

BIODIVERSITY OFFSETTING IN ENGLAND GREEN PAPER

RESPONSE BY THE MINERAL PRODUCTS ASSOCIATION

6th November 2013

Q1: Do you think the Government should introduce a biodiversity offsetting system in England?

Yes, if it delivers the objectives set out in paragraph 14 of the Green Paper.

There would need to be clear and comprehensive guidance for developers, planning authorities, and offset providers, and planning authorities must be given sufficient resources and training to be able to implement the system.

Any system would need to reflect the differences between minerals development and other types of development, namely:

- Mineral extraction, unlike other forms of development can only take place where the minerals exist in economic quantities and it is often not possible to choose an alternative site to avoid areas of ecological interest;
- Offsetting of any impacts caused as a result of mineral development is often achieved within the development scheme itself i.e. as a result of approved restoration schemes. If mineral developments were required to offset their temporary impacts then this would increase the regulatory burden;
- Mineral extraction is a temporary activity in a given location and normally results in a net gain in biodiversity through site and estate management before and during working, and restoration and aftercare following extraction.

The industry has an acknowledged track record in restoration mineral sites often resulting in a net gain in the biodiversity interest of the site from before extraction began. It has expertise in habitat creation and biodiversity management, in conjunction with organisations such as the RSPB, and so is well placed to be an offset provider both for the minerals industry itself but also for other forms of development where there may be more limited opportunities. Recent surveys of a selection of our members has identified that to date they have created over 5,000 hectares of UK priority habitats, with a further 5,000 hectares yet to be created and in approved restoration plans.

A number of good examples of sites delivering biodiversity are available on our website following our recent Biodiversity Awards event¹. Many sites have public access, which we are now publicising as part of our National Nature Map².

¹ http://www.mineralproducts.org/restoration_and_biodiversity_awards_2013.htm

² http://www.mineralproducts.org/nature_map.htm

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

Yes. It should be administered through the planning system and not be an overly bureaucratic process. We would expect the proper application of the mitigation hierarchy to often result in the need for compensation to be avoided.

Q3: 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?

Yes.

Q.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)

- a. The metric is reasonably simple - it should not be complicated by adding other factors
- b. The 'time' factor is relevant to minerals. In many cases it will be possible to provide for enhancement on or near site through habitat creation and management to offset short term loss. For minerals developments, this short-term net loss should be considered in the context of the long term net gain through site restoration, and so the metric should be applied flexibly to recognise this
- c. On quality, the Farm Environment Plan Manual is unlikely to be appropriate for all types of habitat that may be relevant, and so a degree of local flexibility in its implementation should be provided for

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

Yes, it would supplement normal ecological survey/assessment and apply the mitigation hierarchy. Using the metric would provide a consistent means of assessing/quantifying impact, mitigation and any offset required.

Q.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?

Yes. Planning authorities already consider the merits of development and various constraints and opportunities, including nature conservation through applying the mitigation hierarchy. Applying the metric should assist in the application of the mitigation hierarchy. However many authorities will not have in-house ecological

expertise and so must be resourced adequately to be able to administer an offsetting system.

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

Yes. Once planning permission has been granted which includes an offset, there must be no opportunity for other regulatory authorities to “claw back” that permission by introducing additional requirements.

Q.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?

In relation to the options presented:

1. A fully permissive approach where a developer can choose whether to use the offsetting metric (Government’s preference)

We are concerned that this would not generate sufficient interest by developers to enable a market in offsets to develop. We are aware that few projects have emerged so far through the pilots that are testing this approach.

2. A partially permissive approach where developers might be required to use the offsetting metric to assess their project’s impact and are then free to decide the means to secure compensation (via a Section106 or obtaining an offset)

This approach would ensure the metric is used to quantify impact and apply the mitigation hierarchy, and as long as sufficient developers selected the offsetting route there would be sufficient demand to encourage providers to propose offsets. Again the experience to date from the pilots, while only being operational for 18 months and during a deep recession, apparently suggests few offset providers are coming forward with suitable sites, and few developers are selecting to use offsetting.

Minerals companies have the land, experience and expertise to provide habitat that can be used as offsets for other developments. We see an opportunity for minerals companies to be offset providers, and indeed they are better placed than most landowners to perform this role. Offsets could be provided through site restoration or management of habitats on sites or other parts of their estate. Offsetting could provide long term funding for site aftercare.

To enable this to happen planning authorities would need to work with minerals companies to ensure that ‘additionality’ could be demonstrated. This may require review of restoration plans and consideration at the planning application stage of the potential for sites, or parts of sites, to be used as offsets. Planning guidance would be needed to clarify and explain this approach.

3. A uniform approach where developments that exceed a certain threshold would be required to use the offsetting metric to assess their project’s impact. Below the threshold they would be able to opt in.

It would be better for the metric to be used consistently to assess and quantify impacts irrespective of size. This option would have the benefit of stimulating the demand and supply sides of the market.

4. A community infrastructure levy approach where the charging authority would purchase offsets and these would then be funded by a levy collected by the planning authority -which would not be ring fenced!

The offset needs to relate to the impact of the development and this will be site specific, and so collection of funds through CIL would not be likely to be appropriate.

Q.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?

No. However minerals developments should be treated differently given that they may cover large areas of land but are essentially temporary in nature, and can result in net gain in biodiversity through on-site management and restoration.

Q.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?

Offsetting should enable a more strategic approach to be taken to help deliver larger scale gains, and the landscape-scale approach is sensible. Restricting the location of offsets too strictly could limit offsets coming forward or lead to ‘ransom’ sites being proposed, further constraining rather than enabling development.

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

In the absence of firm data the assumptions used are critical and it is not clear that these are properly informed by practice and experience. We acknowledge that obtaining clear costs for compensatory provision under the existing planning system is difficult as specific costs for biodiversity (in terms of process and delivery) will often be very difficult to separate from those for other factors.

Q.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

Minerals sites routinely incorporate biodiversity into landscaping design, site management and restoration, mitigating and compensating for impacts and often delivering net gain through the working of the site. It is difficult to separate out the

costs specifically for biodiversity as they are often integrated with other measures eg landscaping. We would assume that for non-minerals development incidences of compensation being required for effects on non-designated sites or where protected species are not affected, would be relatively rare, given that the mitigation hierarchy would be applied and avoidance and mitigation achieved without need for compensation. Therefore there may not be many examples where the costs and benefits can be quantified. While national planning policy (NPPF and online guidance) requires the hierarchy to be applied, and seeks net gain in biodiversity, local plan policies (where up-to-date plans are in place) are not strongly worded to ensure development management decisions routinely include consideration of the need for compensation of residual losses, and rarely consider offsetting as a mechanism.

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

Offsetting should be simple and applied consistently across England, although there should be local definition of habitat distinctiveness and setting of local priorities (habitat types and broad locations) for compensatory provision.

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

Minerals can only be worked where they occur, and so there may not be feasible alternative locations to provide the essential mineral. The Government should consider enabling Habitats Directive sites and protected species to be subject to offsetting in exceptional circumstances.

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

It is agreed that there are a small number of habitats that are irreplaceable such as limestone pavement and ancient woodland; however there can be circumstances where such habitats are heavily degraded where offsetting may be appropriate and deliver biodiversity benefits.

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

Yes

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

Yes. Most mineral extraction planning applications are supported by an environmental impact assessment. Operators are well versed on the time constraints in assessing the presence of a particular species, and the costs caused due to delay and translocation. Developers should be aware of these limitations and they should not be seen as a constraint to applying offsetting to protected species.

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

Yes

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

The minerals industry has extensive experience in translocating great crested newts and other amphibian and reptile species, and providing suitable habitats for these on or off site, which could inform development of guidance.

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

Yes

Q.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?

Yes. The minerals industry has developed several mechanisms over the years, often working with leading NGOs which have resulted in the delivery of a wide variety of habitats. In addition to the use of covenants, the dedication of land to conservation bodies accompanied with long term management agreements or the use of S106 agreements for enforcing long term management plans should be considered.

Planning authorities should be responsible for certifying the gain the offset will deliver, for enforcing any covenants and management agreements and the monitoring of performance in consultation with Natural England. They must be given adequate resources to take on this role.

Offsets could provide funding for on-going management of restored minerals sites, beyond the aftercare period, thus securing management in the longer term.

Q.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?

Yes. As part of the planning process, planning authorities should be responsible.

Q.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. The Local Planning Authority would be best placed to maintain a register of offsets within their jurisdiction as they would be responsible to monitoring their performance. There may be a need for a more strategic approach, if offsets are allowed to be provided across local authority boundaries (landscape-scale, say for an NIA) and covenants applied, but this may be achieved via the Land Registry.

Q.24: How long should offsets be secured for?

There probably needs to be flexibility and pragmatism to reflect the nature of the offset and the provider. The time needs to be sufficiently long to secure biodiversity benefits and be an incentive for the provider (in terms of guaranteed income) while not too long to make it too onerous and deter providers. Ideally the length of the offset should reflect the life of the development, although once developed land is unlikely usually to be returned to a natural state. The exception is minerals development. For minerals developments, where offsets are required (possibly for initial loss), the time period could be much shorter to reflect the temporary nature of the loss and the potential for extensive habitat creation and net gain on or near-site through management and restoration. A period of 25 years may be pragmatic.

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

Long term management agreements must be flexible enough to take account of changing conditions brought about not only by climate change or also brought about by other changes beyond the control of the offset provider such as neighbouring land use. They should also be able to respond to changing knowledge eg about management practices.

Q.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?

Yes - provided it is for the applicant to choose this option and the application can be amended without the requirement for extensive additional assessments and resultant costs and delays.

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

The hybrid approach seems most reasonable and workable

Q.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.

All of the proposals should be considered further

Q.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 hybrid option (3) appears to be the most sensible and workable

Q.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?

We agree that a strategic approach should be taken and that the hybrid option appears to be the most sensible and workable.

Option 3 'enabling model' may be more positive and encouraging, and have a greater degree of flexibility.

Q.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?

Yes. This facility would have the potential to help the minerals industry and provide an incentive to create offsets for the future. 'Banked' habitat would need to be demonstrated to be additional to that of the agreed baseline amount (pre-development commencing) with any additional credits created as part of restoration being tradable in the usual manner. This would be negotiated at the planning stage and when restoration plans are being developed or reviewed to enable a tradable component of the site to be built in and acknowledged.

No - there should not be a time limit to banked habitats.

Q.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?

Yes - and in the case of minerals sites should apply to the period beyond aftercare obligations providing long term income stream to fund management. The value should be assessed using the metric.

Q.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?

Yes. Often minerals sites require landscaping (including prior to and during working, as well as in restoration) and incorporate measures to specifically benefit biodiversity eg wildflower meadows on screening bunds etc. Such measures that go beyond planning requirements should be capable of being considered as offsets. Long term management (post-aftercare) of habitats on minerals sites should also qualify as potential offsets.

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

Planning authorities using in house ecological expertise (including that in county councils) should be responsible for ensuring the robustness of assessment as they are for all other assessments undertaken in connection with the planning process. Offsetting should be no different. Although we have concerns over resourcing of local

authorities to fulfil this function, as offsets may be relatively infrequent the additional demand may not be too high and could be self-funded through existing planning fees.

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

There is no need to introduce new organisations or involve other regulators in deciding such matters as resolving differences of opinion. This is the role of the planning authority and they should decide, drawing on such advice as they deem appropriate to decide if an assessment is adequate. As stated above they do with all other assessments undertaken in support of a planning application and there is no reason for offsetting to be treated differently. If agreement cannot be reached then the normal planning appeal procedures should apply.

Q.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?

Yes - but should be able to offset with other habitats.

Yes it is the right approach.

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

Yes. In some cases offsetting will be able to deliver greater net gain than replacing like for like hedgerow habitat, including in terms of landscape quality.

Q.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?

Current planning guidance is not clear enough to ensure planning authorities implement the mitigation hierarchy and require compensation for residual losses of sites outside of national designations or where protected species are not affected. In order to stimulate the market - for offset providers and developers - and to ensure consistent application, legislation is likely to be required.