

WAVERLEY BOROUGH COUNCIL

SERVICES OVERVIEW AND SCRUTINY COMMITTEE

21 MARCH 2022

Environment Act 2021

Portfolio Holder: Cllr Steve Williams

Head of Service: Richard Homewood

Key decision: No

Access: Public

1. Purpose and summary

- 1.1 The Environment Act 2021 received Royal Assent on 9 November 2021 and is now in force. The Act is a wide-ranging enabling act which aims to protect and enhance our environment for future generations. It opens the door for further new legislation by allowing the relevant national authorities to make regulations, including provisions dealing with environmental governance, air quality and environmental recovery, water, nature, and biodiversity.
- 1.2 The [25-year Environment Plan](#) published in 2018 set out the ambition and principles for the New Environment Act. The Act is intended to provide powers to clean up the country's air, restore natural habitats, increase biodiversity, reduce waste, and make better use of our resources. It is also intended that the new powers will halt the decline in species by 2030 and require new developments to improve or create new habitats for nature.
- 1.3 The intention is for these changes to be driven by new legally binding environmental targets, and enforced by a new, independent Office for Environmental Protection (OEP) which will hold government and public bodies to account on their environmental obligations. The OEP is classified as an independent Non-Departmental Public Body, and will work with, but not duplicate the work of the [Committee on Climate Change](#). The OEP was set up in an interim, non-statutory form in July 2021, providing independent oversight of the Government's environmental progress and accelerating the foundation of the full body. The OEP will formally commence its statutory functions shortly. In addition to the work of the OEP there is the potential for individuals and organisations to challenge the government and other public bodies (including local authorities) through the courts regarding the work they do.

1.4 Work on implementing Environment Act policies is underway. The Government has started work on developing legally binding environmental targets and has already launched a range of consultations. The Government has also published a draft Principles Policy Statement which will put protecting the environment at the heart of future policy. This legally binding statement will introduce five environmental principles, committing the government to building back greener. These principles are:

- The **integration** principle is the principle which states that policymakers should look for opportunities to embed environmental protection in other fields of policy that have impacts on the environment.
- The **prevention** principle means that government policy should aim to prevent, reduce, or mitigate harm.
- The **rectification** at source principle means that if damage to the environment cannot be prevented it should be tackled at its origin.
- The **polluter pays** principle is the principle that those who cause pollution or damage to the environment should be responsible for mitigation or compensation.
- The **precautionary** principle states that where there are threats of serious or irreversible environmental damage, a lack of scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

1.5 The policy statement is intended to guide ministers across Government departments towards opportunities to prevent environmental damage whilst supporting innovation and sustainable development. Defra will support government departments in understanding and applying the requirements of the new duty in their policymaking. These principles will be backed by long-term (at least 15 years, starting in 2022) legally binding targets on air quality, biodiversity, water, resource efficiency and waste reduction

1.6 The Act and new legislation made under its umbrella is intended to deliver:

- Long-term targets to improve air quality, biodiversity, water, and waste reduction and resource efficiency
- A target on ambient PM_{2.5} concentrations, the most harmful pollutant to human health
- A target to halt the decline of nature by 2030
- Environmental Improvement Plans, including interim targets
- A cycle of environmental monitoring and reporting
- Environmental Principles embedded in domestic policy making
- Office for Environmental Protection to uphold environmental law

1.7 In specific areas it is intended to deliver the following:

Waste & Recycling

- Extend producer responsibility to make producers pay for 100% of cost of disposal of products, starting with plastic packaging

- A deposit Return Scheme for single use drinks containers
- Charges for single use plastics
- Greater consistency in recycling collections in England
- Electronic waste tracking to monitor waste movements and tackle fly-tipping
- Tackle waste crime
- Power to introduce new resource efficiency information (labelling on the recyclability and durability of products)
- Regulate shipment of hazardous waste
- Ban or restrict export of waste to non-OECD countries

Clean Air

- Require Local Authorities to tackle air quality
- Simplify enforcement within smoke control areas

Nature

- Strengthened biodiversity duty
- Biodiversity net gain to ensure developments deliver at least 10% increase in biodiversity
- Local Nature Recovery Strategies to support a Nature Recovery Network
- Duty upon Local Authorities to consult on street tree felling
- Strengthen woodland protection enforcement measures
- Conservation Covenants
- Protected Site Strategies and Species Conservation Strategies to support the design and delivery of strategic approaches to deliver better outcomes for nature
- Prohibit larger UK businesses from using commodities associated with wide-scale deforestation
- Requires regulated businesses to establish a system of due diligence for each regulated commodity used in their supply chain, requires regulated businesses to report on their due diligence, introduces a due diligence enforcement system

Water

- Effective collaboration between water companies through statutory water management plans
- Drainage and sewerage management planning a statutory duty
- Minimise damage water abstraction may cause on the environment
- Modernise the process for modifying water and sewerage company licence conditions

1.8 This report seeks to provide an overview of the impact of the Act on local authorities and how it will support the Climate Change and Sustainability Strategy and how we work to deliver the targets in the Carbon Neutrality Action Plan.

2. Recommendations

- 2.1 That the Executive consider the report and identify areas where further reports are required to further identify the service delivery implications for the local authority.

3. Reason for the recommendation

- 3.1 To ensure the Council is fully appraised on the impact of and opportunities provided by the Environment Act 2021.

4. Background

- 4.1 Set out below is a more detailed overview of how the Act sets out to place environmental protection at the forefront of the work of the council. The OEP will act as a green 'watchdog' to ensure the implementation of this new legislation in England and Northern Ireland.

4.2 **Planning**

- 4.2.1 All new developments will be obliged to deliver a 10% increase in biodiversity (biodiversity net gains - BNG). Developers will need to ensure they can demonstrate a net gain on site or have a mitigation strategy such as purchasing credits to off-set the impact through a Borough or County-wide scheme where available. Biodiversity Net Gain to be a key consideration in assessing planning applications and play a significant role in the allocation of new sites through Local Plans.
- 4.2.2 Developers will soon have to incorporate a Biodiversity Gain Plan in conjunction with planning application submissions, with legislation stipulating that the development may not be begun until the biodiversity gain plan has been submitted and the Local Planning Authority (LPA) has subsequently approved the plan.

The Biodiversity Gain Plan is to include:

- Details of the steps taken or to be taken to reduce the adverse effect of the development on biodiversity of the onsite habitat and any other habitat.
- The pre and post biodiversity value of the onsite habitat (post –development value must be at least the value specified in the plan.
- Any registered offsite biodiversity gain allocated to the development and the biodiversity value of that gain in relation to the development.
- Any biodiversity credits purchased for the development.

- 4.2.3 Of note, there is a mitigation hierarchy in respect of BNG as follows:

- **Avoidance** (such as intentional spatial placement of infrastructure and timing of construction). This approach is often the simplest and most cost-effective, however it requires biodiversity to be accounted for in the preliminary stages.

- **Mitigation** (measures to minimise the extent of impacts which cannot be wholly avoided).
- **On-site Compensation** (measures to enhance degraded or diminished ecosystems after exposure to unavoidable impacts. Varying levels of on-site rehabilitation/restoration can be adopted). On-site BNG commitments are likely to be included in a S106 or Conservation Covenant.
- **Offset biodiversity losses off-site** (As a last resort if compensating on-site is not possible or is not the most beneficial then facilitating gains off-site may be deemed sufficient).

This hierarchy therefore means that developers cannot simply go straight to the 'pay off-site' option.

- 4.2.4 The Town and Country Planning Act and the NPPF will need to be updated before the 10% BNG requirement becomes a mandatory requirement. The projected timeline on this is estimated to be two years, with BNG becoming mandatory from Winter 2023. The NPPF already gives LPAs the tool to encourage some net gain but not the mandatory requirement. Therefore, we cannot insist on it under current planning legislation. Nevertheless, planning officers will be pushing for 10% BNG wherever possible in our discussions with developers.
- 4.2.5 DEFRA have opened a new consultation asking for thoughts on how biodiversity net gain will work in practice. The consultation sets out the government's proposals and asks questions about how biodiversity net gain should be applied to Town and Country Planning Act development, and, at a higher level, Nationally Significant Infrastructure Projects [Consultation on Biodiversity Net Gain Regulations and Implementation - Defra - Citizen Space](#). The consultation closes on 5 April 2022 and Waverley officers will draft a response with the relevant portfolio holders and bring it back to Executive Briefing for sign off.
- 4.2.6 In advance of the adoption of the mandatory requirement, the Council will need to ensure that officers are adequately trained and have a sound working knowledge of BNG and the metric for calculating and assessing this and to give advice. There will also be a need to update process notes and the validation requirements will need to be updated to ensure that the documentation relating to BNG is submitted for the relevant planning applications.
- 4.2.7 Linked to the requirement for biodiversity net gain, a publicly available 'Biodiversity Gain Site Register (BGSR)' will need to be set up to register land where a person is required under a conservation covenant or planning obligation to carry out works for the purpose of habitat enhancement and maintained for at least 30 years after the work has completed. The register must be kept under review by the Secretary of State who will also have the power to increase the period for which habitat enhancement must be maintained. The details of this are also being consulted on as part of DEFRA's above-mentioned consultation. However, it is not yet set out whose responsibility it will be to maintain the BGSR.

- 4.2.8 The Act also introduces Local Nature Recovery Strategies (LNRS). LPAs will be required to assimilate new LNRS for the environment and nature's recovery into their local planning system which will provide a framework for implementing BNG. These will be a feature in the preparation of emerging Local Plans and a 'greening' in some sites within the LPA areas. LNRS will map the most valuable sites and habitats for wildlife and identify where nature can be restored through, for example, the creation of wildflower habitat, green spaces, or new woodlands and wetlands. The Secretary of State will determine the areas in England to which individual LNRS will relate and who the responsible body will be for preparing them. Further regulations may be required to make provision about the procedure to be followed in the preparation, review, and republication of the strategies. Until these further details are provided, there are no immediate implications for planning but the Council will need to start considering what can be done to ensure that we are ready to implement the requirements including ensuring that we have the ecological expertise to do so.
- 4.2.9 Local Authorities will be required to produce Biodiversity Reports every five years, describing action taken and the impact it has had. Where Local Authorities are also Local Planning Authorities (LPAs), the Biodiversity Reports must also cover biodiversity net gain. As stated above, biodiversity net gain is expected to become mandatory in 2023, so there is likely to be limited data to report on until after that point.
- 4.2.10 The Environment Act also introduced Species Conservation Strategies which will be prepared by Natural England to improve the conservation status of any species of fauna or flora. Currently, we do not know whether there will be any Species Conservation Strategies which cover Waverley. However, should Natural England decide to prepare one or more which cover Waverley, the Council (as a local planning authority) would be required to co-operate with Natural England in the preparation and implementation of a species conservation strategy so far as relevant to the Council's functions. This is likely to have implications for both development management and planning policy in supporting Natural England in preparing the Strategy and in implementing it through the preparation of development plan documents and determination of planning applications.
- 4.2.11 Additionally Natural England may prepare and publish Protected Sites Strategies which can cover European sites, sites of special scientific interest or marine conservation zones. The Council would be consulted by Natural England on a Protected Sites Strategy if it covered a site in Waverley and the Council would be required to co-operate with Natural England in the preparation of the Strategy.

4.3 Environmental Services – Waste and Recycling

- 4.3.1 The Government has been reviewing the National Waste Strategy and embarked on a series of consultations in 2020 and 2021. The Environment Act 2021 opens the door to further new legislation by allowing the relevant national authorities to make regulations because of those consultations, about:

- Producer responsibility obligations, including requiring payment towards the costs of disposing of products and materials
- The provision of resource efficiency information and resource efficiency requirements
- Deposit schemes and charges for single use items
- Managing waste
- Waste enforcement and regulation.

4.3.2 Members received briefings on these consultations recently and the final proposals from Defra are expected soon.

4.3.3 The Act also amends existing legislation, for example by amending the sections of the Environmental Protection Act 1990 dealing with the separation of waste, hazardous waste, the trans frontier shipment of waste, enforcement, and enabling the establishment of an electronic waste tracking system, as well as amending the powers under the Environment Act 1995 to make charging schemes.

4.3.4 Proposals under discussion during this consultation included requirements for:

- Changes will extend producer responsibility for the cost of disposal of products, starting with plastic packaging.
- Recyclable household waste must be collected separately from other household waste, for recycling or composting ('recyclable household waste' being defined in the amended EPA 1990 to reference specific recyclable waste streams). The Secretary of State ("SoS") will have the power to add further recyclable waste streams. This is already done in Waverley for several dry recycling commodities (paper, cardboard, and glass, metal and plastic food and drink containers) using a co-mingled collection for all of these commodities. There are some other recyclable commodities for which to date it has not been technically and or economically viable to collect at the kerbside.
- Recyclable household waste must be collected as individual streams unless the exceptions in the new Section 45A(6) EPA 1990 apply. For Waverley, it could mean providing an additional recycling bin to every property in the Borough, which the Government has suggested it will cover in new burdens payments. Also moving to a different collection pattern, for example: week 1 refuse, week 2 paper and cardboard, week 3 refuse, week 4 food containers. If this methodology was followed, there should be limited cost increases through the waste contract as broadly, the same vehicle fleet could be utilised.
- Food waste collection must take place at least once a week. This is already done in Waverley, with food waste collections offered to all residential properties. No significant changes are anticipated in terms of the collection offer, although there will be a need to increase the promotion and participation rates of food waste collections, especially in flatted properties. Work on this is already underway with other Surrey local authorities through the Surrey Waste Partnership.
- Some WCAs charge for the collection of garden waste using the exception in Schedule 1 Paragraph 4 Controlled Waste (England and Wales) Regulations 2012. However, under the Act, WCAs are not permitted to charge for the collection of food waste. Therefore, if WCAs

decide to collect garden and food waste together, charging for collection may be viewed as a breach of their statutory duties.

Environmental Services – Air Quality

- 4.3.5 The Act strengthens the Local Air Quality Management (LAQM) framework, placing duties on LPAs to identify sources of failure not only in its only area but also those of its neighbouring LPA, to prepare action plans for LAQM areas.
- 4.3.6 Regulations under the Act will introduce new targets for air quality, including a new target on ambient PM_{2.5} concentrations, the most harmful pollutant to human health. PM_{2.5} has a significant impact on public health. A twin track approach is being taken to tackle PM_{2.5} with a traditional limit value being set (to tackle hot spot areas) and an exposure reduction approach for the general population. By 31 October 2022 the Government must set:
- **a long-term exposure target for PM_{2.5}** (to reduce population exposure) with a date when it must be achieved
 - a target, set by regulation, for an **annual mean concentration of fine particulate matter (PM_{2.5})** in ambient air

It is unclear at present what the targets will be, or the implications for local authorities, but it is anticipated local authorities will have a role in achieving the targets set.

- 4.3.7 The Local Air Quality Management System under the Environment Act 1995 will remain in place with some [adjustments](#):
- The Secretary of State must produce an Air Quality Strategy every 5 years and report annually. The last one was produced in 2007. It is anticipated an updated Air Quality Strategy will be in place by summer 2023, with public consultation before then. **Note, local authorities, including counties, must have regard to the strategy when exercising any function of a public nature that could affect the quality of air.**
 - In addition to identifying where standards are not met local authorities must identify the source of the emissions responsible, where they come from (potentially a neighbouring local authority) and which public bodies have responsibility for the sources (e.g., EA or NH). There is a duty to prepare an air quality action plan detailing how the local authority will exercise their functions to **secure and maintain air quality standards**, what measures they will take and the date by which they will be carried out. A local authority must revise an action plan if it considers that there is a need for further or different measures to be taken to secure the air quality.
 - There is a legal framework for greater collaboration with '**Air Quality Partners**'. Responsibility for tackling local air pollution will now be shared with public authorities identified as responsible for any sources of exceedance, i.e., all tiers of local government, neighbouring authorities, Environment Agency, National Highways etc. There is a duty on these 'air

quality partners' to cooperate with the local authority. This includes requiring air quality partners to provide measures they would take to contribute to the action plan being developed by a local authority. Where a local authority in England intends to prepare an action plan it must notify each of its air quality partners that it intends to do so.

4.3.8 The Clean Air Act 1993 and Environmental Protection Act 1990 have been amended to make it easier for local authorities to act in **Smoke Control Areas** against problem burning giving rise to [smoke from a chimney](#). Waverley is not a smoke control area.

4.3.9 Additionally, [The Air Quality \(Domestic Solid Fuels Standards\) \(England\) Regulations 2020](#) which came into force in May 2021 required **standards to be met for the sale of wood and other solid fuels** to try and minimise emissions to air from domestic burning. Bags of traditional house coal will no longer be available for sale from May 2021, and sales of loose coal via approved coal merchants will be phased out by May 2023. We are already working with Trading Standards (who are the enforcing authority) via the Surrey Air Alliance on raising awareness and the enforcement of these regulations.

4.4 Commercial Services – Parks & Countryside

4.4.1 Whilst the act does not specifically mention requirements for this service, much of what we do and will do will help towards the Council achieving and meeting the requirements of the act. The below is pulled from the action plan of our forthcoming Biodiversity Policy. The Tree & Woodland Policy, links to Biodiversity Policy, therefore nothing further is added.

- The service will continue to ensure the habitats it manages are in good or very good condition and will prioritise management and habitat creation to maximise biodiversity and connectivity across the landscape by;
 - Collating existing habitat condition information to determine current condition
 - Surveying habitats where baseline condition is not available
 - Identifying priorities for improvement of habitat condition to improve connectivity across the borough
 - Identifying opportunities for habitat creation to enhance connectivity and improve connectivity across the borough
 - Identifying funding deficiencies to enable management prioritisation.
- Ensure there is a current habitat management plan statement for sites or habitat types the service manages by:
 - Identifying sites or habitats which require a management plan or strategy, prepare these, and keep up to date
 - Ensuring all management plans and strategies are linked with the objectives of Biodiversity opportunity Areas (BOA) where they are located within

- Where the Council identifies suitable opportunities to accept biodiversity net gain (BNG) offset funding on its land, it will only accept projects that deliver a 20% BNG.
 - Assessing current assets to determine potential biodiversity net gain (BNG) offset potential on sites we manage.
 - Liaising with the planning team to identify projects that can be offset on Council land.
 - Undertaking BNG assessment of the offset opportunities
- Develop a robust monitoring regime across sites or habitats to support and guide management.

4.4.2 The service would like to appoint a Biodiversity Officer to oversee the implementation of the services Biodiversity Policy and Action Plan and other activities relating to Biodiversity that the Council is involved in.

4.5 Waste and resource efficiency

4.5.1 Environment Improvement Plan (EIP) to be published by the government setting interim targets (non-binding), the first of which is the 25-Year Environment Plan published in 2018, with annual reports on its implementation and progress, and a complete review by 31 January 2023

4.6 Water Resources, Abstraction and Drainage

4.6.1 Land valuation for the purposes of calculating land drainage charges
The Act has provided for changes to be made to modernise the way that land is valued for the purpose of apportioning the costs of IDBs and calculating drainage rates and special levies.

4.6.2 Collaborative water resource planning - Regional Water Resource Management Plans aim to address the balance of water supply and demand. Flood risk management authorities (RMAs) should actively engage with their local water resource planning partnership in order to put forward their case and contributions to the development of the catchment approach to water resource management.

4.6.3 Changes will give the Environment Agency the ability to revise an abstraction licence to reflect the volume of water that has historically been used, and to revoke a license, if it is deemed that the revision is necessary to protect the environment. IDBs may need to adjust water levels in the future to assist land managers adapting to the consequences of these changes.

4.7 Species Conservation Strategies and Protected Sites Strategies

4.7.1 Public authorities will be expected to cooperate with Natural England in the development and implementation of Protected Site Strategies, and Species Conservation Strategies where they relate to areas under their management (e.g. a

SSSI within an internal drainage district), and must have regard for them whilst undertaking their functions.

- 4.7.2 Conservation covenants will enable landowners to enter into a voluntary but legally binding agreement to assign a particular piece of land to be managed for conservation and the public good. There could be opportunities for local public bodies, such as IDBs, to assist with the management of such land.

5 Relationship to the Corporate Strategy and Service Plan

- 5.1 The Environment Act 2021 will support the Council in delivering its commitment to a sense of responsibility by all for our environment, promoting biodiversity, championing the green economy and protecting our planet by taking action on Climate Emergency and protecting the environment

6 Implications of decision

6.1 Resource (Finance, procurement, staffing, IT)

This Act is an enabling act and until subsequent supporting legislation is introduced it will not be possible to assess the full financial impacts of it on the council.

Changes to the arrangements for waste and recycling collections proposed in recent consultations could have a significant financial impact on the council but the Government has indicated it would provide additional funding where appropriate.

Funding has already been allocated to support the Carbon Neutrality Action Plan but the potential costs for implementing this and subsequent legislation will clearly exceed existing provision. Further reports will be provided with more financial impact assessments as new legislation on specific objectives in the act come into force.

6.2 Risk management

There are potentially significant reputational risks for Waverley BC if it is not seen to be supporting and promoting the general principles of this enabling Act and subsequent legislation.

6.3 Legal

The main provisions of the Act are set out within the body of this report.

6.4 Equality, diversity, and inclusion

There are no direct equality, diversity, or inclusion implications in this report. Equality impact assessments are carried out when necessary, across the council to ensure service delivery meets the requirements of the Public Sector Equality Duty under the Equality Act 2010.

6.5 Climate emergency declaration

The Act and subsequent legislation will place greater relevance and importance on the objectives in the Climate Change and Sustainability Strategy and the targets in the Carbon Neutrality Action Plan and fully supports the work the Council has done to date.

7. Consultation and engagement

- 7.1 The Council has already engaged in the consultation on the National Waste Strategy independently and through the Surrey Environmental Partnership.
- 7.2 The Council will continue to work with and consult the community and partner authorities and agencies in responding to the challenges of this new legislation.

8. Other options considered

8.1 .

9. Governance journey

9.1	Senior Management Team	1 February 2022
	Management Board	8 February 2022
	Executive Briefing	22 February 2022
	O&S Services	21 March 2022
	Executive	5 April 2022

Annexes:

Background Papers

There are / are no background papers, as defined by Section 100D(5) of the Local Government Act 1972).

CONTACT OFFICER:

Name: Richard Homewood
Position: Head of Environmental and Regulatory Services
Telephone: 01483 523411
Email: Richard.homewood@waverley.gov.uk

Name: Delma Bryant
Position: Sustainability Projects Officer
Telephone: 01483 523148
Email: delma.bryant@waverley.gov.uk

Agreed and signed off by:
Legal Services: date
Head of Finance: date
Strategic Director: date
Portfolio Holder: date