

VIEW POINT | BIODIVERSITY OFFSETTING - PANDORA'S BOX, NATURE'S TAX OR A POSITIVE CONTRIBUTION TO ADDRESSING BIODIVERSITY LOSS?

Wall Brown Butterfly Photo by: Owain Gabb, BSG Swansea

The development of a biodiversity offsetting scheme has been in the pipeline for some time, and a pilot scheme (<https://www.gov.uk/biodiversity-offsetting>) devised by Defra has recently come to an end. In essence, the Defra 'metrics' approach enables biodiversity credits to be calculated for habitats that will be unavoidably lost, and an equivalent value of credits provided through habitat restoration or creation to compensate for this loss. This is a very simplified explanation: there are various grades of scoring that reflect the habitat value, quality and difficulty of habitat creation and multipliers that seek to take account of the delay in the time for habitats to mature, but essentially the calculation enables a numerical figure to be determined that sets a target 'fee' for compensation measures. There is also guidance from Defra that certain sites or habitats should not be subject to such offsetting calculations and that, where they are proposed, the principle of avoidance (of harm) first, mitigation second and compensation last, should be applied.

The concept of biodiversity offsetting is not new and various schemes are being operated around the world, but there remain a range of questions, concerns and opportunities associated with a biodiversity offsetting scheme if it should be rolled out formally in the UK. Some see it as a bit like opening Pandora's box (see George Monbiot's blog entitled 'The Unsung World' of December 2012 <http://www.monbiot.com/2012/12/08/the-unsung-world/>) where there is a fear that offsetting provides an ability for all options being up for grabs and no habitats or sites being seen as sacrosanct. It is an understandable concern, especially whilst the scheme is being developed and tested. If it is not to be Pandora's box, it will be vital that the

key sequential principles of avoidance of harm, mitigation and compensation are applied and, crucially, that certain sites and possibly specific habitat types are seen as all but sacrosanct. This will need to be clearly stated in policy and subject to enforcement.

However, some would say even then habitats and sites of lower conservation value could come under threat as the potential land value arising from development is likely to make the financial cost of an offsetting payment an attractive price to pay if it enables an increase in developable area. This could be seen as a positive step forward by those who consider that many piecemeal compensation schemes associated with development are unsustainable and ineffective. However, it will not address specific issues in relation to protected species such as great crested newts and bats that are likely to need to still be addressed within the local area of any development, rather than at some unknown location and at an unspecified time in the future.

What will it mean in EIA terms?

The development sector has expressed concern about biodiversity offsetting, as it will present additional cost to development and potentially make planning more complex. Conversely, there is also some optimism that it could make dealing with biodiversity impacts easier to resolve in the planning process. The Defra trials included all habitats outside of hardstanding or built development, and as such, any habitat (regardless of its wildlife value) would attract the need for biodiversity off-setting payments. This would include intensively managed arable

farmland, albeit this type of habitat attracts the lowest rating in terms of a biodiversity credit calculation. Loss of (intensively managed) arable land is often scoped out of the process of formal environmental impact assessment (EIA) due to its generally low wildlife value and it being a common and widespread habitat in the landscape, unless it supports a particular species of interest. Under offsetting, the principle of arable farmland loss could potentially need to be compensated. This raises an interesting question in relation to EIA and the process of assessing habitat value. If offsetting attracts payment for the loss of common and widespread habitats that are not considered to be of particular value under current assessment processes, how will this be addressed in EIA terms? If a habitat is considered valuable enough to attract a biodiversity offsetting payment then how can it be assessed as being of little biodiversity value in an EIA ecology chapter? There are similarities here with the implementation of the Water Framework Directive which can drive the need for compensation for impacts on waterways and waterbodies that in EIA terms are considered as only having minor or locally adverse impacts. This is not to say such an approach is necessarily wrong, it is just that it will require some additional thought in EIA terms.

The same amount of money to go around?

The additional cost that could fall on development to compensate for the loss of habitat could have a number of effects. The principal one, however, would be that there is less money for other planning gains in terms of the pot of money often referred to as the

'Section 106 contribution pot.' This pot of money will not increase as a result of biodiversity offsetting, although it may drive maximisation of developable areas and increase revenue. There is, in effect, a finite pot of money for Section 106 obligations (or their mandatory equivalent). As such payments under biodiversity offsetting may take money away from other planning gains, potentially reducing benefits to local communities from local development. This effect could be felt by local communities further if the project the biodiversity offsetting payment supports, is located some distance from the point of impact of the development. Faced with a choice between provision of, for example, a local community centre or new playground equipment or contributing money to a potentially unknown biodiversity offsetting scheme that could lie beyond local people's day to day reach could generate a perception of compensation not being delivered to the communities directly affected by a given development. How will the beneficiaries of offsetting payments (e.g. nature conservation bodies or private landowners) be viewed if a biodiversity offsetting payment is perceived as taking money away from a local planning gain? Will this put biodiversity conservation at odds with other good causes locally?

How this relates to the Government's Localism agenda is also unclear. This potential conflict could 'test' the general support for wildlife conservation.

What are the biodiversity benefits?

Setting aside the perceived problems, there is the potential for offsetting to deliver very positive gains for nature conservation and, as stated above, potential benefits to the development sector in terms of a simplified approach to biodiversity issues. Certainly the prospect of a constant stream of income for the restoration and creation of new habitats must seem a very attractive prospect to nature conservation bodies providing funding for ambitious projects to extend nature reserves or re-wild large areas of landscape (such as The Great Fen project).

So how will biodiversity offsetting proceed, how can it avoid opening Pandora's Box, provide a genuine benefit to the development sector and local communities affected by development proposals and deliver no net loss of biodiversity and biodiversity gain? Much depends on how biodiversity offsetting is implemented. Will it be a voluntary or mandatory system? Who will manage and control offsetting policy and payments? Who will form the bulk of biodiversity offset providers – private land owners or public bodies and charities? Will payments be realistic and properly

reflect the true cost of habitat restoration and creation and how will this be affected by affordability considerations for developers? Will offsetting be in perpetuity? How will the success be monitored and who by?

Offsetting discussed at Westminster Energy, Environment and Transport Forum (4 July 2013).

To see what answers there were to these questions and to keep up to date with the ongoing debate, Kirsty Kirkham, BSG Ecology Partner based in our Derbyshire office, recently attended a Westminster Energy, Environment and Transport Forum meeting. This was entitled Biodiversity and the Natural Environment: valuation, localism and engaging business.

The key message delivered at the Forum regarding 'engaging business in biodiversity' was that for biodiversity offsetting to work there will be a need to make it mandatory. According to Dr David Hill (Deputy Chair Natural England and CEO of the Environment Bank <http://www.environmentbank.com/biodiversity-offsetting-news.html>), the six recent Defra biodiversity offsetting trials have suffered from slow take up, and inconsistencies in approach to the need to apply offsetting to compensate for biodiversity losses between local authority areas in the 12 month pilot projects. David considers that this is due to the voluntary nature of the pilot projects rather than a mandatory regulation based approach advocated by the Ecosystems Market Taskforce (<http://www.defra.gov.uk/ecosystem-markets/files/Ecosystem-Markets-Task-Force-Final-Report-.pdf>). This was echoed by several speakers.

Questions and discussion ensued regarding whether the use of a regulatory approach sat well with the current Government's desire to reduce 'red tape' and the burden of regulation: the application of the metrics based system to generate credits for the creation of habitat off site at specific locations may be applied to all developments that have an impact upon biodiversity. It was suggested that there will be an on line resource of sites available as a 'trading board' for companies to select the credit from, check with the local authority that they are happy with the choice, make their payment 'tick the box and off you go'.

The proposals were compared with the carbon credits system that is in operation which, in her address to the Forum, Hannah Mowat (Carbon and Ecosystems Campaigner from FERN) said did not come without problems. 'A price won't do it alone!' Hannah advised that we need to understand what is behind the biodiversity losses in the first place before we can truly deliver success. Her concerns with biodiversity offsetting are that the same on the ground problems with carbon credits

may apply, such as unacceptable time lags and uncertainty in outcomes.

The MoD said that the challenge would be to persuade people to think beyond their local patch and David Hill was optimistic that local people would 'broaden their horizons'.

In practical terms, a stumbling block may well be the local planning authorities who are under-resourced to oversee existing Section 106 obligations and carry out enforcement. There was discussion by the panel of speakers about £23 million currently lying unspent in s106 pots within local authorities. The Association of Local Government Ecologists advises that approximately 2/3 of local planning authorities do not currently have dedicated Ecologists and hence, there will be many authorities who simply do not have the in-house expertise to assess biodiversity offsetting proposals.

Speakers from the Co-operative Group and The Wildlife Trusts gave examples of how they are delivering biodiversity benefits in local communities and engaging with local people. Kirsty Kirkham of BSG Ecology asked David Hill if the profits from the Environment Bank would be put back into biodiversity projects and research which he confirmed would 'of course' be the case.

Viewpoint

There is no doubt that some interesting challenges lie ahead and the ability to deliver 'bigger, better and more joined up' areas for biodiversity as required in the 2011 Natural Environment Rural White Paper (<http://www.official-documents.gov.uk/document/cm80/8082/8082.pdf>) Using the mechanism of trading biodiversity assets will need careful thought. It is going to be important to get the messaging right in rolling out an offsetting programme. It is clear, however, from Defra (Robin Mortimer) that there is strong political will behind offsetting, it may be rolled out quickly and there is a desire to secure quick wins.