report, the Council must summarise the action it has taken to comply with this duty during that period, evidencing biodiversity delivery in certain areas, and set out the actions it proposes to undertake under this duty over the next five years. This report will then need to be produced every five years. These reports will be submitted to the Department for Environment, Food and Rural Affairs (DEFRA) for publication.
- 2.11 It is understood that there will not be any direct sanction for not complying with this heightened duty. However, as part of DEFRA's schedule for publishing 'Biodiversity Reports' from public authorities, nil returns will be included for those that do submit. This will be publicly accessible information.

### **Resource Implications**

- 2.12 Unlike the other duties that have arisen from the Environment Act, such as BNG delivered through the planning system, or the production of the LNRS, this heightened duty does not come with any additional burdens funding. This is because local authorities should have already been addressing this work through the requirements of the NERC Act 2006. Nonetheless, resource is required to assist the Council in complying with this heightened duty.
- 2.13 In the short term, a temporary post, until the end of March 2025, has been established in the Conservation, Heritage and Design Service to assist the Council in assessing BNG submissions that form part of planning applications, and to assist the Departments in starting to develop Action Plans to address the Strengthened Biodiversity Duty.

Officers are currently reviewing resource options for 2025-26 and beyond.

### **3. Consultation**

- 3.1 As part of the development of the First Considerations report consultations have taken place across all the Departments of the Council to ascertain what areas of work and policy may impact on biodiversity.

### **4. Alternative Options Considered**

- 4.1 **Option 1: No action** The Council could undertake no further action to address this Strengthened Biodiversity Duty. This would result in the Council receiving a nil return in DEFRA's published report. While there would be no legislative sanction for this, it could be damaging to the Council's reputation, especially as the condition of the natural environment is of increasing public concern. This option is not recommended.

### **5. Implications**

- 5.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

### **6. Background Papers**

- 6.1 None identified.

### **7. Appendices**

- 7.1 Appendix 1 – Implications.

### **8. Recommendation**

That the Committee:

- a) Notes and endorses the work being undertaken to address the Council's Strengthened Biodiversity Duty.

### **9. Reason for Recommendation**

- 9.1 To ensure that the Improvement and Scrutiny Committee for Climate Change, Biodiversity and Carbon Reduction is informed of, understands

and supports the work that is being undertaken to address the Council's Heightened Biodiversity Duty.

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**Implications**

**Financial**

- 1.1 The delivery of the Strengthened Biodiversity Duty from April 2025 may have financial implications for the Council. The appropriate resourcing of the duty is currently being assessed by officers, and a further finance update will be provided once resourcing requirements are determined.

**Legal**

- 2.1 There is a statutory duty under Section 40 of the NERC Act 2006 that requires the Council in exercising its functions to have regard to the conservation of biodiversity, including having regard the need to conserve, restore or enhance habitats or populations of species, particularly those identified by government as being priorities for conservation.
- 2.2 The Environment Act 2021, through its sections 102 and 103 requires the Council to take a considered and documented approach to the above, recording, evidencing and publishing information about the steps it has taken to conserve and enhance biodiversity.

**Human Resources**

- 3.1 The resourcing of the duty is currently being assessed by officers.

**Information Technology**

- 4.1 The delivery of the future work related to this heightened biodiversity duty may have information technology implications for the Council.

**Equalities Impact**

- 5.1 It is not envisaged that the delivery of the Heightened Biodiversity Duty will have equalities implications for the Council.

**Corporate objectives and priorities for change**

- 6.1 The delivery of the Council's heightened biodiversity duty will assist in realising its strategic objectives of: resilient, thriving, and green communities; happy, safe, and healthy people; a strong, diverse, and clean economy; great places to live, work and visit; and High quality public services.

**Other (for example, Health and Safety, Environmental, Sustainability, Property and Asset Management, Risk Management and Safeguarding)**

**Environmental Sustainability**

- 7.1 A healthy natural environment is essential for supporting life. Biodiversity is a primary indicator as to the 'health' of the natural environment.